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Reference Material for Five Years

Bachelor of Law (Hons.)

Code: 035

Semester – I

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LEGAL METHOD (101)

Unit-I: Meaning and Classification of Law

(a)Meaning and Definition of law

Law is a term which does not have a universally accepted definition, but one definition is that law is a system of rules and guidelines which are enforced through social institutions to govern behavior. Laws are made by governments, specifically by their legislatures. The formation of laws themselves may be influenced by a constitution (written or unwritten) and the rights encoded therein. The law shapes politics, economics and society in countless ways and serves as a social mediator of relations between people.

A general distinction can be made between civil law jurisdictions (including Canon and Socialist law), in which the legislature or other central body codifies and consolidates their laws, and common law systems, where judge-made binding precedents are accepted. Historically, religious laws played a significant role even in settling of secular matters, which is still the case in some countries, particularly Islamic.

The adjudication of the law is generally divided into two main areas. Criminal law deals with conduct that is considered harmful to social order and in which the guilty party may be imprisoned or fined. Civil law (not to be confused with civil law jurisdictions above) deals with the resolution of lawsuits (disputes) between individuals or organizations. These resolutions seek to provide a legal remedy (often monetary damages) to the winning litigant.

Under civil law, the following specialties, among others, exist: Contract law regulates everything from buying a bus ticket to trading on derivatives markets. Property law regulates the transfer and title of personal property and real property. Trust law applies to assets held for investment and financial security. Tort law allows claims for compensation if a person's property is harmed. Constitutional law provides a framework for the creation of law, the protection of human rights and the election of political representatives. Administrative law is used to review the decisions of government agencies. International law governs affairs between sovereign states in activities

To implement and enforce the law and provide services to the public by public servants, a government's bureaucracy, the military and police are vital. While all these organs of the state are creatures created and bound by law, an independent legal profession and a vibrant civil society inform and support their progress.

Law provides a rich source of scholarly inquiry into legal history, philosophy, economic analysis and sociology. Law also raises important and complex issues concerning equality, fairness, and justice. All are equal before the law. The author Anatole France said in 1894, "In its majestic equality, the law forbids rich and poor alike to sleep under bridges, beg in the streets, and steal loaves of bread." Writing in 350 BC, the Greek philosopher Aristotle declared, "The rule of law is better than the rule of any individual." Mikhail Bakunin said: "All law has for its object to confirm and exalt into a system the exploitation of the workers by a ruling class". said "more law, less justice". Marxist doctrine asserts that law will not be required once the state has withered away.

(b)Functions of Law

1. Outlines what people can and cannot do
2. Protects public order (Criminal Law)
3. To resolve disputes between people (Civil Law)
4. Protects certainty of systems

5. Outlines what the government can do and what it cannot do
6. Helps to protect us a keep people safe
The law is the body of rules imposed by a State upon its members which is designed to regulate human conduct within that State.

The courts interpret these rules of conduct, decide whether they have been broken and pass sentence or make an award of compensation. A certain standard of behavior is thereby maintained amongst the members of the State in the interest of the common good.

(c)Classification of Law

(i)Procedural Law and Substantive Law
Procedural law comprises the set of rules that govern the proceedings of the court in criminal lawsuits as well as civil and administrative proceedings. The court needs to conform to the standards setup by procedural law, while during the proceedings. These rules ensure fair practice and consistency in the "due process".

Substantive law is a statutory law that deals with the legal relationship between people or the people and the state. Therefore, substantive law defines the rights and duties of the people, but procedural law lays down the rules with the help of which they are enforced. The differences between the two need to be studied in greater detail, for better understanding.

Procedural Law Substantive Law
Structure: Elaborates on the steps which the case passes through
Deals with the structure and facts of the case
Enforcement: Creates the machinery for the enforcement of law
Defines the rights and duties of citizens
Powers: No independent powers Independent powers to decide the fate of a case
: Can be applied in non legal contexts
Cannot be applied in non legal contexts

Differences in Structure and Content
In order to understand the differences between the structure and content of substantative and procedural law, let's use an example. If a person is accused and undergoing a trial, substantive law prescribes the punishment that the under-trial will face if convicted. Substantative law also defines the types of crimes and the severity depending upon factors such as whether the person is a repeat offender, whether it is a hate crime, whether it was self-defense etc. It also defines the responsibilities and rights of the accused.
Procedural law, on the other hand provides the state with the machinery to enforce the substantive laws on the people. Procedural law comprises the rules by which a court hears and determines what happens in civil or criminal proceedings. Procedural law deals with the method and means by which substantive law is made and administered. In other words, substantive law deals with the substance of the case, how the charges are to be handled and how the facts are to be dealt with; while procedural law will give a step by step action plan on how the case is supposed to proceed in order to achieve the desired goals. Therefore its procedural law that helps decides whether the case requires trial or otherwise.

Powers of substantive vs. procedural laws
Substantive law is an independent set of laws that decide the fate of a case. It can actually decide the fate of the under-trial, whether he wins or loses and even the compensation amounts etc. Procedural

laws on the other hand, have no independent existence. Therefore, procedural laws only tell us how the legal process is to be executed, whereas substantive laws have the power to offer legal solution.

Differences in Application
Another important difference lies in the applications of the two. Procedural laws are applicable in non legal contexts, whereas substantive laws are not. So, basically the essential substance of a trial is underlined by substantive law, whereas procedural law chalks out the steps to get there.
Example
An example of substantive law is how degrees of murder are defined. Depending upon the circumstances and whether the murderer had the intent to commit the crime, the same act of homicide can fall under different levels of punishment. This is defined in the statute and is substantive law.
Examples of procedural laws include the time allowed for one party to sue another and the rules governing the process of the lawsuit.

(ii)Municipal and International Law

International law governs the relation of sovereign independent states inter and constitutes a legal system the rules of which it is incumbent upon all states to observe. Municipal law also known as state law or national law is the law of state or a country.
International law regulates the behavior of states whereas national law the behavior of individuals. International law concerns with the external relations of the states and its foreign affairs. Municipal law concerns with the internal relations of states o and its domestic affairs.
International law is a law between equal sovereign states in which no one is supreme to the other but municipal laws the w law of the sovereign over the individuals subject to the sovereign rule.
Whether international law is a law or not is a debatable question and this debate is continued where as municipal law i a law in a real sense and there is o doubt about it.
However international law and municipal law relates to each other and some justice considers that both from a unity being manifestation of single conception of law while others say that international law constitutes an independent system of law essentially different from the municipal Law. Thus there are two theories knows as monastic and dualistic. According to monastic and the same thing. The origin and sources of these two laws are the same, bothspheres of law simultaneously regulate the conduct of individuals and the two systems are in their essence groups of commands which bind the subjects of the law independently of their will.
According to dualistic theory international law and municipal law are separate and self contained to the extent to which rules of one are not expressly tacitly received into the other system. The two are separate bodies of legal norms emerging in part from different sources comprising different difference subjects and having application to different objects.

(iii)Public law and Private law

Public law (lat. ius publicum) is that part of law which governs relationships between individuals and the government, and those relationships between individuals which are of direct concern to the society. Public law comprises constitutional law, administrative law, tax law and criminal law, as well as all procedural law. In public law, mandatory rules (not optional) prevail. Laws concerning relationships between individuals belong to private law.

The relationships public law governs are asymmetric and unequal – government bodies (central or local) can make decisions about the rights of individuals. However, as a consequence of the rule of law doctrine, authorities may only act within the law (secundum et intra legem). The government must obey the law. For example, a citizen unhappy with a decision of an administrative authority can ask a court for judicial review.

Rights, too, can be divided into private rights and public rights. A paragon of a public right is the right to welfare benefits – only a natural person can claim such payments, and they are awarded through an administrative decision out of the government budget.

The distinction between public law and private law dates back to Roman law. It has been picked up in the countries of civil law tradition at the beginning of the 19th century, but since then spread to common law countries, too.

The borderline between public law and private law is not always clear in particular cases, giving rise to attempts of theoretical understanding of its basis.

Private law is that part of a civil law legal system which is part of the jus commune that involves relationships between individuals, such as the law of contracts or torts (as it is called in the common law), and the law of obligations (as it is called in civil legal systems). It is to be distinguished from public law, which deals with relationships between both natural and artificial persons (i.e., organizations) and the state, including regulatory statutes, penal law and other law that affects the public order. In general terms, private law involves interactions between private citizens, whereas public law involves interrelations between the state and the general population.

The public law is that branch of law which determines and regulates the organization and functioning of states (country). Also it regulates the relation of the state (country) with its subjects.

Public law includes (i) constitutional law, (ii) Administrative law (iii) criminal law, (iv) municipal law (v) international law; criminal law is enforced on behalf of or in the name of the state.

On the other hand, private law is that branch of the law which regulates those of the relation of the citizens with one another as are not of public importance .In this sense the state, through its judicial organs, adjudicates the matters in dispute between them.

In other words, it is primarily concerned with the rights and duties of individuals to each other .under it, the legal action is begun by the private citizens to establish rights (In which the state is not primarily concerned) against another citizens or a group of citizens.

Private law includes, (i) Law of contract (ii) Law of tort (iii) Law of property (iv) Law of succession, (v) family laws. Private law is sometimes, referred to as civil law.

Unit-II: Sources of Law

There are six most essential sources of Law in India. By sources of law we mean its beginning as law and the point from which it springs or emanates. As regards law there are six important sources. (A) Customs

Customs are oldest source of law. It is the outcome of habits. When a particular habit is followed for a long time by the people regularly and habitually, the custom comes into being. When written laws were more conspicuous by their absence in the primitive society, it was customary laws that regulated human conduct in the primitive society. It is said that kings have no power to create custom and perhaps less to destroy it. Customs largely influence the legal system of a state and the state gets rid of the bad customs like Sati, Polygamy, and Dowry etc. only by means of legal impositions. The United Kingdom provides the best example of customary laws which are found in the common law of England. In the United Kingdom the law and custom are so intimately connected with each other that the violation of convention custom will lead to the violation of law.

(B) Religion

The religion is another important source of law. It played an important role in the primitive period when men were very much religious minded and in the absence of written laws the primitive people obeyed religion thinking it of divine origin. In the medieval period, most of the customs that were followed were only religious customs. Even today the Hindu Laws are founded on the code of Manu and the Mohammedan Laws are based on the Holy Koran. The religious codes become a part of the law of the land in the state incorporates the religious codes in its legal system.

(C) Judicial Decisions

Since the dawn of the human civilization the dispute between two parties is referred to a third party who acts as the arbiter. His decision is generally obeyed by both the parties. The arbiter may be a tribal chief or a priest. But with the passage of time, the judicial organ of the state is given power to decide cases between the parties. While deciding a case and pronouncing a judgment, the judges generally apply their own common sense and justice. This is known as Judge-made laws or case laws. Justice Holmes commented that "judges do and must make laws". The principle by which a judicial decision becomes a precedent is known as "Stare Decisis".

(D) Scientific commentaries

Chief Justice Hughes of the U.S.A. opines that " We are living under a constitution and the constitution is what the judges say it is". The law needs interpretation and the scientific commentaries and interpretations by eminent jurists have contributed a lot for the evolution of a legal system. The views of Blackstone in the U.K., Kent in the U.S.A. have made tremendous impact on the legal system of their respective countries. The opinions of these expert legal luminaries are always kept in high esteem by the judges and the courts.

(E) Equity

The term 'equity' literally means 'just', 'fairness' and according to 'good conscience'. When the existing law is inadequate or silent with regard to a particular case, the judges generally apply their common sense, justice and fairness in dealing with such cases. Thus, without 'equity' the term law will be devoid of its essential quality.

(F)Precedent

In common law legal systems, a precedent or authority is a principle or rule established in a previous legal case that is either binding on or persuasive for a court or other tribunal when deciding subsequent cases with similar issues or facts. The general principle in common law legal systems is that similar cases should be decided so as to give similar and predictable outcomes, and the principle of precedent is the mechanism by which that goal is attained. Black's Law Dictionary defines "precedent" as a "rule of law established for the first time by a court for a particular type of case and thereafter referred to in deciding similar cases." Common law precedent is a third kind of law, on equal footing with statutory law (statutes and codes enacted by legislative bodies), and regulatory law (regulations promulgated by executive branch agencies).

Stare decisis is a legal principle by which judges are obliged to respect the precedent established by prior decisions. The words originate from the phrasing of the principle in the Latin maxim Stare decisis et non quieta movere: "to stand by decisions and not disturb the undisturbed." In a legal context, this is understood to mean that courts should generally abide by precedent and not disturb settled matters.

Case law is the set of existing rulings which have made new interpretations of law and, therefore, can be cited as precedent. In most countries, including most European countries, the term is applied to any set of rulings on law which is guided by previous rulings, for example, previous decisions of a government agency - that is, precedential case law can arise from either a judicial ruling or a ruling of adjudication within an executive branch agency. Trials and hearings that do not result in written decisions of a court of record do not create precedent for future court decisions.

(G) Legislation

This is the most important and modern source of law. The legislature is that organ of the state whose primary function is to make laws. To Leacock the legislatures deliberate, discuss and make laws.

Thus, law can be defined as the opinion of the majority legislators. They are recorded in the Statute Book. When the legislature is not in session, the executive is empowered to issue ordinances, decrees etc. which as good as the laws are made by the legislatures

Besides the above six sources of law we can add two more sources of law in the present days. The executive in a parliamentary democracy has the support of the majority legislators in the legislature enabling it to make laws according to its choice. The executive in a presidential system can influence legislation in the floor of the legislature through its party men. With the advent of time, the legislature is required to make laws in a large number of subjects. Due to paucity of time, the legislature makes laws in the skeleton form and the flesh and blood is added to it by the executive. This is termed as 'delegated legislation which has considerably enhanced the role of the executive in the field of legislation. Public opinion in this age of democracy plays a vital role in the process of lawmaking. In Switzerland, with direct democracy, public opinion is reflected through Landsgeminde, Referendum and Initiative, which paves the way for making laws for the state.

Unit-III: Basic Concepts of Indian Legal System

(a)Common Law

Common law is the traditional unwritten law of England, based on custom and usage which developed over a thousand years before the founding of the United States. The best of the preSaxon compendiums of the Common Law was reportedly written by a woman, Queen Martia, wife of a Briton king of a small English kingdom. Together with a book on the "law of the monarchy" by a Duke of Cornwall, Queen Martia's work was translated into the emerging English language by King Alfred (849-899 A.D.). When William the Conqueror arrived in 1066, he combined the best of this Anglo-Saxon law with Norman law, which resulted in the English Common Law, much of which was by custom and precedent rather than by written code. By the 14th Century legal decisions and commentaries on the common law began providing precedents for the courts and lawyers to follow. It did not include the so-called law of equity (chancery) which came from the royal power to order or prohibit specific acts. The common law became the basic law of most states due to the Commentaries on the Laws of England, completed by Sir William Blackstone in 1769, which became every American lawyer's bible. Today almost all common law has been enacted into statutes with modern variations by all the states except

Louisiana which is still influenced by the Napoleonic Code. In some states the principles of common law are so basic they are applied without reference to statute.

The ancient law of England based upon societal customs and recognized and enforced by the judgments and decrees of the courts. The general body of statutes and case law that governed England and the American colonies prior to the American Revolution. The principles and rules of action, embodied in case law rather than legislative enactments, applicable to the government and protection of persons and property that derive their authority from the community customs and traditions that evolved over the centuries as interpreted by judicial tribunals.

A designation used to denote the opposite of statutory, equitable, or civil, for example, a common-law action.

The common-law system prevails in England, the United States, and other countries colonized by England. It is distinct from the civil-law system, which predominates in Europe and in areas colonized by France and Spain. The common-law system is used in all the states of the United States except Louisiana, where French Civil Law combined with English Criminal Law to form a hybrid system. The common-law system is also used in Canada, except in the Province of Quebec, where the French civil-law system prevails.

Anglo-American common law traces its roots to the medieval idea that the law as handed down from the king's courts represented the common custom of the people. It evolved chiefly from three English

Crown courts of the twelfth and thirteenth centuries: the Exchequer, the King's Bench, and the Common Pleas. These courts eventually assumed jurisdiction over disputes previously decided by local or manorial courts, such as baronial, admiral's (maritime), guild, and forest courts, whose jurisdiction was limited to specific geographic or subject matter areas. Equity courts, which were instituted to provide relief to litigants in cases where common-law relief was unavailable, also merged with common-law courts. This consolidation of jurisdiction over most legal disputes into several courts was the framework for the modern Anglo-American judicial system.

Early common-law procedure was governed by a complex system of Pleading, under which only the offenses specified in authorized writs could be litigated. Complainants were required to satisfy all the specifications of a writ before they were allowed access to a common-law court. This system was replaced in England and in the United States during the mid-1800s. A streamlined, simplified form of pleading, known as Code Pleading or notice pleading, was instituted. Code pleading requires only a plain, factual statement of the dispute by the parties and leaves the determination of issues to the court.

Common-law courts base their decisions on prior judicial pronouncements rather than on legislative enactments. Where a statute governs the dispute, judicial interpretation of that statute determines how the law applies. Common-law judges rely on their predecessors' decisions of actual controversies, rather than on abstract codes or texts, to guide them in applying the law. Common-law judges find the grounds for their decisions in law reports, which contain decisions of past controversies. Under the doctrine of Stare Decisis, common-law judges are obliged to adhere to previously decided cases, or precedents, where the facts are substantially the same. A court's decision is binding authority for similar cases decided by the same court or by lower courts within the same jurisdiction. The decision is not binding on courts of higher rank within that jurisdiction or in other jurisdictions, but it may be considered as persuasive authority.

Because common-law decisions deal with everyday situations as they occur, social changes, inventions, and discoveries make it necessary for judges sometimes to look outside reported decisions for guidance in a CASE OF FIRST IMPRESSION (previously undetermined legal issue). The common-law system allows judges to look to other jurisdictions or to draw upon past or present judicial experience for analogies to help in making a decision. This flexibility allows common law to deal with changes that lead to unanticipated controversies. At the same time, stare decisis provides certainty, uniformity, and predictability and makes for a stable legal environment.

Under a common-law system, disputes are settled through an adversarial exchange of arguments and evidence. Both parties present their cases before a neutral fact finder, either a judge or a jury. The judge or jury evaluates the evidence, applies the appropriate law to the facts, and renders a judgment in favor of one of the parties. Following the decision, either party may appeal the decision to a higher court. Appellate courts in a common-law system may review only findings of law, not determinations of fact.

Under common law, all citizens, including the highest-ranking officials of the government, are subject to the same set of laws, and the exercise of government power is limited by those laws. The judiciary may review legislation, but only to determine whether it conforms to constitutional requirements.

(b) Rule of Law

The expression 'Rule of Law' has been derived from the French phrase 'la principle de legalite', i.e. a Government based on the principles of law. In implied by the state in the administration of justice. The Rule of law, according to Gamer, is of en used simply to describe the state le words, the term 'rule of law' indicates the state of affairs in a country where, in main, the law mules. Law may be

taken to mean mainly a rule or principle which governs the external actions of the human beings and which is recognized and aloof affairs in a country where, in main, the law is observed and order is kept. It is an expression synonymous with law and order.
The basis of Administrative Law is the 'Doctrine of the Rule of Law'. It was expounded for the first time by Sri Edward Coke, and was developed by Prof. A.V.Dicey in his book 'The law of the Constitution' published in 1885. According Coke, in a battle against King, he should be under God and the Lank thereby the Supremacy of Law is established.
Dicey regarded rule of law as the bedrock of the British Legal System:. 'Fins doctrine is accepted in the constitutions of U.S.A. and India.

According to Prof. Dicey, rules of law contain three principles or it has three meanings as stated below:
1. Supremacy of Law or the First meaning of the Rule of Law.
2. Equality before Law or the Second meaning of the Rule of Law: and
3. Predominance of Legal Spirit or the Third meaning of the Rule of Law.

1. Supremacy of Law: The First meaning of the Rule of Law is that 'no man is punishable or can lawfully be made to suffer in body or goods except for a distinct breach of law established in the ordinary legal manner before the ordinary courts of the land. It implies that a man may be punished for .a breach of law but cannot be punished for anything else. No man can be punished except for a breach of law. An alleged offence is required to be proved before the ordinary courts in accordance with the ordinary procedure.

2. Equality before Law: - The Second meaning of the Rule of Law is that no man is above law. Every man whatever is his rank or condition is subject to the ordinary law of the realm and amenable to the jurisdiction of the ordinary tribunals.
Prof. Dicey states that, there must be equality before the law or equal subjection of all classes to the ordinary law of the land. He criticized the French legal system of droit Administrative in which there were separate administrative tribunals for deciding the cases of State Officials and citizens separately. He criticizes such system as negation of law 2. Predominance of Legal Spirit: - The Third meaning of the rule of law is that the general principles of the constitution are the result of juridical decisions determining file rights of private persons in particular cases brought before the Court.

Dicey states that many constitutions of the states (countries) guarantee their citizens certain rights (fundamental or human or basic rights) such as right to personal liberty, freedom from arrest etc. According to him documentary guarantee of such rights is not enough. Such rights canbe made available to the citizens only when they are properly enforceable in the Courts of law, For Instance, in England there is no written constitution and such rights are the result judicial decision.

Application of the Doctrine in England: Though, there is no written constitution, the rule of law is applied in concrete cases. In England, the Courts are the guarantors of the individual rights. Rule of law establishes an effective control over the executive and administrative power.
However, Dicey's rule of law was not accepted in full in England. In those days, many statutes allowed priority of administrative power in many cases, and the same was not challenged better c the Courts. Further sovereign immunity existed on the ground of King can do no wrong'. The sovereign immunity was abolished by the 'Crown Proceedings Act, 1947. Prof. Dicey could not distinguish arbitrary power from discretionary power, and failed to understand the merits of French legal system.

Rule of Law under the Constitution of India: - The doctrine of Rule of Law has been adopted in Indian Constitution. The ideals of the Constitution, justice, liberty and equality are enshrined

(embodied) in the preamble.
The Constitution of India has been made the supreme law of the country and other laws are required to be in conformity with the Constitution. Any law which is found in violation of any provision of the Constitution is declared invalid.

Part III of the Constitution of India guarantees the Fundamental Rights. Article 13(l) of the Constitution makes it clear that all laws in force in the territory of India immediately before the commencement of the Constitution, in so far as they are inconsistent with the provision of Part ill dealing with the Fundamental Rights, shall, to the extent of such inconsistency, be void. Article 13(2) provides that the State should not make any law which takes away or abridges the fundamental rights and any law made in contravention of this clause shall, to the extent of the contravention, be void. The Constitution guarantees equality before law and equal protection of laws. Article 21 guarantees right to life and personal liberty. It provides that no person shall be deprived of his life or personal liberty except according to the procedure established by law. Article 19 (1) (a) guarantees the third principle of rule of law (freedom of such and expression).

Article 19 guarantees six Fundamental Freedoms to the citizens of India -- freedom of speech and expression, freedom of assembly, freedom to form associations or unions, freedom to live in any part of the territory of India and freedom of profession, occupation, trade or business. The right to these freedoms is not absolute, but subject to the reasonable restrictions which may be imposed by the State.

Article 20(1) provides that no person shall he convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence not be subject to a penalty greater than that which might have been inflicted tinder the law in for cc at the time of the commission of the offence. According to Article 20(2), no person shall be prosecuted and punished for the same offence more than once. Article 20(3) makes it clear that no person accused of the offence shall be compelled to be witness against himself. In India, Constitution is supreme and the three organs of the Government viz. Legislature, Executive and judiciary are subordinate to it. The Constitution provided for encroachment of one organ (E.g.: Judiciary) upon another (E.g.: Legislature) if its action is mala fide, as the citizen (individual) can challenge under Article 32 of the Constitution.

In India, the meaning of rule of law has been much expanded. It is regarded as a part of the basic structure of the Constitution and, therefore, it cannot be abrogated or destroyed even by Parliament. It is also regarded as a part of natural justice.
In Kesavanda Bharti vs. State of Kerala (1973) - The Supreme Court enunciated the rule of law as one of the most important aspects of the doctrine of basic structure.
In Menaka Gandhi vs. Union of India, AIR 1978 SC 597 - The Supreme Court declared that Article 14 strikes against arbitrariness.
In Indira Gandhi Nehru vs. Raj Narahr, Alit 1975 SC 2299 - Article 329-A was inserted in the Constitution under 39th amendment, which provided certain immunities to the election of office of Prime Minister from judicial review. The Supreme Court declared Article 329-A as invalid since it abridges the basic structure of the Constitution.
In A.D.M Jabalpur vs., Shivakant Shukla (1976) 2 SCC 521 AIR 1976 SC 1207 - This case is popularly known as Habeas Corpus Case.

On 25th June, emergency was proclaimed under Article 359. Large number of persons was arrested under N11SA (Maintenance of Internal Security Act. 1971) without informing the grounds for arrest. Some of their filed petition in various high Courts for writ of Heabeas Corpus. The petitioners

contend that their detention is violation of Article 21. It was argued on the other side that the protection tinder Article 21 is not available (suspended) during emergency. The preliminary objection (not to file writ petitions during emergency). The Preliminary objection (not to file writ petitions during emergence) was rejected by various High Courts. The Madhya Pradesh Government through Additional District Magistrate. Jabalpur and Government of India filed appeals before Supreme Court.

The question before Supreme Court was, whether there was any rule of law in India apart front Article 21 of the Constitution. The Supreme Court by majority held that there is no rule of law other than the constitutional rule of law. Article 21 is our rule of law. If it is suspended, there is not rule of law.

c) Doctrine of Separation of power

In the introduction it is explained that separation of powers and judicial review are important. The principle of checks and balances and its history and necessity are also explained. Montesquieu theory is in brief explained, if all the powers joining in one organ there can be tyrannical laws. Therefore all these three should be separate. Political theorist in the 17th century evolved that theory of separation of powers and theory of checks and balances are very closely related. In the second chapter it is compared with the Indian constitutions and also discussed the importance and necessity of exercising judicial powers. In the third it is concluded that administration of justice is primary function of the state. It should be maintained without any doubt and to be proved its efficiency and effectiveness in maintaining the administration of justice system properly. The Judiciary must bring confidence and faith among the public.

Separations of Powers

1. 1. Introduction

In the context of separation of powers, judicial review is crucial and important. We have three wings of the state, judiciary, Legislature and Executive with their function clearly chalked out in our Constitutions. Article 13 of the constitution mandates that the "state shall make no law, which violates, abridges or takes away rights conferred under part III". This implies that both the Legislature and judiciary in the spirit of the words can make a law, but under the theory of checks and balances, the judiciary is also vested with the power to keep a check on the laws made by the Legislature.

Montesquieu: The foundations of theory of separation of powers were laid by the French Jurist Baron De conclusions of Montesquieu are summarized in the following quoted passage "When the legislative and executive powers are united in the same persons or body there can be no liberty because apprehensions may arise lest the same monarch or senate should enact tyrannical laws to enforce them in a tyrannical manner...were the powers of judging joined with the legislature the life and liberty of the subject would be exposed to arbitrary control. For the judge would then be the legislator. Were it joined to the executive power, the judge might be have with all the violence of an oppressors" To obviate the danger of arbitrary government and tyranny Montesquieu advocated a separation of governmental functions. The decline of separation of powers requires that the functions of legislations, administration and adjudications should not be placed in the hand of one body of persons but should be distributed among the district or separate bodies of persons.

2. Principles of checks and balances

The doctrine of separations of powers may be traced back to an earlier theory known as the theory of mixed government from which it has been evolved. That theory is of great antiquity and was adurnbrated in the writings of Polybius, a great historian who was captured by the Romans in 167 BC

and kept in Rome as a Political hostage for 17 years in his history of Rome Polybius explained the reasons for the exceptional stability of Roman Government which enabled Rome to establish a worldwide empire. He advanced the theory that the powers of Rome stemmed from her mixed government. Unmixed systems of government that is the three primary forms of government namely, Monarchy, Aristocracy and Democracy – were considered by Polybius as inherently unstable and liable to rapid degeneration. The Roman constitutions counteracted that instability and tendency to degeneration by a happy mixture of principles drawn from all the three primary forms of government. The consuls, the senate and the popular Assemblies exemplified the monarchical, the aristocratic and the democratic principles respectively. The powers of Government were distributed between them in such a way that each checked and was checked by the others so that an equipoise or equilibrium was achieved which imparted a remarkable stability to the constitutional structure. It is from the wok of Polybius that political theorist in the 17th Century evolved that theory of separation of powers and the closely related theory of checks and Balances.

3. Separation of powers- Indian constitutions

Indian constitution is a very well built document. It assigns different roles to all the three wings of government the Legislature, Executive and the Judiciary. There is no ambiguity about each wings power, privilege and duties. Parliament has to enact law, Executive has to enforce them and the judiciary has to interpret them. There is supposed to be no overlapping or overstepping. The judiciary versus the Executive or Legislative is a battle which is not new but in recent times, the confrontation is unprecedented with both the sides taking the democration of powers to a flash point. Justice Mukherjee observed, "it does not admit of any serious dispute that the doctrine of separation of powers has, strictly speaking no place in the system of Government that Indian has at the present day. The theory of checks and balance has been observed in the Indian constitutions. There is no rigorous separation of powers. For instance, parliament has the judicial power of impeachment and punishing for contempt. The president has the legislative powers of ordinance making. Thus the Indian constitution has not applied the doctrine of separation of powers in its strictest form.

4. Judiciary –importance and its need

Judiciary – It's Importance: An endeavor is being made to highlights the judicial functioning in India, in the context of increasing cases of judicial corruptions and delays in administration of justice. The Indian judiciary has so far, gained the public confidence in discharging its constitutional functions. As an institution, the judiciary has always commanded considerable respect from the people of country. The roots of this high regard lie in the impartiality, independence and integrity of the members of the judiciary. The judiciary in a democratic polity
governed by the rule of law stands as a bull work against abuse or misuse of excess use of powers on the part of the executive and protects the citizens against the government lawlessness.

Judiciary – It Need: Expressing the needs for and importance of judiciary a learned jurist aptly remarks: "middle class people are combating with the government powers through media of the courts". The Indian judiciary is considered as Guardian of the Rights of the citizens of India, explained, argued and emphasized in several contexts.

5. Independence of judiciary

"Judiciary is unlimited"- an unelected judiciary which is not accountable to anyone except its own temperament has taken over significant powers of Indian Governance. The courts have gone well beyond ensuring that laws are implemented. Now, the Supreme Court has invented its own laws and methods of implementation, gained control of bureaucracy and threatened officers with contempt of court if its instructions are not complied with. The question is not whether some good has come out of the all this. The issue is whether the courts have arrogated vase and uncontrolled powers of themselves which undermine both Democracy and Rule of law, including the question is no

undermine both Democracy and Rule of Law including the powers exercised under the doctrine of separation of powers.

6. Conclusion

Administration of justice is a divine function. In fact a nation's rank in the civilization is generally determined to the degree in which s justice is actually administrated. This sacred functions to be an institutions manned by men of high efficiency, honesty and integrity. As the old adages goes, "Justice delayed is Justice denied". This phrase seems to be tune in so far as the administration of justice in India is concerned. While the people have reasons to feel disappointed with functioning of the legislatures and the executive, they have over the years clung to the belief that they can go to the courts for help. But unfortunately, the judiciary is fast losing its credibility in the eyes of the people for one of the main reasons that justice delivery systems have become costlier and highly time consuming. It is needless to say that the ultimate success of a democratic system is measured in terms of the effectiveness and efficiency of its administration of justice system observed by Lord Bryce, "There is no better test of the excellence of a Government than the efficiency of its judicial system".

(d)Indian Judicial System

The Indian Judicial System is one of the oldest legal systems in the world today. It is part of the inheritance India received from the British after more than 200 years of their Colonial rule, and the same is obvious from the many similarities the Indian legal system shares with the English Legal System. The frame work of the current legal system has been laid down by the Indian Constitution and the judicial system derives its powers from it.

The Constitution of India is the supreme law of the country, the fountain source of law in India. It came into effect on 26 January 1950 and is the world's longest written constitution.

It not only laid the framework of Indian judicial system, but has also laid out the powers, duties, procedures and structure of the various branches of the Government at the Union and State levels. Moreover, it also has defined the fundamental rights & duties of the people and the directive principles which are the duties of the State.

Inspire of India adopting the features of a federal system of government, the Constitution has provided for the setting up of a single integrated system of courts to administer both Union and State laws. The Supreme Court is the apex court of India, followed by the various High Courts at the state level which cater to one or more number of states. Below the High Court's exist the subordinate courts comprising of the District Courts at the district level and other lower courts.

An important feature of the Indian Judicial System is that it's a 'common law system'. In a common law system, law is developed by the judges through their decisions, orders, or judgments. These are also referred to as precedents. Unlike the British legal system which is entirely based on the common law system, where it had originated from, the Indian system incorporates the common law system along with the statutory law and the regulatory law.

Another important feature of the Indian Judicial system is that our system has been designed on the pattern of the adversarial system. This is to be expected since courts based on the common law system tend to follow the adversarial system of conducting proceedings instead of the inquisitorial system. In an adversarial system, there are two sides in every case and each side presents its arguments to a neutral judge who would then give an order or a judgment based upon the merits of the case.

Indian judicial system has adopted features of other legal systems in such a way that they do not conflict with each other while benefitting the nation and the people. For example, the Su

Court and the High Courts have the power of judicial review. This is a concept prevalent in the American legal system. According to the concept of judicial review, the legislative and executive actions are subject to the scrutiny of the judiciary and the judiciary can invalidate such actions if they

are ultra virus of the Constitutional provisions. In other words, the laws made by the legislative and the rules made by the executive need to be in conformity with the Constitution of India.
The powers and the jurisdiction of the Supreme Court, the High Courts and subordinate courts like the District Courts are discussed below.
Jurisdiction & Powers of the Courts
Supreme Court of India One of the most important powers of the Supreme Court of India is that any law declared or order/judgment passed by it is binding on all the courts within the territory of India.
The jurisdiction and powers of the Supreme Court (SC) are defined under Articles 131 to 142 of the Indian Constitution. The jurisdiction includes original, writ, and appellate jurisdiction.

Original Jurisdiction refers to the power of the court to hear disputes when they arise for the first time. By exercising its power of Original jurisdiction the Supreme Court can hear disputes between,
• Government of India (GoI) and one or more States, or
• GoI & any State or States on one side and one or more States on the other, or
• Two or more States, if it involves a question - of law or fact - on which depends the existence or extent of a legal right.
The Supreme Court has also been conferred the power to issue directions or order or writs under Article 32 of the Constitution for the enforcement of any of the rights provided under Part III of the Constitution, including the Fundamental Rights. This is referred to as the Writ jurisdiction of the Supreme Court. The writ jurisdiction of the Apex court under Article 32 is part of its original jurisdiction.
[For more details on Original jurisdiction kindly refer to Articles 32&131 of the Indian Constitution.]
Appellate jurisdiction refers to the power of the Apex court to hear appeals against any judgment, decree or final order (or sentence) of a High Court in a constitutional, civil or criminal case, where exists a substantial question of interpretation of
• the constitution, or
• a law of general importance in case of a death sentence awarded in criminal matters.
However, an additional requirement is that the concerned High Court (HC) under Article 134A has to certify that the case in question is fit for an appeal to the SC.

The jurisdiction of SC also encompasses matters which fell within the jurisdiction of the Federal Court under any law just before the commencement of the Indian Constitution.
The Supreme Court can also grant special leave to appeal against any judgment, decree, determination, sentence or order passed by any court or tribunal in the territory of India in any matter. The exception to this rule is the orders, judgments etc passed by any court or tribunal constituted by or under any law relating to the Armed Forces.
Apart from the original, appellate and writ jurisdiction, the Supreme Court also has special advisory jurisdiction regarding matters referred to it by the President if India under Article 143 of the Constitution.
The Apex court also has the power and authority to review any order or judgment passed by it as well as transfer cases from one High Court to another or from the District Court of one state to the District Court of another State.

The High Courts of India are the supreme judicial authority at the State level. There are currently 21 High Courts in the country and of these the oldest High Court of India is the Kolkata High Court, which was established in the year 1862.
Their powers and jurisdiction are similar to that of the Apex court, but with a few differences –
• Any law declared or orders/judgments passed by them are not binding on the other High Courts (HCs) of the country or the subordinate courts which fall under the purview of the other HCs unless the other High Courts choose to follow such law or order or judgment. • Their territorial jurisdiction

is varied.

The High Courts are the appellate authority for a State or group of States and get a lot of matters in appeal from the subordinate courts.
They have the power to issue writs, just like the Apex court, under Article 226 of the Constitution, but with one difference. While the Supreme Court has the power to issue writs to enforce only the rights provided under Part III of the Constitution, the High Courts can issue writs for enforcement of the rights under Part III as well as "for any other purpose".
Just like in the case of the Supreme Court, the writ jurisdiction of the High Court is also part of their Original jurisdiction, since all writ petitions are filed directly before the High Court. Apart from writ petitions, any civil or criminal case which does not fall within the purview or ambit of the subordinate courts of a State, due to lack of pecuniary or territorial jurisdiction, can be heard by the High Court of that State. Also certain other matters or issues may be heard by the High Court as part of its original jurisdiction, if the law lay down by the legislature provides for it. For example, the company law cases fall within the original jurisdiction of the High Court.
Therefore, the High Courts' work primarily consists of appeals from the lower courts as well as the writ petitions filed before it under Article 226.
The territorial jurisdiction of a High Court, as mentioned earlier, is varied.

Both the Supreme Court and the High Courts are courts of record and have all the powers associated with such a court including the power to punish for contempt of itself.
The Subordinate Courts
The District Courts are at the top of all the subordinate or lower courts. They are however under the administrative control of the High Court of the State to which the district court belongs to.
Their jurisdiction is confined to the districts they are responsible for, which could be just one or more than one. The original jurisdiction of the District Courts in civil matters is confined by not just the territorial limitations, but by pecuniary limitations as well. The pecuniary limitations are laid down by the legislature and if the amount in dispute in a matter is way above the pecuniary jurisdiction of the District Court, then the matter will be heard by the concerned High Court of that State. In case of criminal matters, the jurisdiction of the courts is laid down by the legislature.
The decisions of the District Courts are of course subject to the appellate jurisdiction of the High Courts. Apart from these judicial bodies who enforce the laws and rules laid down by the legislature and executive and also interpret them (the Supreme Court & High Courts), there are numerous quasi judicial bodies who are involved in dispute resolutions. These quasi judicial bodies are the Tribunals and Regulators.

Tribunals are constituted as per relevant statutory provisions and are seen as an alternative forum for redressed of grievances and adjudication of disputes other than the Courts. Some of the important tribunals are, Central Administrative Tribunal (CAT), Telecom Disputes Settlement Appellate Tribunal (TDSAT), Competition Appellate Tribunal (COMPAT), Armed Forces Tribunal (AFT), Debt Recovery Tribunal (DRT), etc.

The kinds of cases the tribunals hear are limited to their specific area. That is TDSAT can hear only matters related to telecom disputes and not matters of armed forces personnel. So the area of operation of these tribunals are marked out at the beginning itself by the statute under which it's constituted. The same hold true for the various Regulators like – TRAI, DERC, etc. They regulate the activities of companies which fall under their purview as per the statute.
Thus, the Indian Judicial System is a mix of the Courts and the Tribunals & Regulators, and all these entities working together as part of an integrated system for the benefit of the nation.

Unit-IV:
Legal Writing and Research

Introduction

India's first major civilization flourished around 2500 BC in the Indus river valley. This civilization, which continued for 1000 years and is known as Harappan culture, appears to have been the culmination of thousands of years of settlement. For many thousands of years, India's social and religious structures have withstood invasions, famines, religious persecutions, political upheavals and many other cataclysms. Few other countries have national identities with such a long and vibrant history. The roots of the present day human institutions lie deeply buried in the past. This is also true about the country's law and legal system. The legal system of a country at any given time cannot be said to be creation of one man for one day; it represents the cumulative effect of the endeavor, experience, thoughtful planning and patient labor of a large number of people throughout generations. The modern judicial system in India started to take shape with the control of the British in India during the 17th century. The British Empire continued till 1947, and the present judicial system in India owes much to the judicial system developed during the time of the British.

1. Judicial Administration in Ancient India

Law in ancient India meant "Dharma" in the broader sense. The Vedas, regarded as divine revelation, were the supreme source of authority for all codes which contained what was then understood as law or dharma. The traditional records have governed and molded the life and evolution of the Hindu community from age to age. These are supposed to have their source in the Rigveda. Justice was administered in ancient India according to the rules of civil and criminal law as provided in the Manusmriti. There was a regular system of local courts from which an appeal lay to the superior court at the capital, and from there to the King in his own court. The King's Court was composed of himself, a number of judges, and his domestic chaplain who directed his conscience; but they only advised and the decision rested with the King. Arbitrators in three gradations existed below the local courts: first of kinsmen, secondly of men of the same trade, and thirdly, of townsmen. An appeal lay from the first to the second, from the second to the third, and from the third to the local court. Thus under this system there were no less than five appeals. Decision by arbitration, generally of five (Panches), was very common when other means of obtaining justice were not available. The village headman was the judge and magistrate of the village community and also collected and transmitted the Government revenue.

2. Legal System in India during the British Period

India has one of the oldest legal systems in the world. Its law and jurisprudence stretches back centuries, forming a living tradition which has grown and evolved with the lives of its diverse people. The history of the present judicial system may be traced back to the year 1726, when a Charter was issued by King George I for bringing about important changes in the judicial administration of the Presidency Towns of Bombay, Calcutta and Madras. The system of appeals from India to the Privy Council in England was introduced by this Charter in 1726.

In order to bring about better management of the affairs of the East India Company, the East India Company Regulating Act of 1773 was promulgated by the King. This Act subjected the East India Company to the control of the British Government and made a provision for His Majesty by Charters or Letters Patent to establish the Supreme Court of Judicature at Fort William at Calcutta, superseding the then prevalent judicial system. The Supreme Court of Judicature at Fort William was established by a letter patent issued on March 26, 1774. This Court, as a court of record, had full power and authority to hear and determine all complaints against any of His Majesty's subjects for any crimes and also to entertain, hear and determine any suits or actions against any of His Majesty's subjects in Bengal, Bihar and Orissa. Two more Supreme Courts, conceived along the same lines as that of the Supreme Court of Calcutta, were established at Madras and Bombay by King George III

through Charters issued on 26th December, 1800 and on 8th December, 1823 respectively.

The role of the Privy Council has been a great unifying force and the instrument and embodiment of the rule of law in India. The Judicial Committee of the Privy Council was made a Statutory Permanent Committee of legal experts to hear appeals from the British Colonies in the year 1833 by an Act passed by the British Parliament. Thus, the Act of 1833 transformed the Privy Council into a great imperial court of unimpeachable authority.

The Indian High Court's Act 1861 reorganized the then prevalent judicial system in the country by abolishing the Supreme Courts at Fort William, Madras, and Bombay, and also the then existing Sadar Adalats in the Presidency Towns. The High Courts were established having civil, criminal, admiralty, vice-admiralty, testimony, intestate, and matrimonial jurisdiction, as well as original and appellate jurisdiction.

Provincial autonomy was established in India with the establishment of the Government of India Act, 1935, which introduced responsibility at the provincial level and sought the Union of British Indian Provinces with the rulers of Estate in a federation. As a federal system depends largely upon a just and competent administration of the law between governments themselves, the 1935

Act provided for the establishment of the Federal Court, forerunner of the Supreme Court of India. The Federal Court was the second highest Court in the judicial hierarchy in India.

The Federal Court was the first Constitutional Court and also the first all-India Court of extensive jurisdiction, and it had Original Jurisdiction in matters where there was dispute between the provinces or federal States. It was also the Appellate Court for the judgments, decrees, or final orders of the High Courts. Thus, the Federal Court of India had original, appellate and advisory jurisdiction. The doctrine of precedent in India also had its roots in Federal Court as the law declared by the Federal Court and Privy Council has been given binding affect on all the courts in British India.

2. Constitution of India

The Indian Constitution is basically federal in form and is marked by the traditional characteristics of a federal system, namely Supremacy of the Constitution, division of power between the Union and State, and the existence of an independent judiciary in the Indian Constitution. The three organs of the State – State, Legislature and Judiciary – have to function within their own spheres demarcated under the Constitution. In other words, the doctrine of Separation of Powers has been implicitly recognized by the Indian Constitution. The basic structure of the Constitution is unchangeable and only such amendments to the Constitution are allowed which do not affect its basic structure or rob it of its essential character. The Constitution of India recognizes certain basic fundamental rights for every citizen of India, such as the Right to Equality, the Right to Freedom, the Right against exploitation, the Right to Freedom of Religion, Cultural and Educational rights, and the Right to Constitutional Remedies. Any infringement of fundamental rights can be challenged by any citizen of India in the court of law. The Constitution of India also prescribes some fundamental duties on every citizen in India.

4. Union and State Judiciary

The Constitution of India deals with the "Union Judiciary," which provides for the establishment and constitution of the Supreme Court. The Supreme Court, since its inception, was empowered with jurisdiction far greater than that of any comparable court anywhere in the world. As a federal court, it has exclusive jurisdiction to determine disputes between the Union of India and any state and the states inter-se. Under Article 32, it issue writs for enforcement of fundamental rights guaranteed under the Constitution of India. As an appellate court, it could hear appeals from the state high

courts on civil, criminal and constitutional matters. It has the special appellate power under Article 136 to grant leave to appeal from any tribunal or court. Thus, it is a forum for the redressing of grievance not only in its jurisdiction as conferred by the constitution, but also as a platform and forum for every grievance in the country which requires judicial intervention. The Supreme Court, with the present strength of 25 judges and the chief justice, is the repository of all judicial powers at the national level. Supreme Court judges holds office until they reach the age of 65 years.

The State Judiciary consists of a high court for each state and subordinate courts in each district. Each high court consists of a chief justice and a number of puisne judges. The high court judges are appointed by the President after consultation with the chief justice of India and the chief justice of that state. The high court judge holds office until he reaches the age of 62 years.

5. Independence of Judiciary

The principle of the independence of justice is a basic feature of the constitution. In a country like India, which is marching along the road to social justice with the banner of democracy and the rule of law, the principle of independence of justice should not only be treated as an abstract conception but also a living faith. Independence of justice deals with the independence of the individual judges in relation to their appointment, tenure, and payment of salaries, and also non-removal except by process of impeachment. It also means the "Institutional Independence of the Judiciary". The concept of independence of justice is a noble concept which inspires the constitutional scheme and constitutes the foundation on which rests the edifice of our democratic polity. It is absolutely essential that the judiciary must be free from executive pressure or influence and this has been secured by the constitution maker by making elaborate provisions in the constitution of India.

6. Law Commission of India

The Law Commission of India was started in 1955 by an executive order. In order to confront new situations and problems which arise from time to time and to amend law which calls for amendment, a body like the Law Commission is absolutely essential. This is because it is a body which is not committed to any political party and which consists of judges and lawyers, who are expert in the field and who would bring to bear upon the problems purely judicial and impartial minds. As the parliament is very busy in day-to-day debates and discussions, its members do not have the necessary time to consider legal changes required to meet the new situations and problems in a constructive manner. For that the Law Commission may be able to serve its purpose effectively. The function of the law commission is to study the existing laws, suggest amendments to the same if necessary, and to make recommendations for enacting new laws. The recommendations for amendment of the existing laws are made by the commission either suo motu or on the request of the government. Presently, the eighteenth Law Commission is in existence. The Law Commission in India has brought out 207 scholarly reports to date on various legal aspects. The full text for each report is available on the commission's website.

UNIT- 4

7. Legal Profession

The profession of law is called a noble profession, and lawyers are a force for the perseverance and strengthening of constitutional government because they are guardians of the modern legal system. The first step in the direction of organizing a legal profession in India was taken in 1774 with the establishment of the Supreme Court at Calcutta. The Supreme Court was empowered "to approve, admit and enroll such and so many advocates, Vakils and Attorneys-atlaw" as to the court "shall

seem meet". The Bengal Regulation VII of 1793 for the first time created a regular legal profession for the companies' courts. Other, similar regulations were passed to regulate the legal profession in the Companies courts in Bengal, Bihar, Orissa, Madras, and Bombay. The Legal Practitioner Act of 1879 was enacted to consolidate and amend the law relating to legal practitioners. This empowered an advocate/Vakil to enroll on the roll in any high court and to practice in all the Courts subordinate to the high court concerned, and also to practice in any court in British India other than the high court on whose roll he was not enrolled. After independence of India, it was felt that the judicial administration in India should be changed according to the needs of the time. Presently, the legal profession in India is governed by the Advocates Act of 1961, which was enacted on the recommendation of the Law Commission of India to consolidate the law relating to legal practitioners and to provide for the constitution of the Bar Council and the All India Bar. Under the Advocates Act, the Bar Council of India has been created as a statutory body to admit persons as advocates on its roll, to prepare and maintain such roll, to entertain and determine instances of misconduct against advocates on its roll and to safeguard the rights, privileges, and interests of advocates on its roll. The Bar

Council of India is also an apex statutory body which lays down standards of professional conduct and etiquette for advocates, while promoting and supporting law reform.

8. Legal Education

Legal education in India is regulated by the Bar Council of India, which is a statutory body constituted under the Advocates' Act of 1961.

There are two types of graduate level law courses in India: (i) A 3 year course after graduation; and, (ii) A 5 year integrated course after the 10 + 2 leading to a graduate degree with honors and a degree in law. The Bar Council of India rules prescribe norms for recognition of the universities/colleges imparting legal education. A graduate from a recognized law college, under the Advocates Act of 1961, is only entitled to be registered as an advocate with the Bar Council, and any law graduate registered with Bar Council is eligible to practice in any court of law in India.

9. Manifestations of Legal Literature

Legal fraternity may need different types of information, such as case laws, statutory provisions, rules framed under any act, object and reasons of any act, amendment of any act, notifications issued under any particular statute, debates in parliament at the time of enactment of any particular act, or academic articles on a given topic in different situations.

Legal literature manifests itself in many forms such as:

(i) Bare Acts
(ii) Commentaries on specific laws
(iii) Manuals/local acts
(iv) Reports
a) Law Commission Reports
b) Committee/Commission Reports
c) Annual Reports
d) Parliamentary Committee Reports

- Joint Committee
- Select Committee
- Standing Committee

10. Law Reporting in India

The theory of binding force of precedent is firmly established in England. A judge is bound to follow the decision of any court recognized as competent to bind him, and it becomes his duty to

administer the law as declared by such a court. The system of precedent has been a powerful factor in the development of the common law in England. Because of common law heritage, the binding force of precedents has also been firmly established in India, meaning thereby that the judgments delivered by the superior courts are as much the law of the country as legislative enactments. The theory of precedent brings in its wake the system of law reporting as its necessary concomitant. Publication of decisions is a condition necessary for the theory of precedent to operate; there must be reliable reports of cases. If the cases are to be binding, then there must be precise records of what they lay down, and it is only then that the doctrine of stare decisis can function meaningfully. The Indian Law Reports Act of 1875 authorizes the publication of the reports of the cases decided by the high court's in the official report and provides that, "No Court shall be bound to hear cited, or shall receive or treat as an authority binding on it the report of any case decided by any of the said High Courts on or after the said day other than a report published under the authority of the Governor-General-in-Council." Though the Law Reports Act gave authenticity to the official reports, it did not take away the authority of unpublished precedents or give a published decision a higher authority than that possessed by it as a precedent. A Supreme Court or high court decision is authoritative by itself, not because it is reported. The practice of citing unreported decisions thus led to the publication of a large number of private reports. The unusual delay in publication of official reports and incompleteness of the official reports made the private reports thrive, resulting in a number of law reports in India being published by non-official agencies on a commercial basis. In India, there are more than 300 law reports published in the country. They cover a very wide range and are published from various points of view. A "union catalogue" compiled by the Supreme Court Judges' Library of the current law journals subscribed by the libraries of various high court and Supreme Court judges (appended at the end of this paper) gives details of various law reports published from India. It also gives details of various foreign law reports submitted by law libraries in India, which gives an idea of the "foreign journals" being used by the legal fraternity in the country.

11. Legal Research Methodology

Legal fraternity may require different types of information for different purposes. One's search strategy for retrieving the desired information has to be formulated on the basis of

(v) Gazettes
a) Central Government
b) State Government
(vi) Parliamentary Debates
• Constituent Assembly Debates • Lok Sabha Debates • Rajya Sabha Debates
(vii) Parliamentary Bills
• Lok Sabha Bills • Rajya Sabha Bills • State Legislature Bills
(viii) Law Journals
• Academic Journals (containing articles only) • Law Reports (containing only the full text of case laws)
• Hybrid, i.e. a combination of both articles and case laws. Some of the journals also publish statutory materials such as acts, amendments, rules, etc. • Only legislative materials such as acts, rules, notifications, etc.
(ix) Digests
(x) Legal Dictionaries/Law Lexicons
(xi) Legal encyclopedic works: such as American jurisprudence, corpus juris secundum, Halsbury law of England and Halsbury laws of India.
the "information requirement" at hand. The most common types of information sought by the legal fraternity are: o Any particular case law o Case laws on a specific topic o Legislative intent of any act o Material for speeches to be delivered o Legislative history of any particular enactment o

Corresponding foreign law to any statutory provision in India o Meaning of any particular "word" or "phrase"

11.1 Finding Case Laws The most common methods for finding the case laws on a subject are "digests" and "commentaries" on particular subjects. Subject indexes given at the end of the commentaries are a very useful aid to find out the desired case law on specific aspect. If there is no commentary on any particular enactment, "AIR Manual" published by M/s All India Reporters, Nagpur can be treated as a very useful source for finding out the case law on any Central Statute. In the electronic era, legal databases both online and on CD-ROM, are also very useful for finding any particular case law or case laws on specific topics.
11.2. Legislative Intent In case of any ambiguity while interpreting the provision of any statute, judges have to examine the "legislative intent" of the legislature for enacting a particular legislation. The legislative intent of any provision can be ascertained with the help of the following tools: • Objects and Reasons of the Act (published in the bill) • Parliamentary debates • Law Commission Reports (if the bill has been introduced on the recommendation of the Law Commission) • Standing Committee/ Joint/Select Committee Reports • Reports of the Committee appointed by the ministries for enacting/reviewing any existing enactments.

"Objects and reasons" are published in the bill introduced in the Parliament for ascertaining the legislative intent of any particular provision; they are considered very important and, for that reason, the corresponding bill of any particular act has to be examined.

Law Commission Reports, while proposing any new enactment or proposing any amendment in the existing statute, review the legal position on that particular aspect in India as well as in other countries. Hence Law Commission reports are treated as useful tools for ascertaining the legislative intent.
When a bill is introduced in the Upper House or Lower House, sometimes it is referred to a Parliamentary Committee which examines the bill and submits a report to the Parliament. Hence, these reports also contain the background material of any act and can be treated as a useful source for determining legislative intent. "Parliamentary debates" on any bill are always helpful in assessing the legislative intent of the enactment of any particular statute because they contain the speech given by the law minister at the time of introducing the bill and the specific discussions in the House thereafter. 11.3. Legislative Intent of Tax Statutes/Excise and Customs, Tariff, Excise Tariff and Service Tax etc. Tax Statutes are amended on a year-to-year basis by the "Finance Act" passed by the Parliament/State Legislatures after the budget session. Whenever the constitutionality of any provision is challenged or there is any dispute in the interpretation of any provision in any taxing statute, courts have to ascertain the legislative intent of that provision. Legislative intent of any taxing statutes may be ascertained with the help of the following documents: • "Notes on Clauses" given in the Finance Bill/Finance Act. • "Budget Speech" of the Finance Minister. • "Parliamentary Debates" related to specific clauses.
In every finance bill there is a note for each clause under the heading "Notes on Clauses," which gives an indication of the purpose for which the corresponding provision is introduced.
Speeches delivered by the Finance Minister of the Union government while presenting the budget in the Parliament or by the State Finance Ministers, while presenting the budget in the state legislatures, are important instruments for ascertaining the purpose of levying a particular tax and serve as an important source of information for the honorable judges for interpreting the provisions of a taxing statute while rendering a decision in any case.
11.4. Research for the Material for Preparing Speeches
Articles published in the law journals on any specific topic are necessary informational resources for writing speeches and can be searched by browsing through the journals, browsing through the legal

databases, and browsing through the indexes of the legal articles.

Besides articles, legislative histories of the enactment relating to the topic, objects and reasons, law commission or committee reports, if any, on the topic concerned, and statistics, are important. The internet is a useful tool for retrieving the statistical information on the relevant topic through various governmental websites. The legislative history of any particular enactment can be traced with the help of the latest Bare Act. After identifying the amendments in a particular act, original amendments are to be retrieved from the government gazettes or journals containing statutory information. Objects and reasons of the particular amendment also give useful insight for the purpose of amendment in any particular act. The legislation database, developed by the Supreme Court judges' library, is also a very useful tool for ascertaining the legislative history of any central act in India. This database is going to be made available very soon on the website of the Supreme Court.

Corresponding foreign law to any statutory provision in India can be traced with the help of any international legal database containing statutory information, such as Westlaw or LexisNexis. Commentaries on the foreign case laws on the subject may also be examined for identifying the corresponding statutory provisions.

11.5. Law Lexicons/Legal Dictionaries When the meaning of a particular word or phrase used in any statute is to be interpreted, in case of any dispute between the parties on the interpretation of a particular word, law lexicons/ legal dictionaries are to be consulted in order to find out whether that particular word has been interpreted by any court. And if that word has been interpreted in any decision by any court, the court has to give its decision on the basis of the appropriate meaning of that particular word defined in any decision of any court.

12. Important Legal Sources in India

12.1. Commentaries

CONSTITUTIONAL LAW

1 Seervai H.M. Constitutional Law of India: A Critical Commentary, Edn. 4, Vols. 3, 1996.
Bombay: N.M. Tripathi Pvt. Ltd., 1991-1996.
2 Basu D.D. Shorter Constitution of India, Edn. 13.
Nagpur: Wadhwa & Co., 2001
3 Jain M.P. Indian Constitutional Law, Edn. 5, Vols. 2.
Nagpur: Wadhwa & Co., 2003
4 Datar Arvind P. Commentary on the Constitution of India, Edn. 2, Vols. 3.
Nagpur: Wadhwa & Co., 2007

ADMINISTRATIVE LAW

1 Jain M.P. Principles of Administrative Law, Edn. 6, Vols. 2.
Nagpur: Wadhwa & Co., 2007
2 Wade H.W.R. Administrative Law, Edn. 9.
New Delhi: Oxford University Press, 2005 (Indian Edn. 2004)
INDIAN PENAL CODE

1 Batuk Lal & Nakvi S.K.A.
Commentary on the Indian Penal Code, Vols. 2.
New Delhi: Orient Pub. Co., 1860
2 Ratan Lal & Dhiraj Lal Law of Crime: A Commentary on Indian Penal Code 1860, Edn. 26, Vols. 2.
New Delhi: Bharat Law House, 2007.

3 Gour Hari Singh Commentaries on the Indian Penal Code, Edn. 13 (Abridged) 2006
Allahabad : Law Publishers, 2006
CODE OF CRIMINAL PROCEDURE

1 Mitra B.B. Code of Criminal Procedure, 1973, Edn. 20, Vols. 2.
Calcutta: Kamal Law House, 2003.
2 Ratan Lal & Dhiraj Lal Code of Criminal Procedure, Edn. 18, Vols. 2.
Nagpur: Wadhwa & Co., 2006.
3 Sarkar S.C. & Ors. Law of Criminal Procedure, Edn. 9, Vols. 2.
Nagpur: Wadhwa & Co., 2007
4 Princep Code of Criminal Procedure, Edn. 19, Vols. 2.
Delhi: Delhi Law House, 2008.
COMPANY LAW

1 Ramaiya A. Guide to Companies Act, Edn. 16, Vols. 3 + 3 Appendix Volumes.
Nagpur: Wadhwa & Co., 2004.

INCOME TAX

1 Kanga J.B. & Palkhivala N.A.
Law and Practice of Income Tax, Edn. 9, Vols. 2.
New Delhi: Lexis Nexis, 2004.
EVIDENCE

1 Monir M. Law of Evidence, Edn. 14, Vols. 2.
Delhi: Universal Law Pub. Co. 2006.
2 M.C. Sarkar & Ors. Law of Evidence in India, Pakistan, Bangladesh, Burma & Ceylon, Edn. 16, Vols. 2.
Nagpur; Wadhwa & Co., 2007.
CODE OF CIVIL PROCEDURE

1 Mulla D.F. Code of Civil Procedure, Edn. 17, Vols. 4.
New Delhi: Lexis Nexis, 2007
2 Sarkar P.C. & Sarkar S.C.
Law of Civil Procedure, Edn. 11, Vols. 2.
Nagpur: Wadhwa & Co., 2006.
3 Thakker C.K. Code of Civil Procedure, 1908, Edn. 5, Vols. 1-3-
Lucknow: Eastern Book Co., 2000-
CONTRACT LAW

1 Pullock F. & Mulla D.F.
Indian Contract and Specific Relief Acts, Edn. 13, Vols. 2.
New Delhi: Lexis Nexis, 2006.
ARBITRATION

1 Kwatra G.K. Arbitration and Conciliation Law of India, Edn. 7.
New Delhi: ICA/Universal Law Pub., 2008
2 Markanda P.C. Law relating to Arbitration & Conciliation, Edn. 6.
Nagpur: Wadhwa & Co., 2006.
3 Bachawat R.S. Law of Arbitration & Conciliation, Edn. 4, Vols. 2.

Nagpur: Wadhwa & Co., 2005.

4 Malhotra O.P. & Malhotra Indu
Law & Practice of Arbitration and Conciliation
New Delhi: Lexis Nexis, 2006.
INTERPRETATION OF STATUTES

1 Singh, Guru Prasanna Principles of Statutory Interpretation, Edn. 10.
Nagpur: Wadhwa & Co., 2006.
12.2. Digests

1 Surendra Malik Supreme Court Yearly Digest
Lucknow: E.B. Co., 2007.
2 Complete Digest of Supreme Court Cases, Vol. 1-10- (Since 1950-
Lucknow: E.B. Co., 2007
Supreme Court Millennium Digest 1950-2000, Vol. 118.
Nagpur: AIR Publications.
12.3. Law Lexicon
1 Aiyar Ramanatha P. Advanced Law Lexicon: Encyclopedia Law Dictionary with Legal Maxims, Latin Terms and Words & Phrases, Edn. 3, (Revised & Enlarged), Vols. 4.
Nagpur: Wadhwa & Co., 2005
2 Aiyar K.J. Judicial Dictionary, Edn. 13
New Delhi: Butterworths India 2001
3 Prem, Daulat Ram Judicial Dictionary, Vols. 2
Jaipur: Bharat Law Publications, 1992.

4 Legal Glossary published by Ministry of Law, Justice & Co. Affairs, 2001
12.4. Encyclopedic Reference Source

1 Halsbury's Laws of India, Approx 30 Vols.
New Delhi: Butterworths 1999-
12.5. Manual of Central Acts

1 Manohar & Chitley AIR Manual: Civil and Criminal, Edn. 6, Vol. 1-10, 1314-
Nagpur: AIR Pvt. Ltd., 2004
2 Encyclopedia of Important Central Acts & Rules, Vols. 20,
Delhi: Universal Law Publishers, 2004, Reprint 2005
12.6. Statutory Rules
1 Malik & Manchanda Encyclopedia of Statutory Rules Under Central Acts, Edn. 2
Allahabad: Law Publishers (India Pvt.) Ltd., 1989.
12.7. Important Law Reports in India
There are approximately 350 law journals, which are being published in India. The most cited law report containing Supreme Court decisions is "Supreme Court Cases (SCC)"followed by "All India Reporter (AIR)" and "Supreme Court Report (SCR)". Major law journals containing the Supreme Court judgments are as under:

1. Supreme Court Cases
2. AIR (SC)
3. Supreme Court Reports
4. Judgment Today
5. SCALE

An analysis of the citations in the Supreme Court shows that "Supreme Court Cases" is the most used law report cited by about 60% of the advocates in the Supreme Court.

12.8. Important Academic Law Journals

1 Annual Survey of Indian Law

New Delhi: ILI

2 Journal Indian Law Institute

3 Journal of Constitutional & Parliamentary Studies

4 Indian Journal of International Law

5 Indian Bar Review

6 National Law School of Indian Review

7 Journal of Human Rights (NHRC)

13. Important Legal Websites in India The Supreme Court judges' library has developed some very useful in-house legal databases, namely "SUPLIS" "SUPLIB" and"LEGISLATION". These databases are going to be released very soon on the website of the Supreme Court of India.

1

3.1. SUPLIS (Database of Case Laws)

SUPLIS is an indexing database of case laws decided by the honorable Supreme Court. This database consists of more than 42,000 case laws since 1950. This database is very useful in finding out the desired case laws. As soon as a cyclostyled copy of any judgment is received in the library it is immediately entered in this database after assigning subject headings and a famous case name (if any). This database is unique, as it contains some important features that are not available in other legal databases developed by commercial vendors. Besides retrieval of case laws by subject and case title, it also provides search capability by a "famous case name" (if any) assigned at the time of the entry – for example: "Bhopal Gas Case", "Rajiv Gandhi assassination case," "Mandal Commission Case," etc. SUPLIS also provides "equivalent citations" of case laws so that, in the event that a particular journal is unavailable, that case law could be made available from another journal with the help of this facility. The retrieval menu of the SUPLIS is as under:

13.2. SUPLIB (Database of Legal Articles)

Research articles published in various law reports and academic journals contain valuable information as they are written after comprehensive research on the aspect they deal with. SUPLIB is a database of legal articles published in about 200 foreign and Indian law reports subscribed to by the library. Presently, this database consists of more than 12,000 articles. Immediately after receipt of a journal in the library, important articles are identified, indexed

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3. Legislations (Database of Acts, Rules & all Statutory Materials)

Statutory materials such as bills, acts, joint committee reports, select committee reports, law commission reports, parliamentary and assembly debates, rules, by-laws, schemes, etc, are among the most important and sought-after library materials in any law library. The Legislative Database is a database for central government acts including amendments, rules, bills, and all subordinate legislations relating to central as well as state acts. This database is very useful for tracing the complete legislative history of any particular central or state act. All the amendments in acts, rules, schemes and by-laws framed under any particular enactment could be readily identified and retrieved

with the help of their citations / source given in this database. If the text of any particular central act is desired, a link for "India Code," which is a database of the Ministry of Law, is also provided to access the full text of the desired central act. The retrieval menu of this database is as under:

4. Supreme Court of India This is the official website of the Supreme Court of India. It contains information about the full text of the Constitution of India, the jurisdiction of the Supreme Court, golden jubilee celebration, Rules, former CJI's, present CJI and judges, calendar of the Supreme Court, registrars, and former judges. This site also has links to "Indian Courts", "JUDIS", "Daily Orders", "Case Status", "Cause List", "Courts Websites", and India Code. The "Equivalent Citation Table" developed by the Supreme Court Judges Library, which gives parallel citations of any case in four major law repots in India, namely "Supreme Court Cases", "AIR(SC)", "JT" and "SCALE," can also be accessed through this website. 5. Parliament of India This consists of three separate home pages: President of India, Rajyasabha & Lok Sabha. (i) President of India This consists of information & photographs of Rastrapati Bhawan a photo gallery of former presidents along with other information, parliamentary addresses, speeches, addresses and parliamentary addresses of the president. (ii) Rajya Sabha
This contains information about business, members, questions, debates, legislation, and committees. It is useful for retrieving information from Rajyasabha debates, information about the Rajyasabha bills, and various committees constituted by Rajyasabha. It also provides links to the other country's parliamentary sites, as well as legislative sites for all the states of other countries. (iii) Lok Sabha This is also a very important site which provides information regarding recent and previous members, committees, procedures of the house, debates, etc. It is useful for retrieving the information regarding any bill pending in the house, debate of the house, procedure of the house and about the collection of the parliament library. It also provides a link to various official sites in the country. A link to all of the sites of various ministries is also provided.

6. TRAI

This is the official site of the Telecom Regulatory Authority of India, which informs about the TRAI Act. The Telecom policy service provides registered agency regulations, which can be retrieved through this site. This site is important for retrieving tariff orders as well as the judgments delivered by the authority. 7. Central Electricity Regulatory Committee This site is an important site for knowing about the regulations, orders, power data, tariff notifications, and schedules of hearings of the authority. All the orders / decisions of the authority are available on this site in a chronological fashion. 8. SEBI Securities and Exchange Board of India This site is the official site of the Securities and Exchange Board of India, and provides information on the legal framework of the SEBI, including auto rules. Regulations, orders / rulings of the tribunal as well as of chairman / members, and reports and documents of the boards are also available on this site. 9. Ministry of Company Affairs This is an important site for knowing any information related to company affairs. Reports of various committees such as company law, notifications and circulars issued by the Ministry of Company Affairs and Information about the vanishing companies, corporate groups and concept paper are available on this site. 10. Ministry of Law & Justice This is a very important site as it contains a link to "India Code," which provides online access to the full text of any central act of Parliament. It also provides a link to various important legal websites.

11. Law Commission of India
This is a very useful site as it contains the full text of many law commission reports and a list of all law commission reports in the countries. It also contains consultation papers of the law commission on various legal aspects. 12. India Code Information System (incodis) This website belongs to

legislative department of India. This is an important site for retrieving the full text of any of the central acts which are being regularly updated after amendment, if any. The full text of the Constitution of India is also available on this site. It also contains the text of the parliamentary bills / legislative bills, as well as information regarding the bills which are being introduced or passed in the current session of the Parliament. A CD-Rom version of the Constitution of India and the election laws manual could also be ordered with the help of a requisition form available on this site. 13. India Image This is another important site developed by NIC, which is being framed as, "gateway to the government of India information over the web". This is a very comprehensive site which verbally provides something on everything about the government of India. It contains a Government of India directory, India fact file, and information about any district in India with facts and statistics. Results of various examinations and important documents such as the union budget, economic survey, and India vision 2020 are also available. It also contains government policies, provides links to Indian Railways and Indian Airlines and all other important Indian websites. Other related information could also be retrieved with the help of this site. 14. Indian Judiciary This is the most important website of the Government of India, which provides invaluable information regarding the judiciary, covering all the cases of the Supreme Court and High Courts (reportable / non-reportable), decided or pending. It also provides information about all of the high courts. Its sub-websites are as follows:

• Judis: Contains information regarding the judgments of the Supreme Court (decided cases) from 1950 to date. It also covers judgments of the high courts. • Daily Orders: It provides the latest daily orders of the Supreme Court and high courts. • Courtnic: The current status of any case, i.e. information of all pending and disposed cases including next date of listing, date of disposal, etc, is easily available on this site. It also provides the text of latest orders. • Causelists: Contains information regarding cause lists, including weekly lists, advance lists, daily lists and supplementary lists of the Supreme Court and high courts. • Court Web Sites: This provides links to the websites of the high court and some district courts. • India Code: Can be accessed from the provided link on this site.

(b) Legal Research

Meaning of research:

Generally, the term "research" is taken as an academic activity or as an art of scientific investigation. It is not only an important prerequisite for dynamic social order but also a systematic and objective analysis of information that is discovered. It is an established fact that the research is a foundation of the progress and prosperity achieved and may be achieved in future. Nobody can get specific and deep knowledge on any matter without having research that is why, research plays significant role in gaining knowledge. As a result, research can be defined as a systematic search for attaining deep knowledge.

The Oxford Advanced Learners Dictionary defined the term "research" as a careful investigation or inquiry especially through search for new facts in any breech of knowledge.

Encyclopedia of social science defined it as the manipulation of things, concept or symbols for generalizing to extend, correct or verify knowledge, whether that knowledge aids in construction of theory or in the practice of an art. Exhaustive investigation of a specific subject matters, which has its aim, the advancement of making knowledge. Keeping in view the said definitions, the term "research" can be defined as a method of gaining specific knowledge. It is not only a major factor for human-development but also of civilization. Similarly, research not only plays a signification role in academic scenario but also plays a vital role in practical life of whole humankind. There are various methods used for pursuing research. Method applicable for research depends on the objectives of the research for instance impact analysis, theory inception or experiment, etc. Generally, research methods are divided as qualitative and quantitative, depending on its nature. The former method is

understood as descriptive research and the latter as numerical. The qualitative research is most suitable for social research.

Legal Research:

Generally, law is enacted to regulate the human conduct for the welfare of humankind. It is considered that law should be enacted to protect the interest of a person, society, and the county as a whole. The goal of legal research cannot be distinguished from the goal of law. As law is directly related with the social science, its research is also automatically related with the research of social science.

This is the age of democracy and good governance. Democracy and good governance depend upon the rule of law. In democratic society, law is changed for welfare of the people and society along with the pace of time. Alternatively, law shall not be constraint for the development rather it be facilitator. That is why law needs charges. Similarly, legal research is essential to have changes in law for socialization and betterment of the people and society.

Now-a-days, legal research is not limited only on the analyzing of criminal behavior, activities of public, court, public prosecutors, legal practitioners etc. but it also includes the protection of environment of all creatures in the world and the development as well. As a result, legal research plays crucial role for the welfare of the humankind and is more important than others to bring positive changes in our society and at the end in the whole humankind.

Meaning of legal research:

"Legal research is the field of study concerned with the effective marshaling of authorities that bears in a question of law"

"The systematic investigation of problems and matters concerned with such as codes, acts etc. are called legal research."

"Legal research is an investigation directed to discovery of some fact; careful study of a subject."

Keeping in view to the said definitions, we can say here that legal research is an act that discovers the legal principles relevant to a particular problem and it is the foundation for good legal advice.

Primary and Secondary Sources:

Primary sources contain the actual law. Constitutions, court decisions, cases, statutes, treaties and administrative regulations are all examples of primary sources.

Secondary sources are materials, which comment, explain and annotate on these primary sources. Usually, they include treaties, legal periodical, articles, legal encyclopedias, annotations, law dictionaries, commentaries, continuing legal education publications, opinions of the Attorney General, Secretary of the Ministry of Law, Justice and Parliamentary Affairs and other agencies.

On the other hand, finding tools are reference publications, which are used to find out primary and secondary sources. They include digests, indexes to legal periodicals, and indexes to annotations, law dictionaries and citations.

1. Primary Sources: The following sources are considered as primary sources in the legal research by the legal professionals.

• Constitutions, • Statutes, • Treaties, • Court decisions, and • Administrative regulations.

2. Secondary Sources: The following sources are the secondary sources used in the legal research by the legal professionals.

• Treaties, • Commentaries, • Law review/Legal periodicals,

• Articles, • Continuing legal education publications, • Law encyclopedia, • Annotations, and • Opinions of the Secretary of Justice. •

Methods/ Techniques of legal research:

In pursuing research for disclosing facts or proving a hypothesis true or false, various kinds of

methods can be applied for the successful research. The following research methods collectively or individually can be applied for the successful research as the main methods.

1 Observation:

Information can be received by observing, visiting and viewing the place, society, events or the things pertinent to the study or research. Observation can be taken as primary and reliable source of information. If a researcher is careful, he/she can get the points that may play the significant role in his research or study. Observation is a method that is common in the research of legal and social science. Observation should be guided by a specific research purpose, the information receive from the observation should be recorded and subjected to checks on the trail of reliability.

2 Questionnaires:

In questionnaire method, a researcher develops a form containing such questions pertinent to his study. Generally, the researcher prepares yes/ No questions or short answer questions. In questionnaire method, researcher distributes such forms to the people to whom he/she deems appropriate. The people, to whom the questionnaires have been distributed, should answer that what they have known by filling out the form and return it to researcher.

3 Sampling:

When the subject of research is vague, comprehensive and when each indicator cannot be taken by virtue of financial constraint, time and complexity, etc. then the researcher can randomly collect data/sample depending on the reason. This is called as sampling method. For instance, in a demographic research, part of population represent various groups can be taken into consideration. That is why, it is said that sample is a method that saves time and money.

4 Interviews:

A researcher can receive information sought by him/her asking people concerned through interview. It is a direct method of receiving information. Interview can be generally held asking questions in face-to-face contact to the person or persons and sometimes through telephone conversation. This method is common in the research of legal and social science. In this method, the researcher has to use less skill and knowledge to receive information he/she had sought. Interview is known as an art of receiving pertinent information. In the opinion of P.V. Young, interview can be taken as a systematic method by which a person enters more or less imaginatively into the life of a stranger.

5 Case Study:

Case study is taken as one of the important a and reliable methods for legal research. Case study can be defined as a method of research where facts and grounds of each legal issue are dealt with by taking individual case. P.V. Young pointed out that case study is a method of exploring and analyzing of life of a social unit such as a person, a family, an institution, a cultural group or even entire community. Goode and Hatt state that case study is a way of organizing social data so as to preserve the utility character of the social object being studied.

Keeping in view to the matters as referred to in above, we can state here that the case study is a method of legal research to explore and analyze the fact and data of a social unit and to organize social data for prescription of useful character and society.

LAW OF CONTRACT (103)

LAW OF CONTRACT-103

Unit-I: Formation of Contract

Meaning, nature and scope of contract

"All agreements are contracts, if they are made – by free consent of the parties, competent to contract, for a lawful consideration and with a lawful object, and not hereby expressly declared to be void." Sec.10.

Offer + acceptance = Promise
+
consideration
=
Agreement
+
enforceability By Law

Contract

Proper offer and proper acceptance with intention to create legal relationship.

Cases;- A and B agree to go to a movie on coming Sunday. A does not turn in resulting in loss of B's time B cannot claim any damages from B since the agreement to watch a movie is a domestic

agreement which does not result in a contract.
In case of social agreement there is no intention to create legal relationship and there the is no contract (Balfour v. Balfour)
In case of commercial agreements, the law presume that the parties had the intention to create legal relations.
[an agreement of a purely domestic or social nature is not a contract]

Lawful consideration:- consideration must not be unlawful, immoral or opposed to the public policy.

Capacity:- The parties to a contract must have capacity (legal ability) to make valid contract.

Section 11:- of the Indian contract Act specify that every person is competent to contract provided.
Is of the age of majority according to the Law which he is subject, and
Who is of sound mind and
Is not disqualified from contracting by any law to which he is subject.
Person of unsound mind can enter into a contract during his lucid interval. An alien enemy, foreign sovereigns and accredited representative of a foreign state. Insolvents and convicts are not competent to contract.

Free consent :- consent of the parties must be genuine consent means agreed upon samething in the same sense i.e. there should be consensus – ad – idem. A consent is said to be free when it is not caused by coercion, undue influence, fraud, misrepresentation or mistake.

Lawful object :- The object of agreement should be lawful and legal.

Two persons cannot enter into an agreement to do a criminal act. Consideration or object of an agreement is unlawful if it

is forbidden by law; or
is of such nature that, if permitted, would defeat the provisions of any law; or
is fraudulent; or
Involves or implies, injury to person or property of another; or
Court regards it as immoral, or opposed to public policy.

Possibility of performance:
The terms of the agreement should be capable of performance. An agreements to do act, impossible in itself cannot be enforced.
Example : A agrees to B to discover treasure by magic. The agreement is void because the act in itself is impossible to be performed from the very beginning.

The terms of the agreements are certain or are capable of being made certain.
Example : A agreed to pay Rs.5 lakh to B for ultra-modern decoration of his drawing room. The agreement is void because the meaning of the term " ultra – modern" is not certain.

Not declared Void
The agreement should be such that it should be capable or being enforced by law. Certain agreements have been expressly declared illegal or void by the law.

Necessary legal formalities

A contract may be oral or in writing.
Where a particular type of contract is required by law to be in writing and registered, it must comply with necessary formalities as to writing, registration and attestation.
If legal formalities are not carried out then the contract is not enforceable by law. Example : A promise to pay a time. Barred debt must be in writing.
Agreement is a wider term than contract where as all contracts are agreements. All agreements are not contracts.
All Contracts are Agreements, but all Agreements are not Contracts.

Contracts as defined by Eminent Jurists
"Every agreement and promise enforceable at law is a contract." – Pollock.
"A Contract is an agreement between two or more persons which is intended to be enforceable at law and is contracted by the acceptance by one party of an offer made to him by the other party to do or abstain from doing some act." – Halsbury .
"A contract is an agreement creating and defining obligation between the parties" – Salmond.

Conclusion: Thus we see that an agreement may be or may not be enforceable by law, and so all agreement are not contract. Only those agreements are contracts, which are enforceable by law,

Contracts = Agreement + Enforceability by Law

Hence, we can conclude "All contracts are agreement, but all agreements are not contracts."

Distinction between Contract & Agreement
Illegal contract

On the basis of creation

Express contract :- A contract made by word spoken or written. According to sec 9 in so for as the proposal or acceptance of any promise is made in words, the promise is said to be express.
Example : A says to B 'will you purchase my bike for Rs.20,000?" B says to A "Yes".

Implied contract:- A contract inferred by the conduct of person or the circumstances of the case.

By implies contract means implied by law (i.e.) the law implied a contract through parties never intended. According to sec 9 in so for as such proposed or acceptance is made otherwise than in words, the promise is said to be implied.

Example:

A stops a taxi by waving his hand and takes his seat. There is an implied contract that A will pay the prescribed fare.

Tacit contract: - A contract is said to be tacit when it has to be inferred from the conduct of the

parties. Example obtaining cash through automatic teller machine, sale by fall hammer of an auction sale.

(d). Quasi Contracts are contracts which are created - Neither by word spoken

Nor written

Nor by the conduct of the parties. But these are created by the law.

Example:

If Mr. A leaves his goods at Mr. B's shop by mistake, then it is for Mr. B to return the goods or to compensate the price. In fact, these contracts depend on the principle that nobody will be allowed to become rich at the expenses of the other.

(e). e – Contract: An e – contract is one, which is entered into between two parties via the internet.

On the Basis of Validity

Valid contract:- An agreement which satisfies all the requirements prescribed by law On the basis of creation

Void contract (2(j)):- a contract which ceases to be enforceable by law because void when of ceased to be enforceable Agreement in restrain of marriage [26] traint of trade [27]
Restrain legal proceeding [28]
Agreement by wage of wager [30]
Voidable contract 2(i) :- an agreement which is enforceable by law at the option of one or more the parties but not at the option of the other or others is a voidable contract. Result of coercion, undue influence, fraud and misrepresentation.

Unenforceable contract: - where a contract is good in substance but because of some technical defect i.e. absence in writing barred by imitation etc one or both the parties cannot sue upon but is described as unenforceable contract.

Example: Writing registration or stamping.

Example: An agreement which is required to be stamped will be unenforceable if the same is not stamped at all or is under stamped.

(e) Illegal contract:- It is a contract which the law forbids to be made. All illegal agreements are void but all void agreements or contracts are not necessary illegal. Contract that is immoral or opposed to public policy are illegal in nature.

Unlike illegal agreements there is no punishment to the parties to a void agreement. Illegal agreements are void from the very beginning agreements are void from the very beginning but

sometimes valid contracts may subsequently becomes void.

On the Basis of execution

Executed contract :- A contract in which both the parties have fulfilled their obligations under the contract.
Example: A contracts to buy a car from B by paying cash, B instantly delivers his car.

Executory contract:- A contract in which both the parties have still to fulfilled their obligations.

Example : D agrees to buy V's cycle by promising to pay cash on 15 thJuly. V agrees to deliver the cycle on 20thJuly.

Partly executed and partly executory:- A contract in which one of the parties has fulfilled his obligation but the other party is yet to fulfill his obligation.

Example : A sells his car to B and A has delivered the car but B is yet to pay the price. For A, it is excuted contract whereas it is executory contract on the part of B since the price is yet to be paid.

On the Basis of Liability
Bilateral contract:- A contract in which both the parties commit to perform their respective promises is called a bilateral contract.

Example : A offers to sell his fiat car to B for Rs.1,00,000 on acceptance of A's offer by B, there is a promise by A to Sell the car and there is a promise by B to purchase the car there are two promise.

Unilateral contract:- A unilateral contract is a one sided contract in which only one party has to perform his promise or obligation party has to perform his promise or obligation to do or forbear.

Example :- A wants to get his room painted. He offers Rs.500 to B for this purpose B says to A " if I have spare time on next Sunday I will paint your room". There is a promise by A to pay Rs 500 to B. If B is able to spare time to paint A's room. However there is no promise by B to

Paint the house. There is only one promise.
Difference between Void and Voidable Contract

BASIS FOR COMPARISON	VOID CONTRACT	VOIDABLE CONTRACT
Meaning	The type of contract which cannot be enforceable is known as void contract.	The contract in which one of the two parties has the option to enforce or rescind it, is known as voidable contract.
Defined in	Section 2 (j) of the Indian Contract Act, 1872.	Section 2 (i) of the Indian Contract Act, 1872.
Nature	The contract is valid, but subsequently becomes invalid due to some reasons.	The contract is valid, until the party whose consent is not free, does not revokes it.
Reasons	Subsequent illegality or	If the consent of the

	impossibility of any act which is to be performed in the future.	parties is not independent.
Rights to party	No	Yes, but only to the aggrieved party.
Suit for damages	Not given by any party to another party for the non-performance, but any benefit received by any party must be restored back.	Damages can be claimed by the aggrieved party.

Offer/proposal: definition, communication, revocation, general and specific offer

Offer(i.e. Proposal) [section 2(a)]:-When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other person either to such act or abstinence, he is said to make a proposal.

To form an agreement, there must be at least two elements – one offer and the other acceptance. Thus offer is the foundation of any agreement.

"When one person signifies to another his willingness – to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal."

The person who makes an offer is called "Offeror" or " Promisor" and the person to whom the offer is made is called the Offeree" or "Promisee".

Example

Mr. A says to Mr. B, "Will you purchase my car for Rs.1,00,000?" In this case, Mr. A is making man offer to Mr. B. Here A is the offeror and B is the offeree.

Essentials elements of an offer:-

(1) There must be two parties.
(2) The offer must be communicated to the offeree.
(3) The offer must show the willingness of offeror. Mere telling the plan is not offer.
(4) The offer must be made with a view to obtaining the assent of the offeree.
(5) A statement made jokingly does not amount to an offer.
(6) An offer may involve a positive act or abstinence by the offeree.
(7) Mere expression of willingness does not constitute an offer.

A tells B' that be desires to marry by the end of 2008, if does not constitute an offer of marriage by A' to B' A further adds will you marry me. Then it become offer.

Legal Rules as to valid offer:-

1. Offer must be communicated to the offeree: The offer is completed only when it has been communicated to the offeree. Until the offer is communicated, it cannot be accepted. Thus, an offer accepted without its knowledge, does not confer any legal rights on the acceptor.

Example:

A's nephew has absconded from his home. He sent his servant to trace his missing nephew. When he servant had left, A then announced that anybody who discovered the missing boy, would be given the reward of Rs.500. The servant discovered the missing boy without knowing the reward. When the servant came to know about the reward, he brought an action against A to recover the same. But his action failed. It was held that the servant was not entitled to the reward because he did not know about the offer when the discovered the missing boy.

[Lalman Shukla v. Gauri Datt (1913) All LJ 489]

2. The offer must be certain definite and not vague unambiguous and certain.

Example:

A offered to sell to B. 'a hundred tons of oil'.The offer is uncertain as there is nothing to show what kind of oil is intended to be sold.

3. The offer must be capable of creating legal relation. A social invitation is not create legal relation.

Example:

A invited B to a dinner and B accepted the invitation. It is a mere social invitation. And A will not be liable if he fails to provide dinner to B.

4. Offer may be express and implied

The offer may be express or implied; An offer may be express as well as implied. An offer which is expressed by words, written or spoken, is called an express offer. The offer which is expressed by conduct, is called an implied offer [Section 9].

5. Communication of complete offer Example:

A offered to sell his pen to B for Rs.1,000. B replied, "I am ready to pay Rs.950". On A's refusal to sell at this price, B agreed to pay Rs.1,000. held, there was not contract at the acceptance to buy it for Rs.950 was a counter offer, i.e. rejection of the offer of A. Subsequent acceptance to pay Rs.1,000 is a fresh offer from B to which A was not bound go give his acceptance.

6. Counter offer – A counter offer amounts to rejection of the original offer

7. Cross offer do not conclude a contract

8. An offer must not thrust the burden of acceptance on the offeree.

Example:

A made a contract with B and promised that if he was satisfied as a customer he would favorably consider his case for the renewal of the contract. The promise is too vague to create a legal relationship.

The acceptance cannot be presumed from silence. Acceptance is valid only if it is communicated to the offeror.

Offer must be distinguished from invitation to offer.

Example:

Menu card of restaurant is an invitation to put an offer.

Example ;

Price – tags attached with the goods displayed in any showroom or supermarket is also an invitation to proposal. If the salesman or the cashier does not accept the price, the or the cashier does not accept the price, the interested buyer cannot compel him to sell, if he wants to buy it, he must make a proposal.

Example:

Job or tender advertisement inviting applications for a job or inviting tenders is an invitation to an offer.

Example:

An advertisement for auction sale is merely an invitation to make an offer and not an offer for sale. Therefore, an advertisement of an auction can be withdrawn without any notice. The persons going to the auction cannot claim for loss of time and expenses if the advertisement for auction is withdrawn.

10. Offeror should have an intention to obtain the consent of the offeree.

11. An answer to a question is not a offer.

BASIS FOR COMPARISON	OFFER	INVITATION TO OFFER
Meaning	When one person expresses his will to another person to do or not to do something, to take his approval, is known as an offer.	When a person expresses something to another person, to invite him to make an offer, it is known as invitation to offer.
Defined in	Section 2 (a) of the Indian Contract Act, 1872.	Not Defined
Objective	To enter into contract.	To receive offers from people and negotiate the terms on which the contract will be created.
Essential to make an agreement	Yes	No
Consequence	The Offer becomes an agreement when accepted.	An Invitation to offer, becomes an offer when responded by the party to whom it is made.

KINDS OF OFFER

Express offer - When the offeror expressly communication the offer the offer is said to be an express offer the express communication of the offer may be made by Spoken word or Written word.

Implied offer – when the offer is not communicate expressly. An offer may be implied from the conduct of the parties or the circumstances of the case.

Specific:- It means an offer made in

(a) a particular person or

(b) a group of person: It can be accepted only by that person to whom it is made communication of acceptance is necessary in case of specific offer.

General offer: - It means on offer which is made to the public in general.

General offer can be accepted by anyone.

If offeree fulfill the term and condition which is given in offer then offer is accepted.

Communication of acceptance is not necessary is case of general offer

Example

Company advertised that a reward of Rs.100 would be given to any person who would suffer from influenza after using the medicine (Smoke balls) made by the company according to the printed directions.One lady, Mrs, Carlill, purchased and used the medicine according to the printed directions of the company but suffered from influenza, She filed a suit to recover the reward of Rs.100. The court held that there was a contract as she had accepted a general offer by using the medicine in the prescribed manner and as such as entitled to recover the reward from the company.Carlill v. Carbilic Smoke Ball Co. 1893

Cross offer:- When two parties exchange identical offers in ignorance at the time of each other's offer the offer's are called cross offer.

Two cross offer does not conclude a contract. Two offer are said to be cross offer if

1. They are made by the same parties to one another
2. Each offer made in ignorance of the offer made by the
3. The terms and conditions contained in both the offers' are same.

Example : A offers by a letter to sell 100 tons of steel at Rs.1,000 per ton. On the same day, B also writes to A offering to buy 100 tons of steel at Rs.1,000 per ton.

When does a contract come into existence: - A contract comes into existence when any of the parties, accept the cross offer made by the other party.

Counter offer :- when the offeree give qualified acceptance of the offer subject to modified and variations in the terms of original offer. Counter offer amounts to rejection of the original offer.

Legal effect of counter offer:-

(1) Rejection of original offer

(2) The original offer is lapsed

(3) A counter offer result is a new offer.

In other words an offer made by the offeree in return of the original offer is called as a counter offer.

Example:

A offered to sell his pen to B for Rs.1,000. B replied, " I am ready to pay Rs.950." On A's refusal to sell at this price, B agreed to pay Rs.1,000. Held, there was not contract as the acceptance to buy it for Rs.950 was a counter offer, i.e. rejection of the offer of A.

Subsequent acceptance to pay Rs.1,000 is a fresh offer from B to which A was not bound to give his acceptance.

Standing, open and continuous offer:- An offer is allowed to remain open for acceptance over a period of time is known as standing, open or continually offer. Tender for supply of goods is a kind of standing offer.

Example:

When we ask the newspaper vendor to supply the newspaper daily. In such case, we do not repeat our offer daily and the newspaper vendor supplies the newspaper to us daily. The offers of such types are called Standing Offer.

LAPSE OF AN OFFER

An offer should be accepted before it lapses (i.e. comes to an end). An offer may come to an end In any of the following ways stated in Section 6 of the Indian Contract Act:

1. By communication of notice of revocation: An offer may come to an end by communication of notice of revocation by the offeror. It may be noted that an offer can be revoked only before its acceptance is complete for the offeror. In other words, an offeror can revoke his offer at any time before he becomes before bound by it. Thus, the communication of revocation of offer should reach the offeree before the acceptance is communicated.

2. By lapse of time; Where time is fixed for the acceptance of the offer, and it is not acceptance within the fixed time, the offer comes to an end automatically on the expiry of fixed time. Where no time for acceptance is prescribed, the offer has to be accepted within reasonable time.

The offer lapses if it is not accepted within that time. The term 'reasonable time' will depend upon the facts and circumstances of each case.

3. By failure to accept condition precedent: Where, the offer requires that some condition must, be fulfilled before the acceptance of the offer, the offer lapses, if it is accepted without fulfilling the condition.

4. By the death or insanity of the offeror: Where, the offeror dies or becomes, insane, the offer comes to an end if the fact of his death or insanity comes to the knowledge of the acceptor before he makes his acceptance. But if the offer is accepted in ignorance of the fact of death or insanity of the offeror, the acceptance is valied. This will result in a valid contract, and legal representatives of the deceased offeror shall be bound by the contract. On the death of offeree before acceptance, the offer also comes to an end by operation of law.

5. By counter – offer by the offeree: Where, a counter – offer is made by the offeree, and then the original offer automatically comes to an end, as the counter – offer amounts to rejections of the original offer.

6. By not accepting the offer, according to the prescribed or usual mode: Where some manner of acceptance is prescribed in the offer, the offeror can revoke the offer if it is not accepted according to the prescribed manner.

7. By rejection of offer by the offeree: Where, the offeree rejects the offer, the offer comes to an end. Once the offeree rejects the offer, he cannot revive the offer by subsequently attempting to accept it. The rejection of offer may be express or implied.

8. By change in law: Sometimes, there is a change in law which makes the offer illegal or incapable of performance. In such cases also, the offer comes to an end.

C . Invitation to treat

An 'offer' is the final expression of willingness by the offerer to be bound by his offer. Sometimes a person may not offer to sell his goods, but make some statement or give some information with a view to inviting others to make offers on that basis. Where a party, without expressing his final willingness proposes certain terms on which he is willing to negotiate, he does not make an offer but merely 'invites' the other party to make an offer on those terms. For example, a book-seller sends catalogue of books indicating price of various books to many persons. This is an 'invitation to treat'. The interested part may make an offer and the bookseller may accept or reject the offer.

Similarly, advertisements for bids/ tenders are only 'invitation to offer the bid/tender constitutes the offer which can be accepted or rejected. A auctioneer is not bound to accept even the highest bid (offer). Where an auctioned sale was cancelled, the plaintiff cannot recover travel expenses as there was no contract. An offer can be withdrawn before it is accepted [Harris Verses Nickerson].

Likewise, an inducement of special discount by a shopkeeper is a "commercial puff' or an invitation to treat and not an offer. A banker’s catalogue of charges or a prospectus of a company inviting applications for job is also not an offer. A quotation of prices is not an offer. In Grainger & Sons Verses Gough, it was held that, "The transmission of a price list does not amount to an offer to supply an unlimited quantity of the wine described at the price named."

In Bank of India Verses O. P. Swarankar, it has been held that a contract of employment is governed by the Contract Act. Announcement of Voluntary Retirement Scheme by a nationalized bank is not an offer. The employee offering to retire makes an offer and the same becomes effective when the written request of retirement is accepted. An employee who has offered to retire under the scheme

can withdraw before his request is accepted.
In Ghaziabad Dev. Authority Verses UOI, the court observed that when a development authority announces a scheme for allotment of plots, the brochure issued by it for public information is an invitation to offer. Several members of public may make applications for availing benefit of the scheme. Such applications are offers. Some of the offers having been accepted subject to the rules of priority/preference laid down by the authority result into a contract between the applicant and the authority.

In McPherson Verses Appana, it was held that mere statement of the lowest price at which the offerer would sell contains no implied contract to sell at that price to the person making the inquiry. The plaintiff offered to purchase the lodge owned by the defendant for Rupees 6,000. He wrote the defendant's agent asking whether his offer had been accepted and saying that he was prepared to accept any higher price if found reasonable. The agent replied, "Won't accept less than Rupees 10,000." The plaintiff accepted this and brought a suit for specific performance. Held that the defendant did not make any offer or counter offer but was merely inviting offers. There was no assent to the plaintiff's offer to buy at Rupees and, therefore, no concluded contract.

The Supreme Court relied on the principle enunciated in Harvey Verses Facey, In that case the plaintiffs telegraphed to the defendants, writing, "Will you sell us Bumper Hall Pen? Telegraph lowest cash price". The defendants replied, also by a telegram, "Lowest price for Pen, £ 900".

The plaintiffs immediately sent their last telegram stating, "We agree to buy Pen for £ 900 asked by you". The defendants, however, refused to sell the plot of land at that price. The court observed that the defendants gave only the lowest price and did not expressed their willingness to sell. Thus they had made no offer. The plaintiffs' last telegram was an offer to buy, but that was never accepted by the defendants.
Where a proposer, in response to a proposal to purchase his land, asked for a higher price and also some advance with acceptance, it was held that the proposer accepting the same along with an advance payment amounted to a contract, although the letter of acceptance came back being refused [Byomkesh Verses Nani Gopal].
An Offer must be distinguished from:
(a) An invitation to treat or an invitation to make an offer: e.g., an auctioneer's request for bids (which are offered by the bidders), the display of goods in a shop window with prices marked upon them, or the display of priced goods in a self-service store or a shopkeeper's catalogue of prices are invitations to an offer.
(b) A mere statement of intention: e.g., an announcement of a coming auction sale. Thus a person who attended the advertised place of auction could not sue for breach of contact if the auction was cancelled (Harris v. Nickerson (1873) L.A. 8 QB 286).
(c) A mere communication of information in the course of negotiation: e.g., a statement of the price at which one is prepared to consider negotiating the sale of piece of land (Harvey v. Facey (1893) A.C. 552).
An offer that has been communicated properly continues as such until it lapses, or until it is revoked by the offeror, or rejected or accepted by the offeree.

d .acceptance: definition, communication, revocation, tenders /auctions.

Acceptance 2(b):- When the person to whom the proposal is made, signifies his assent there to , the proposal is said to be accepted.

Legal Rules for the Acceptance

1. Acceptance must be absolute and unqualified

Example: A offers to sell his house to B for Rs. two lakhs. B accepts the offer and promises to pay the price in four installments. This is not pay the acceptance as the acceptance is with variation in the terms of the offer.

2. Acceptance must be communicated: Mere mental acceptance is no acceptance, But there is no requirement of communication of acceptance of general offer.

Example The manager of Railway Company received a draft agreement relating to the supply of coal. The manager marked the draft with the words "Approved" and put the same in the drawer of his table and forgot all about it. Held, there was no contract between the parties as the acceptance was not communicated. It may however, be pointed out that the Court construed a conduct to parties as railway company was accepting the supplies of coal from time to time.

3. Manner of acceptance

General rule say that it must be as per the manner prescribed by offeror. If no mode is prescribed in which it can be accepted, then it must be in some usual and reasonable manner.

4. If there is deviation in communication of an acceptance of offer, offeror may reject such acceptance by sending notice within reasonable time. If the offeror doesn't send notice or rejection, he accepted acceptance of offer.

Example: A offers B and indicates that the acceptance be given by telegram. B sends his acceptance by ordinary post. It is a valid acceptance unless A insists for acceptance in the prescribed manner.

5. Acceptance of offer must be made by offeror.
Example : A applied for the headmastership of a school. He was selected by the appointing authority but the decision was not communicated to him. However, one of members in his individual capacity informed him about the selection. Subsequently, the appointing authority cancelled its decision. A sued the school for breach of contract. The Court rejected the A's action and held that there was no notice of acceptance. "Information by unauthorized person is as insufficient as overhearing from behind the door".

6. Acceptance must be communicated to offeror

7. Time limit for acceptance

If the offer prescribes the time limit, it must be accepted within specified time.

If the offer does not prescribe the time limit, it must be accepted within reasonable time.

Example : A applied (offered) for shares in a company in early June. The allotment (Acceptance) was made in late November. A refused to take the shares. Held, A was entitled to do so as the

reasonable time for acceptance had elapsed.

8. Acceptance of offer may be expressly (by words spoken or written); or impliedly (by acceptance of consideration); or by performance of conditions (e.g.in case of a general offer)

9. Mere silence is not acceptance of the offer

Example A offers to B to buy his house for Rs.5 lakhs and writes "If I hear no more about it within a week, I shall presume the house is mine for Rs.5 lakhs. "B does not respond. Here, no contract is concluded between A and B.

10. However, following are the two exceptions to the above rule. It means silence amounts as acceptance of offer.

Where offeree agrees that non – refusal by him within specified time shall amount to acceptance of offer.

When there is custom or usage of trade which specified that silence shall amount to acceptance.

11. Acceptance subject to the contract is no acceptance

If the acceptance has been given 'subject to the contract" or subject to approval by certain persons, it has not effect at all. Such an acceptance will not create binding contract until a formal contract is prepared and signed by all the parties.

General Rules as to Communication of Acceptance

1. In case of acceptance by post

Where the acceptance is given by post, the communication of acceptance is complete as against the proposer when the letter of acceptance is posted. Thus, mere posting of letter of acceptance is sufficient to conclude a contract. However, the letter must be properly addressed and stamped.

2. Delayed or no delivery of letter

Where the letter of acceptance is posted by the acceptor but it never reaches the offeror, or it is delayed in transit, it will not affect the validity of acceptance. The offeror is bound by the acceptance.

3. Acceptance by telephones telex or tax

If the communication of an acceptance is made by telephone, tele-printer, telex, fax machines, etc, it completes when the acceptance is received by the offeror. The contract is concluded as soon as the offeror receives not hears the acceptance.

4. The place of Contract

In case of acceptance by the post, the place where the letter is posted is the place of contract. Where the acceptance is given by instantaneous means of communication (telephone, fax, tele-printer, telex etc.), the contract is made at the place where the acceptance is received,

5. The time of Contract

In case of acceptance by post, the time of posting the letter of acceptance to the time of contract. But

in case of acceptance by instantaneous means of communication, the time of contract is the time when the offeror gets the communication, the time of contract is the time when offeror gets the communication of acceptance.

6. Communication of acceptance in case of an agent.

Where the offer has been made through an agent, the communication of acceptance is completed when the acceptance is given either to the agent or to the principal. In such a case, if the agent fails to convey the acceptance received from offeree, still the principal is bound by the acceptance.

7. Acceptance on loudspeakers

Acceptance given on loudspeaker is not a valid a acceptance.

Accepted is lighted match, while offer is a train of gun powder
Sir willian Anson.

Revocation of proposals and acceptances

A proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards.

An acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards.

Illustration

A proposes, by a letter sent by port, to sell his house to B.

B accepts the proposal by a letter sent by post.

A may revoke his proposal at any time before or at the moment when B posts his letter of acceptance, but not afterwards.

B may revoke his acceptance to any time before or at the moment when B posts his letter of acceptance, but not afterwards.

E. Effect of void, voidable, valid, illegal, unlawful agreements

There may be the circumstances under which a contract made under these rules may still be bad, because there is a flaw, vice or error somewhere. As a result of such a flaw, the apparent agreement is not a real agreement.

Where there is no real agreement, the law has three remedies:

Firstly: The agreement may be treated as of no effect and it will then be known as void agreement.

Secondly: The law may give the party aggrieved the option of getting out of his bargain, and the contract is then known as voidable.

Thirdly: The party at fault may be compelled to pay damages to the other party.

(a) Void Agreement

A void agreement is one which is destitute of all legal effects. It cannot be enforced and confers no rights on either party. It is really not a contract at all, it is non-existent. Technically the words 'void contract' are a contradiction in terms. But the expression provides a useful label for describing the situation that arises when a 'contract' is claimed but in fact does not exist. For example, a minor's contract is void.

(b) Voidable Contract

A voidable contract is one which a party can put to an end. He can exercise his option, if his consent

was not free. The contract will, however be binding, if he does not exercise his option to avoid it within a reasonable time. The consent of a party is not free and so he is entitled to avoid the contract, if he has given misrepresentation, fraud, coercion or undue influence.

(c) Illegal Agreement

An illegal agreement is one which, like the void agreement has no legal effects as between the immediate parties. Further transactions collateral to it also become tainted with illegality and are, therefore, not enforceable. Parties to an unlawful agreement cannot get any help from a Court of law, for no polluted hands shall touch the pure fountain of justice. On the other hand, a collateral transaction can be supported by a void agreement.

"All illegal agreements are void agreements but all void agreements are not illegal."

For example, one party may have deceived the other party, or in some other way there may be no genuine consent. The parties may be labouring under a mistake, or one or both the parties may be incapable of making a contract. Again, the agreement may be illegal or physically impossible. All these are called "the FLAWS in contract or the VICES of contract".

The chief flaws in contract are:

(i) Incapacity
(ii) Mistake
(iii) Misrepresentation
(iv) Fraud
(v) Undue Influence
(vi) Coercion
(vii) Illegality

(d) Valid contract: An agreement which has all the essential elements of a contract is called a valid contract. A valid contract can be enforced by law.

Difference between Void and illegal Agreement :-

The Contract Act draws distinction between an agreement which is only void and the one which is unlawful or illegal . An illegal agreement is one which is forbidden by law ; but a void agreement may not be forbidden , the law may merely say that if it is made , the courts will not enforce it . Thus every illegal contract is void but a void contract is not necessarily illegal.

The main difference between a void and illegal contract is that , a void contract is not punishable and its collateral transactions are not affected but on the contrary illegal contract is punishable and its collateral transactions are also void

Difference between Void and Voidable Agreement :-

While a void contract becomes invalid at the time of its creation, a voidable contract only becomes invalid if it is cancelled by one of the two parties who are engaged in the contract.

In the case of a void contract, no performance is possible, whereas it is possible in a voidable contract. While a void contract is not valid at face value, a voidable contract is valid, but can be declared invalid at any time.

While a void contract is nonexistent and cannot be upheld by any law, a voidable contract is an existing contract, and is binding to at least one party involved in the contract.

F. Standard form of contract

"Standard form Contracts" are 'take it or leave it' contracts i.e a contract signed between two parties that has no room for negotiation.

The customer is in no position to renegotiate the standard terms of the contract and the company's representative usually does not have the authority to do so. Such contracts are also known as- "Contracts of adhesion" which means that the individual has no choice 'but to accept; he does not negotiate, but merely adheres', "Compulsory Contracts", they being a kind of imposition; and "Private Legislation", they being a kind of code of bye-laws on the basis of which the individual can enjoy the services offered.
For large organizations, it is very difficult to draw up a separate contract with every individual. As Kessler puts it Therefore, they keep printed forms of contract i.e SFC's containing a large number of terms and conditions in "fine-print" which restricts and often excludes the liability of the other party under the contract. Briefly, one can say that the SFC's have arisen as a result of:
a) The convenience in having a printed form;
b) The fact that one party stands in a position where the terms dictated by it can be imposed upon the other, notwithstanding the will of the other, and since the terms of such bargains are known to the former even prior to the entry into the contract, the former prints it out and keeps it ready, waiting for the persons to come forward and enter into such contracts; and
c) The willingness of the customer to allow the provider and his or her perceptions as to the likelihood of the contract being enforced to the latter.

III. Reasons for Acceptance of Standard Form Contracts:
There are a number of specific reasons why such terms and conditions laid down in the contract are accepted, which are as follows:
a) SFC's are rarely read: Such contracts are always printed in fine print and written in complicated legal language which most of the times seems irrelevant to the common mass. And such contracts are always on "take it or leave it" basis. Coupled with the large amount of time needed to read the terms, the expected payoff from reading the contracts is low and very few people read it.
b) Access to the full terms may be difficult or impossible before an acceptance: Often the document being signed is not the full contract; the purchaser is told that the rest of the terms are in another location. This reduces the likelihood of the terms being read and in some situations, such as software license agreements, can only be read after they have been notionally accepted by purchasing the good and opening the box.
c) Boilerplate terms are not salient: The most important terms to purchasers of a commodity are the price and quality which is generally understood before the SFC is signed so the other terms which may be exploitative in nature are not read at all.

d) There may be diverse social pressure to sign: SFC's are signed at a point when the main details of the transactions have either been negotiated or explained. Social pressure to conclude the bargain at that point may come from a number of sources. For eg. If the purchaser is in front of a queue there is additional pressure to sign quickly or the salesperson may imply that the additional terms are "just something that lawyers want us to do", and in a hurry the purchaser concludes the transaction by signing the SFC.

e) SFC's may exploit unequal power relations: If the commodity which is being sold using a SFC is an essential one for the purchaser or appeals to the purchaser such as a rental property or a needed medical item, then again the "take it or leave it" condition has an impact and the purchaser in many cases has no choice but to buy that commodity.

IV. The Legal Issues Arising And The Protective Devices:
As explained above with reasoning an individual can easily be exploited through the SFC's by mere insertion of certain clauses which will completely exclude the seller from the liability. Now, some interesting legal issues arise in these circumstances:
• Generally speaking, what is the legitimacy/validity of such a clause in a SFC?
• What are the limits on its enforceability?

A problem may arise in proving the terms of the agreement where it is sought to be shown that they are contained in a contract in a printed form i.e in some ticket, receipt, or other standard form document. Chitty states that:
"The other party may have signed the document, in which case he is bound by its terms. More often, however, it is simply handed to him at the time of making the contract and the question will then arise whether the printed conditions which it contains have become terms of the contract. The party receiving the document will probably not take trouble to read it, and may even be ignorant that it contains any conditions in at all. Yet standard form contracts very frequently embody clauses which purport to impose obligations on him or to exclude or restrict the liability of the person supplying the document. Thus it becomes important to determine whether these clauses should be given contractual effect."

The individual therefore deserves to be protected against the possibility of exploitation inherent in such contracts. Stated below are some of the important modes of protection evolved by the courts:
1. Reasonable Notice:
It is the prime duty of the person delivering the document to give proper notice to the offeree of the printed terms and conditions, especially ones which can create a situation of ambiguity. Where this is not done, the acceptor will not be bound by the terms of the contract. The same was laid down in Henderson v Stevenson by the House of Lords:

The plaintiff brought a steamer ticket on the face of which was these words only: "Dublin to Whitehaven"; on the back of the ticket certain conditions were printed which excluded the liability of the company for any loss, injury or delay to the passenger or his luggage. The plaintiff did not see the back of the ticket and was unaware of these conditions and nor were they brought to his notice. The plaintiff's luggage was lost in shipwreck caused by the company's fault. He was held entitled to recover the loss inspite of the exemption clauses because the same were not brought to his notice.

The case would have been entirely different if the terms would have been to the notice of the plaintiff eg : through the words "For conditions see back". This was clearly stated in the subsequent case of Parker v South Eastern Rly Co.-
The plaintiff deposited his bag at the cloakroom at a railway station and received a ticket, on the face of which were printed, among other words, "see back" and on the back there was a notice that "the company would not be responsible for any package exceeding the value of £ 10". A notice of the same was hung up in the cloakroom. The plaintiff lost his bag and claimed full value of the same. The company relied upon the exemption clause. The plaintiff contended that although he knew that there was something written on the ticket he did not bother to read it. The ticket was a mere receipt for him.

Mellish LJ stated that if the plaintiff "knew there was writing on the ticket, but he did not know or believe that the writing contained conditions, nevertheless he would be bound", for there was

reasonable notice that the writing contained conditions.

2. There Should Be A Contractual Document

Now, the dilemma was that to apply this principle, the courts had to clearly distinguish between contractual documents and receipts. Mellish LJ clearly solves this problem in Parker v. South Eastern Railway Co. and the conclusion was that a document was said to be contractual if it embodies the contract, that is to say, of the persons to whom it is delivered should know that it is supposed to contain conditions. But if the paper does not express or imply conditions of the contract then it will be regarded as a voucher, receipt etc. In Chapelton v Barry Urban District Council the same was reiterated. To bring the exemption clause to the notice of the receiver, Lord Denning MR remarked in Thornton v Shoe Lance Parking Ltd : "In order to give sufficient notice, it would need to be printed in red ink with a red hand pointing to it, or something equally startling". If this is not done then the agreement would not form part of the contract. One can clearly distinguish between a contractual document and a receipt from the following passage:

"The document must be of a class which either the party receiving it knows, or which a reasonable man would expect, to contain contractual conditions. Thus a cheque-book, a ticket for a deck chair, a ticket handed to a person at public bath house, and a parking ticket issued by an automatic machine have been held to be cases where it would be quite reasonable that the party receiving it should assume that the writing contained no conditions and should be put in his pocket unread. "

Contract signed by the Acceptor

It was laid down in L'Estrange v Graucob Ltd that when a party signs a written contract thereby accepting it, he becomes bound by all its terms whether he has read it or not. But in such cases the affected party can be protected by the doctrine of fundamental breach or by finding that the terms are unreasonable or that there was a misrepresentation about them.

3. There Should Be No Fraud Or Misrepresentation:

The leading authority in the case of misrepresentation is Curtis v Chemical Cleaning & Dyeing Co. : The plaintiff delivered a white satin wedding dress to the defendant for cleaning. She was asked to sign a receipt, which made her responsible for any damage to beads and sequins, which she did without reading the receipt. Now, the receipt contained a clause that excluded the company from any damage to the dress. When the dress was returned there was a stain on it. When plaintiff sought damages the defendants pleaded the exemption clause.

Even though the acceptor had signed the document, the defendants were held liable and the reasoning was that A party to the contract cannot rely on the exclusion clause to avoid liability or misrepresentation or fraud. The same was held in Chau v Van Pelt. A rule, which is a modern development in this regard, is stated in American RESTATEMENTS OF CONTRACTS. It stated that when the other party has a reason to believe that the party manifesting written assent would not do so if he knew that the writing contained a particular term; the term is not a part of the agreement.

4. The Notice Should Be Contemporaneous With The Contract:

The reasonable notice of the terms should be given before or at the time of the contract. A subsequent notification would amount to modification of the original contract and will not be binding on the other party unless he has given his assent for the same. Now, when the contract materializes by the issue of a ticket by an automatic machine, the dilemma faced is that whether the notice printed

on the ticket has been given contemporaneously with the contract or subsequent to it. Lord Denning MR. considered this matter in Thornton v Shoe Lance Parking Ltd. The theory in case of tickets issued by clerks is that the company makes the offer of the ticket and the customer by paying for the ticket without objection accepts it with all its terms. He has a chance to reject the ticket. But where the ticket is issued by an automatic machine, the customer cannot refuse it. He is committed the moment when puts his money into the machine. The contract is then made. The terms of the offer are contained in the notice placed on the rear of the machine. The customer is bound by its terms if they are sufficiently brought to his notice beforehand, but not otherwise. He is not bound by the terms printed on the ticket if they differ from the notice, because the contract has already been made and the ticket comes too late. The ticket is therefore no more than a receipt for money. Hence, it is the duty of the party relying on the exclusion clause to make the terms and conditions clear to the other party at the time of contract that the same has been incorporated into the contract.

5. Theory of Fundamental Breach:

This is another method to protect the weaker section from exploitation. It is a method of controlling unreasonable consequences of wide and sweeping exemption clauses. Even where adequate notice of the terms and conditions in a document has been given, the party imposing these conditions may not be able to rely on them if he has committed a breach of contract which can be described as "fundamental". This has been laid down by Lord Denning LJ in J. Spurling Ltd. V Bradshaw. The Supreme Court of India also emphasized on the same rule in B.V. Nagaraju v Oriental Insurance Co. Ltd.

"Every contract contains a 'core' or fundamental obligation must be performed. If one party fails to perform this fundamental obligation, he will be guilty of a breach of contract whether or not any exempting clause has been inserted which purports to protect him." In Davies v Collins it was held that the mere fact of the particular limitation clause in the contract was sufficient to exclude any right to the sub-contract the performance of the substance of the contract. Limitation clauses of this kind do not apply where the goods are lost not within the four corners of the contract but while something was being done which was outside the terms of the contract altogether, or when loss takes place in the course of some operation which was never contemplated by the contract at all.

G. Online contracts

Definition: E-contract is a contract modeled, specified, executed and deployed by a software system. E-contracts are conceptually very similar to traditional (paper based) commercial contracts. Vendors present their products, prices and terms to prospective buyers. Buyers consider their options, negotiate prices and terms (where possible), place orders and make payments. Then, the vendors deliver the purchased products. Nevertheless, because of the ways in which it differs from traditional commerce, electronic commerce raises some new and interesting technical and legal challenges.

For recognition of e-contracts following questions are needed to be considered:

Whether e-contract is a valid contract?

Would a supplier making details of goods and services with prices available on a website be deemed to have made an offer?

Whether e-contracts satisfy the legal requirements of reduction of agreements to signed documents.

Whether e-contracts interpret, adopt and compile the other existing legal standards in the context of electronic transactions?

Recognition E-contracts

Offer: The law already recognizes contracts formed using facsimile, telex and other similar technology. An agreement between parties is legally valid if it satisfies the requirements of the law regarding its formation, i.e. that the parties intended to create a contract primarily. This intention is evidenced by their compliance with 3 classical cornerstones i.e. offer, acceptance and consideration.

One of the early steps in the formation of a contract lies in arriving at an agreement between the contracting parties by means of an offer and acceptance. Advertisement on website may or may not constitute an offer as offer and invitation to treat are two distinct concepts. Being an offer to unspecified person, it is probably an invitation to treat, unless a contrary intention is clearly expressed. The test is of intention whether by supplying the information, the person intends to be legally bound or not.

When consumers respond through an e-mail or by filling in an online form, built into the web page, they make an Offer. The seller can accept this offer either by express confirmation or by conduct.

Acceptance:

Unequivocal unconditional communication of acceptance is required to be made in terms of the offer, to create a valid e-contract. The critical issue is when acceptance takes effect, to determine where and when the contract comes into existence. The general receipt rule is that acceptance is effective when received. For contracting no conclusive rule is settled. The applicable rule of communication depends upon reasonable certainty of the message being received. When parties connect directly, without a server, they will be aware of failure or partial receipt of a message. Such party realizing the fault must request re-transmission, as acceptance is only effective when received. When there is a common server, the actual point of receipt of the acceptance is crucial in deciding the jurisdiction in which the e-contract is concluded. If the server is trusted, the postal rule may apply, if however, the server is not trusted or there is uncertainty concerning the e-mail's route, it is best not to apply the postal rule. When arrival at the server is presumed insufficient, the 'receipt at the mail box' rule is preferred.

Consideration and Performance:

Contracts result only when one promise is made in exchange for something in return. This something in return is called 'consideration'. The present rules of consideration apply to e-contracts. There is concern among consumers regarding Transitional Security over the Internet. The e-directive on Distance Selling tries to generate confidence by minimizing abuse by purchasers and suppliers. It specifies---

A list of key points, must be supplied to the consumer in 'a clear and comprehensible manner.'

Written confirmation, or confirmation in another durable medium available and accessible to the consumer, of the principle points.

The right of withdrawal enabling consumers to avoid deals entered into inadvertently or without sufficient knowledge, providing for seven-day cooling-off period free from penalty or reason to return the goods or reimburse the cost of services.

Performance should be delivered within thirty days of order unless otherwise expressly agreed.

Reimbursement of sums lost to fraudulent use of credit cards. It places the risk of fraud on the credit card Company, requiring them to take steps to protect their position.

On the other hand, there is also need to protect sellers from rogue purchasers. For this, the provision of 'charge-back clauses' and encouragement of pre-payment by buyers is recommended.

Thus, this Directive adequately protects rights of consumers against unknown sellers and sellers against unknown buyers.

Liability And Damages:
A party that commits breach of an agreement may face various types of liability under contract law. Due to the nature of the systems and the networks that business employ to conduct e-commerce, parties may find themselves liable for contracts which technically originated with them but, due to programming error, employee mistake or deliberate misconduct were executed, released without the actual intent or authority of the party.

Sound policies dictate that parties receiving messages be able to rely on the legal expressions of the authority from the sender's computer and this legally be able to attribute these messages to the sender.

In addition to employing information security mechanisms and other controls, techniques for limiting exposure to liability include:
1. Trading partner and legal technical arguments
2. Compliance with recognized procedures, guidelines and practices
3. Audit and control programmers and reviews
4. Technical competence and accreditation
5. Proper human resource management
6. Insurance
7. Enhance notice and disclosure mechanisms and
8. Legislation and regulation addressing relevant secure electronic commerce issuing.

Digital Signatures: Section 2(p) of The Information Technology Act, 2000 defines digital signatures as authentication of any electronic record by a subscriber by means of an electronic method or procedure. A digital signature functions for electronic documents like a handwritten signature does for printed documents. The signature is an unforgeable piece of data that asserts that a named person wrote or otherwise agreed to the document to which the signature is attached. A digital signature actually provides a greater degree of security than a handwritten signature. The recipient of a digitally signed message can verify both that the message originated from the person whose signature is attached and that the message has not been altered either intentionally or accidentally since it was signed. Furthermore, secure digital signatures cannot be repudiated; the signer of a document cannot later disown it by claiming the signature was forged. In other words, digital signatures enable "authentication" of digital messages, assuring the recipient of a digital message of both the identity of the sender and the integrity of the message. The fundamental drawback of online contracts is that if there is no alternate means of identifying a person on the other side than digital signatures or a public key, it is possible to misrepresent one's identity and try to pass of as somebody else.

Unit . II CONSIDERATION & CAPACITY
Consideration- Definition, kinds, essentials, privity of contract
MEANING

1.(a) Consideration is a quid pro quo i,e something in return it may be –
some benefit right, interest, loss or profit that may accrue to one party or,

some forbearance, detriment, loss or responsibility suffered on undertaken by the other party [currie V mussa]

According to Sir Frederick Pollock, "consideration is the price for which the promise of the other is bought and the promise thus given for value is enforceable.

Definition [Sec 2(d)]:- when at the desire of the Promisor, the promise or any other person.

has done or abstained from doing , or [Past consideration]
does or abstains from doing, or [Present consideration]

promises to do or abstain from doing something [Future consideration] such act or abstinence or promise is called a consideration for the promise.

Example

'P' aggress to sell his car to 'Q' for Rs.50,000 Here 'Q's Promise to pay Rs50,000 is the consideration for P's promise and 'P's promise to sell the car is the consideration for 'Q's promise to pay Rs.50,000.

'A' promises his debtor 'B' not to file a suit against him for one year on 'A's agreeing to pay him Rs.10,000 more. Here the abstinence of 'A' is the consideration for 'B's Promise to pay.

Legal Rules for valid consideration

Consideration must move at the desire of the promisor.

D constructed a market at the instance of District collector. Occupants of shops promised to pay D a commission on articles sold through their shops. Held, there was no consideration because money was not spent by Plaintiff at the request of the Defendants, but at instance of a third person viz. the Collector and, thus the contract was void.

Durga Prasad v. Baldeo

Consideration may move from the promisee or any other person who is not a party to the contract. [Chinnaya's Vs Ramayya]

A owed Rs.20,000 to B. A persuaded C to sign a Pro Note in favour of B. C promised B that he would pay the amount. On faith of promise by C, B credited the amount to A's account. Held, the discharge of A's account was consideration for C's promise.

National Bank of Upper India v. Bansidhar

Consideration may be past, present, Future:

Under English law, Past consideration is no consideration.

Present consideration :- cash sale
Future or executory consideration:- A Promises to B to deliver him 100 bags of sugar at a future date . B promise to pay first on delivery.

Consideration should be real and not illusory. Illusory consideration renders the transaction void consideration is not valid if it is.

(i) Physically impossible (ii) Legally not permissible
(iii) Uncertain (iv) illusory (fulfillment of a pre existing obligation)

Must be legal:-
Consideration must not be unlawful, immoral or opposed to public policy.

Consideration need not be adequate. A contract is not void merely because of the fact that the consideration is inadequate. The law simply requires that contract should be supported by consideration. So long as consideration exists and it is of some value, courts are not required to consider its adequacy.

Example:

A agreed to sell a watch worth Rs.500 for Rs.20, A's consent to the agreement was freely given. The consideration, though inadequate. Will not affect the validity of the contract. However, the inadequacy of the consideration can be considered in order to know whether the consent of the promisor was free or not. [Section 25 Explanation II]

The performance of an act what one is legally bound to perform is not consideration for the contract mean's something other than the promisor's existing obligation –

A contract not supported by consideration is void . Ex. Nudo Pacto non oritur action, i,e, an agreement without consideration is void.

Exceptions to the Rule " No consideration . No contract".

Written and registered agreements arising out of love and affection:- [25 (1)]

Expressed in writing and registered under law for the time being in force for registration of document

Natural love and affection

Between parties standing in a near relation to each other

Example:- An elder brother, on account of natural love and affection, promised to pay the debts of his younger brother. Agreement was put to writing and registered. Held, agreement was valid.

Exception: - Rajlukhy Dabee Vs Bhootnath Mukharjee

Example: A Hindu husband by a registered document, after referring to quarrels and disagreements between himself and his wife, promised to pay his wife a sum of money for her maintenance and separate residence. Held that the promise was unenforceable since natural love and affection was missing.

Promise to compensate [25(2)]

Promise to compensate wholly or in part

Who has already voluntarily done something for the promisor
Something which the promisor was legally compellable to do.

Example:- A finds B's purse and give to him. B Promise to give A Rs.500. This is a valid contract.

Promise to pay a time – barred debt. [Sec 25(3)]

A debt barred by limitation con not recovered. Hence, a promise to pay a such a debt is without any consideration.

Can be enforced only when – in writing and sighed by Debtor or his authorized agent.

Example : A owes B Rs.10,000 but the debt is barred by Limitation Act. A signs a written promise to pay B Rs.8,000 on account of debt. This is a valid contract.

Completed gift- gift do not require any consideration.

Agency (185) – According to the Indian contract Act. No consideration is necessary to create an agency.

Bailment (148)- consideration is not necessary to effect a valid bailment of goods. It is called Gratuitous Bailment.

KINDS OF CONSIDERATION

Consideration can be classified as: -
1. Executory
2. Executed
3. Past

1. Executory Consideration

It is when one promise is made in return for another or a promise in return of promise.

Example: -

M promised to sell his mobile phone to K for RM550/- and K promised to pay the price upon delivery by M. Here, the promise to sell is in return to promise to buy.

See Murugesu v Nadarajah [1980] 2 MLJ 82

M agreed to sell his house to N. An agreement was written on a scrap paper and says as follows: -

I agree to sell my house No. (address) held under…. to Mr. N, the present tenant of the house at

$26,000/- within three months from the date.

M later refused to sell the house and a specific performance was ordered at the trial and the appellant took the matter to Federal Court. The appeal was dismissed, gave effect to Illustration of Section 24. Chang Min Tat F.J held:

"The agreement must be seen to be a case of Executory consideration. A promisee is made by one party in return for a promise made by the other; in such a case each promise is the consideration for the other"

Example

A agrees to sell his car for RM20,000/- to B. B promise to pay the sum of RM 20,000/- in consideration for A's promise to sell the car, and A's promise to sell the car is the consideration for B's promise to pay the RM20,000/-. These are lawful considerations.

2. Executed Consideration

It is when a promise is made in return for the performance of an act.

Example

M lost his pen and offered RM 200/- to anyone who finds and returns the documents to him. K found M's pen in response to the offer and returns them to M. By returning the pen, K has given consideration to M's promise to pay. Should M refuse to pay, K may take an legal action against him.

3. Past Consideration

Where a promise is made subsequent to and in return for an act that has already been performed, the promise is made on account of a past consideration.

Example

If K finds and returns M's pen and in gratitude, M promise to pay K RM200/- the promise is made in return for a prior act.

Under English law the general rule is that past consideration is insufficient to support a contract.

PRIVITY OF CONTRACT

The doctrine of privity of contract means that only those involved in striking a bargain would have standing to enforce it. In general this is still the case, only parties to a contract may sue for the breach of a contract, although in recent years the rule of privity has eroded somewhat and third party beneficiaries have been allowed to recover damages for breaches of contracts they were not party to. There are two times where third party beneficiaries are allowed to fall under the contract. The duty owed test looks to see if the third party was agreeing to pay a debt for the original party. The intent to benefit test looks to see if circumstances indicate that the promisee intends to give the beneficiary the benefit of the promised performance. Any defense allowed to parties of the original contract extend to third party beneficiaries.

Indian law is practically same as the English common law. However, under the Indian law 'consideration may move from the promisee or any other person .' In the chinnaya v. rammayya case, an old lady by a deed of gift, gave over certain properties to her daughter under the direction that she should pay her aunt a certain sum of money. The same day the daughter refused to pay her aunt the money on the plea that no consideration has moved from her aunt to her. It was held that sister of the old lady (aunt) was entitled to maintain the suit as consideration had move from the old lady, for her sister to the daughter.

In Donoghue v. Stevenson a friend of Ms. Donoghue bought her a bottle of ginger beer, which was defective. Specifically, the ginger beer contained the partially decomposed remains of a snail. Since the contract was between her friend and the shop owner, there was no privity of contract between the manufacturer and the consumer, but it was established that the manufacturer has a duty of care owed to their consumers and she was awarded damages in tort.

Section 2(d) in The Indian Contract Act, 1872: When, at the desire of the promisor, the promisee or any other person has clone or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such Act or abstinence or promise is called a consideration for the promise.
One of the most notable features of Section 2(d) is that the act which is to constitute a consideration may be done by "the promisee or any other person". It means therefore, that as long as there is a consideration for a promise, it is immaterial who has furnished it. It may move from the promisee or, if the promisor has no objection, then from any other person. This is the principle as established by the English Courts in as early as 1677 in the case of Dutton v. Poole.

capacity to contract
1. Who is competent to make a contract:-
Section 11. Every person is competent to contract who is of age of majority according to the Law to which he is subject, who is of sound mind and not is disqualified from contracting by any Law to which he is subject.
Age of majority:- According to section 3 of Indian majority Act-1875 every person domiciled in Indian attains majority on the completion of 18 years of age.
Exception: - 21 years- in the following cases.

a. Where a guardian of a minor's person or property is appointed under the Guardian and wards Act, 1890.
b. Where minor's property has passed under the superintendence of the court of words. Position of Agreements by Minor:-

1. Validity: - An agreement with a minor is void-ab-initio [Mohoribibee v. Dharmodas Ghose]
Example :
Mr. D, a minor, mortgaged his house for Rs.20000 to a money – lender, but the mortgagee, i.e. the money – lender, paid him a sum of Rs.8000. Subsequently, the minor sued for setting aside the mortgage. Held that the contract was void, as Mr. D was minor and therefore he is not liable to pay anything to the lender.
2. A minor's has received any benefit under a void contract, he cannot be asked to return the same.
3. If a minor has received any benefit under a void contract, he cannot be asked to return the same.
4. Fraudulent representation by a minor- no difference in the status of agreement. The contract

remains void.
5. A minor with the consent of all the partners, be admitted to the benefits of an existing partnership.
6. Contracts entered into by minors are void-ab-initio. Hence no specific performance can be enforced for such contracts.
7. Minor's parent/guardians are not liable to a minor's creditor for the breach of contract by the minor.
8. A minor can act as an agent but not personally liable. But he cannot be principal.
9. A minor cannot become shareholder of a the company except when the shares are fully paid up and transfer by share.
10. A minor cannot be adjudicated as insolvent.
11. Can enter into contracts of Apprenticeship, Services, Education, etc:
(a) A minor can enter into contract of apprenticeship, or for training or instruction in a special art, education, etc.
(b) These are allowed because it generates benefits to the Minor.
12. Guarantee for and by minor
A contract of guarantee in favour of a minor is valid. However, a minor cannot be a surety in a contract of guarantee. This is because, the surety is ultimately liable under a contract of guarantee whereas a minor can never be held personally liable.
13. Minor as a trade union member
Any person who has attained the age of fifteen years may be a member for registered trade union, provided the rules of the trade union allow so. Such a member will enjoy all the rights of a member.

EXCEPTION
Contract for the benefit of a minor.
Contract by Guardian
Benefit of a minor by his guardian or manager of his estate.
a. within the scope of the authority of the guardian.
b. Is for the benefit of the minor.

Contract for supply of Necessaries. Example :
Food, clothes, bed, shelter, shoes, medicines and similar other things required for the maintenance of his life or for the life of his dependents, expenses for instruction in grade or arts; expenses for moral religions or intellectual education, funeral expenses of his deceased family members, marriage expenses of a dependent female member in the family; expenses incurred in the protection of his property or personal liberty, Diwali pooja expenses, etc. have been held by courts to be necessaries of life. However, the things like earrings for a male, spectacles for a blind person or a wild animal cannot be considered as necessaries.
Liability for tort: A minor is liable for a tort, i.e., civil wrong committed by him. Example:
A, a 14 – year – old boy drives a car carelessly and injures B. He is liable for the accident i.e., tort.
Person of Unsound Mind
A person who is usually of unsound mind, but occasionally of sound mind can make a contract when he is of sound mind. Similarly, a person who is usually of sound mind, but occasionally of Unsound mind, may not make a contract when he is of unsound mind.
At time of entering into a contract, a person must be sound mind. Law presumes that every person is of sound mind unless otherwise it is proved before court. An agreement by a person of unsound mind is void. The following are categories of a person considered as person of a unsound mind.

An idiot
An idiot is a person who is congenital (by birth) unsound mind. His incapacity is permanent and

therefore he can never understand contract and make a rational judgment as to its effects upon his interest. Consequently, the agreement of an idiot is absolutely void ab initio. He is not personally liable even for the payment of necessaries of life supplied to him.

Delirious persons
A person delirious from fever is also not capable of understanding the nature and implications of an agreement. Therefore, he cannot enter into a contract so long as delirium lasts.

Hypnotized persons
Hypnotism produces temporary incapacity till a person is under the effect of artificial induced sleep.

Mental decay
There may be mental decay or senile mind the to old age or poor health. When such person is not capable of understanding the contract and its effect upon his interest, he cannot enter into contract.
Lunatic is not permanently of unsound mind. He can enter into contract during lucid intervals i.e., during period when he is of sound mind.

Person Disqualified by Law
Body corporate or company or corporation
Contractual capacity of company is determined by object clause of its memorandum of association. Any act done in excess of power given is ultra – virus and hence void.

Alien enemy
An 'alien' is a person who is a foreigner to the land. He may be either an 'alien friend' or an 'alien enemy. If the sovereign or state of the alien is at peace with the country of his stay, he is an alien friend. An if a war is declared between the two countries he is termed as an alien enemy.
During the war, contract can be entered into with alien enemy with the permission of central government.
Convict can't enter into a contract while he is undergoing imprisonment. But he can enter into a contract with permission of central government while undergoing imprisonment. After the imprisonment is over, be becomes capable of entering into contract. Thus the incapacity is only during the period of sentence.

Insolvent
When any person is declared as an insolvent, his property vests in receiver and therefore, he can't enter into contract relating to his property. Again he becomes capable to enter into contract when he is discharged by court.
Foreign sovereigns, diplomatic staff and representative of foreign staff can enter into valid contract. However, a suit cannot be filed against them, in the Indian counts without the prior sanction of the central Government.
c. Minor's position
According to the Indian Majority Act, 1875, a minor is a person, male or female, who has not completed the age of 18 years. In case a guardian has been appointed to the minor or where the minor is under the guardianship of the Court of Wards, the person continues to be a minor until he completes his age of 21 years. According to the Indian Contract Act, no person is competent to enter into a contract who is not of the age of majority. It was finally laid down by the Privy Council in the leading case of Mohiri Bibee v. Dharmodas Ghose, (1903) 30 Cal. 539, that a minor has no capacity to contract and minor's contract is absolutely void. In this case, X, a minor borrowed Rs. 20,000 from Y, a money lender. As a security for the money advanced, X executed a mortgage in V's favour. When sued by Y, the Court held that the contract by X was void and he cannot be compelled to repay

the amount advanced by him.
Indian Courts have applied this decision to those cases where the minor has incurred any liability or where the liabilities on both sides are outstanding. In such cases, the minor is not liable. But if the minor has carried out his part of the contract, then, the Courts have held, that he can proceed against the other party. The rationale is to protect minor's interest. According to the Transfer of Property Act, a minor cannot transfer property but he can be a transferee (person accepting a transfer). This statutory provision is an illustration of the above principle.
Law acts as the guardian of minors and protects their rights, because their mental faculties are not mature- they don't possess the capacity to judge what is good and what is bad for them. Accordingly, where a minor is charged with obligations and the other contracting party seeks to enforce those obligations against minor, the agreement is deemed as void ab-initio. In the leading case of Mohori Bibi vs Dharmo Das Ghosh, a minor executed a mortgage for Rs. 20,000 and received Rs. 8,000 from the mortgagee.
The mortgagee filed a suit for the recovery of his mortgage money and for sale of the property in case of default. The Privy Council held that an agreement by a minor was absolutely void as against him and therefore the mortgagee could not recover the mortgage money nor could he have the minor's property sold under his mortgage.

No restitution except in certain cases :
A minor cannot be ordered to make compensation for a benefit obtained under a void agreement, because Sections 64 and 65 of the Contract Act, which deal with restitution, apply only to contracts between competent parties and are not applicable to a case where there is not and could not have been any contract at all (Kanta Prasad vs. Sheo Gopal Lai).
The court may, however, in certain cases, while ordering for the cancellation of an instrument, at the instance of a minor, require for the cancellation of an instrument, require the minor plaintiff to make compensation to the other party to the instrument. This is as per Section 33 of the Specific Relief Act, 1963, which states as follows:
"On adjudging the cancellation of an instrument, the Court may require the party to whom such relief is granted, to restore, so far as may be any benefit which he may have received from the party and to make any compensation to him which justice may require."
Thus, the Court will compel restitution by a minor when he is a plaintiff. For example, if a minor sells a house for Rs. 50,000 and later on, files a suit to set aside the sale on the ground of minority, he may be directed by the Court to refund the purchase money received by him before he can recover possession of the property sold (Jager Nath Singh vs Lalta Prasad).
It may be emphasized that Section 33 of the Specific Relief Act, 1963, is framed so as to afford relief in only a case where the minor himself as plaintiff seeks the assistance of Court and the Section is inapplicable as he happens to be merely a defendant in a suit by the person who dealt with him when he was a minor. This Section is based on the well known principle that "he who seeks equity must do equity."

Beneficial agreements are valid contracts:
As observed earlier, the court protects the rights of minors. Accordingly, any agreement which is of some benefit to the minor and under which he is required to bear no obligation, is valid. In other words, a minor can be a beneficiary e.g., a payee, an endorsee or a promise under a contract (Goekda Latcharao vs Vishwanadham Bhomayya). Thus money advanced by a minor can be recovered by him by a suit because he can take benefit under a contract.
The Hindu Minority and Guardianship Act, 1956, also provides to the same effect, namely, a natural guardian is empowered to enter into a contract on behalf of the minor and the contract would be binding and enforceable if the contract is for the benefit of the minor.

Illustrations :
(a) A duly executed transfer by way of sale or mortgage in favour of a minor, who has paid the whole of the consideration money, is enforceable by him or by any other person on his behalf (Raghava Chariar vs. Srinivasa).
(b) Where a minor purchaser of immovable property was, subsequent to his purchase, disposed by a third party, it was held that the minor could recover from his vendor the sum which he has paid as purchase money (Walidad Khan vs. Janak Singh).
(c) A minor purchaser of immovable property was held entitled to recover possession of property purchased from his vendor, when refused by vendor (Collector of Meerut vs Hardian).
(d) A promissory note executed in favour of a minor is valid and can be enforced in a court (Sharaft Ali vs. Noor Mohd.)
(e) Where a minor had performed his part of the agreement and delivered the goods, he was held entitled to maintain a suit for the recovery of their price (Abdul Gafar vs Piare Lai).

d. Nature/ Effect of Minor's Agreement
The following points must be kept in mind with respect to minor's contract:
A minor's contract is altogether void in law, and a minor cannot bind himself by a contract. If the minor has obtained any benefit, such as money on a mortgage, he cannot be asked to repay, nor can his mortgaged property be made liable to pay.
Since the contract is void ab initio, it cannot be ratified by the minor on attaining the age of majority.
Estoppel is an important principle of the law of evidence. To explain, suppose X makes a statement to Y and intends that the latter should believe and act upon it. Later on, X cannot resile from this statement and make a new one. In otherwords, X will be estopped from denying his previous statement. But a minor can always plead minority and is not estopped from doing so even where he had produced a loan or entered into some other contract by falsely representing that he was of full age, when in reality he was a minor.
But where the loan was obtained by fraudulent representation by the minor or some property was sold by him and the transactions are set aside as being void, the Court may direct the minor to restore the property to the other party.
For example, a minor fraudulently overstates his age and takes delivery of a motor car after executing a promissory note in favour of the trader for its price. The minor cannot be compelled to pay the amount to the promissory note, but the Court on equitable grounds may order the minor to return the car to the trader, if it is still with the minor.
Thus, according to Section 33 of the Specific Relief Act, 1963 the Court may, if the minor has received any benefit under the agreement from the other party require him to restore, so far as may be such benefit to the other party, to the extent to which he or his estate has been benefited thereby.
A minor's estate is liable to pay a reasons-ble price for necessaries supplied to him or to anyone whom the minor is bound to support (Section 68 of the Act).
The necessaries supplied must be according to the position and status in life of the minor and must be things which the minor actually needs. The following have also been held as necessaries in India.
Costs incurred in successfully defending a suit on behalf of a minor in which his property was in jeopardy; costs incurred in defending him in a prosecution; and money advanced to a Hindu minor to meet his marriage expenses have been held to be necessaries.
An agreement by a minor being void, the Court will never direct specific performance of the contract.
A minor can be an agent, but he cannot be a principal nor can he be a partner.
He can, however, be admitted to the benefits of a partnership.
(g) Since a minor is never personally liable, he cannot be adjudicated as an

insolvent.

(h) An agreement by a parent or guardian entered into on behalf of the minor is binding on him provided it is for his benefit or is for legal necessity. For, the guardian of a minor, may enter into contract for marriage on behalf of the minor, and such a contract would be good in law and an action for its breach would lie, if the contract is for the benefit of the minor (Rose Fernandez v. Joseph Gonsalves, 48 Bom. L. R. 673) e.g., if the parties are of the community among whom it is customary for parents to contract marriage for their children. The contract of apprenticeship is also binding.

However, it has been held that an agreement for service, entered into by a father on behalf of his daughter who is a minor, is not enforceable at law (Raj Rani v. Prem Adib, (1948) 51 80m. L.R. 256).

UNIT.III VALIDITY, DISCHARGE PERFORMANCE OF CONTRACT

Free consent

It means an act of assenting to an offer. According to section 13, "Two or more persons are said to consent when they agree upon the same thing in the same thing in same sense." Thus, consent involves identity of minds in respect of the subject matter of the contract. In English Law, this is called 'consensus-ad-idem'.

One of the essential elements of a valid contract as highlighted in Section 10 is that the parties should enter into the contract with free consent. The foundation of every contract is the free consent of the parties which is the yardstick for measuring the validity of the contract.

Effect of absence of consent:

When there is no consent at all, the agreement is void – ab –initio'. It is not enforceable at the option of either party.

Example 1:-

X have two car one Maruti car and one Honda city car. Y does not know that X has two cars Y offers to buy car at Rs.50,000. Here, there is no identity of mind in respect of the subject matter. Hence there is no consent at all and the agreement is void – ab – inito.

Example 2:-

An Illiterate woman signed a gift deed thinking that it was a power of attorney – no consent at all and the agreement was void – ab – inito [Bala Devi V S. Manumdats]

Free consent

Consent is said to be free when it is not caused by [Section 14]

(a) coercion [Section 15]
(b) Undue influence [Section 16]
(c) Fraud [Section 17]
(d) Misrepresentation [Section 18]
(e) Mistake [Section 20, 21,22]

Effect of flaw in consent – absence of free consent and its effect on contract

Section 19 of the ICA deals with the effect of flaw in consent caused by coercion, fraud, and misrepresentation while Section 19A deals with flaw in consent due to undue influence. It may be noted that there is a distinction between the flaw in consent due to coercion, fraud and misrepresentation and that caused by mistake . In case of mistake the contract is void but in other cases , the contract is voidable .

According to Section 19 when consent to an agreement is caused by coercion , fraud and misrepresentation – the agreement is a contract voidable at the option of the party whose consent was

caused. Until then the contract is valid. A party to contract whose consent was taken by coercion , misrepresentation, and fraud may also, if he thinks fit, insists that the contract shall be performed.
In case of fraud, apart from avoiding the contract, the person whose consent has been so caused may also bring an action for damages because fraud is considered a kind of tort. When a person at whose option the contract is voidable rescinds it , he is bound to restore the benefit if any received by him under such a contract.
According to Section 19 B– when consent to an agreement is caused by undue influence, the agreement is a contract voidable at the option of the party whose consent has been so caused. Any such contract may be set aside either absolutely or upon such terms and conditions as the Court may deem fit.

B. Coercion, Undue Influence, Misrepresentation, Fraud, Mistake

COERCION
Meaning of coercion[section 15]: It means compelling a person to enter into a contract, by use of physical force/activities forbidden by Indian penal code, OR
threatens to do activities forbidden by I.P.C, OR
threatens to damages the property.
Effect of coercion:Voidable and can be canceled at the option of aggrieved party. OR A 'suicide and a 'threat to commit suicide' are not punishable but an attempt to commit suicide is punishable under the Indian penal code.
X threatens to kill Y if he does not sell his house for Rs. 1,00,000 to X. Y sells his house to X and receives the payments. Here, V's consent has been obtained by coercion. Hence, this contract is voidable at the option of Y. If Y decides to avoid the contract, he will have to return Rs 1,00,000 which he had received from X.
"Y" (aggrieved party) will return Rs. 1,00,000
"X" (defendant party) will return the house and any benefit from the goods.
When voidable contract cannot be canceled:
When the third party become interested into a voidable contract. E.g. A obtain the car of B through coercion. Let, A sold it to "C" an innocent buyer, now B cannot get the contract canceled.
When the aggrieved party ratify/confirm/affirm then contract can not be cancel.

2. UNDUE INFLUENCE:
Meaning of Undue influence[section 16(1)]: The term 'undue influence' means dominating the will of the other person to obtain an unfair advantage over the other. According to section 16(1), a contract is said to be induced by undue influence

where the relations subsisting between the parties are such that one of them is in a position to dominate the will of the other, and the dominant party uses that position to obtain an unfair advantage over the other.
When two-partner are in relation, and one of them is dominant and other is in weaker position and dominant person takes undue-Advantage, then it is called "Undue- influence."
No presumption of domination of will
According to judicial decisions held in various cases, there is no presumption of undue influence in the following relationships:

Husband and wife
landlord and tenant
Creditor and debtor

Effect of undue influence [section 19A]:when consent to an agreement is caused by undue influence, the agreement is a contract voidable at the option of the party whose consent was so caused.
Comparison between coercion and undue influence:
Similarities: In case of both coercion and undue influence, the consent is not free and the contract is voidable at the option of the aggrieved party.

3. FRAUD
Meaning and essential elements of fraud [section 17]: The term 'fraud' means a false representation of fact made willfully with a view to deceive the other party. Fraud includes following:

Wrong suggestion about a fact, knowing that it is not-true;
E.g. X sells to Y locally manufactured goods as imported goods charging a higher price, it amounts to fraud. OR A seller claimed that his projector is made in Singapore, and sold it for Rs. 100,000/- However the fact is that "Projector was made in south India".

Active concealment (Hide) of defect in goods:
E.g. "A car-painter, uses paint to hide the scratches over the old furniture and sold it claiming that is Now". This is fraud. OR X a furniture dealer, conceals the cracks in furniture sold by him by using some packing material and polishing it in such a way that the buyer even after reasonable examination can not trace the defect, it would tent amount to fraud through active concealment.

Promise made without intention to perform:
E.g. "A man and a woman underwent a ceremony of marriage with the husband not regarding it as a real marriage. Held, the husband had no intention to perform the promise from the time he made it and hence the consent of the wife was obtained under fraud. OR "A farmer agrees to supply 100kg potato that will be produced by him out of his field, after three month". Two months has been lapsed, but the farmer neither implant seeds, nor does cultivation. This is case of fraud.
Any activity declared fraud as per other law; under companies act and insolvency acts, certain kinds of transfers have been declared to be fraudulent.
Note: In case of fraud, the seller is always liable even though buyer has an opportunity to check the fraud.
Any activity fitted (supported) to deceive. It covers those acts which deceive but are not covered under any other clause.

Effect of Fraud[section-19]
The effects of fraud are as follows:
(a) The party whose consent was caused by fraud can rescind (cancel) the contract but he cannot do so in the following cases:
Where silence amounts to fraud, the aggrieved party cannot rescind the contract if he had the means of discovering the truth with ordinary diligence;
Where the party gave the consent in ignorance of fraud;
Where the party after becoming aware of the fraud takes a benefit under the contract;
Where an innocent third party before the contract is rescinded acquires for consideration some interest in the property passing under the contract.
Where the parties cannot be restored to their original position.

(b) The party whose consent was caused by fraud may, if he thinks fit, insist that the contract shall be performed and that he shall be put in the position in which he would have been if the representation made had been true.
The party whose consent was caused by fraud, can claim damage if he suffers some loss.

Whether silence is fraud? Comment:
General concept: According to explanation to section 17, "Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud".
In other words, Silence is not fraud. It is buyer, who must check the goods & suitability.
E.g. X purchased a used computer from Z thinking it as a computer imported from USA, Z failed to disclose the fact to X. On knowing the fact X wants to repudiate the contract. So, here X cannot repudiate/rescind/cancel the contract.
Exceptions to the general rule:
The general rule that silence does not amount to fraud has the following exceptions. Where the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak. Such duty arises in the following two cases:
When silence is equivalent to speech: E.g. "A student of BBA select a Business law-book and asks the seller". If seller don't stop me from buying this book, I will assume that "it is best". The seller remained silent here the student will treat "silence" as speech. If the book was inferior, then it is a case of fraud.
Disclosure of dangerous nature: E.g. Shyam sold his horse to Ram a buyer for Rs. 11000/- Shyam knows that horse was "wicked" but fails to disclose it to buyer. Here seller has committed fraud by remaining silent.

4. Misrepresentation
The term "misrepresentation" means a false representation of fact made innocently or non-disclosure of a material fact without any intention to deceive the other party. Section 18 defines the term "misrepresentation" as follows
"Misrepresentation" means and includes-
The positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;
Any breach of duly which, without an intent to deceive, gains an advantage to the person committing it, or anyone claiming under him, by misleading an other to his prejudice or to the prejudice of anyone claiming under him;
Causing, however innocently, a party to an agreement, to make a mistake as to the substance of the thing which is the subject of the agreement.

Essential elements of misrepresentation:
By a party to a contract: The representation must be made by a party to a contract or by anyone with his connivance or by his agent. Thus, the misrepresentation by a stranger to the contract does not affect the validity of the contract.
False representation: There must be a false representation and it must be made without the knowledge of its falsehood i.e. the person making it must honestly even it is to be true.

Representation as to fact: The representation must relate to a fact. In other words, a mere opinion, a statement of expression or intention does not amount to misrepresentation.
"Innocent misstatement made into good faith OR without any intention to cause loss"
E.g. A farmer says that his land is very productive and produces 100 quintal per acre. This is misrepresentation and buyer can cancel the contract.
Note: When the buyer has an opportunity to check the misrepresentation, but he fails then buyer cannot cancel the contract.
E.g. An owner of factory, while selling his factory, express his opinion as my factory produces 1000 kg per annum and requested the buyer to find out exact production by checking "production-record".

If the buyer fails to check the production record then buyer cannot blame seller.

Effect of misrepresentation [section 19]
The effects of misrepresentation are as follows:
Right to rescind the contract The party whose consent was caused by misrepresentation can rescind (cancel) the contract but he cannot do so in the following cases:
where the party whose consent was caused by misrepresentation had the means of discovering the truth with ordinary diligence;
where the party gave the consent in ignorance of misrepresentation;
where the party after becoming aware of the misrepresentation, takes a benefit under the contract;
where an innocent third party, before the contract is rescinded, acquires for consideration some interest in the property passing under the contract;
where the parties cannot be restored to their original position.

(b) Right to insist upon performance The party whose consent was caused by misrepresentation may if he thinks fit, insist that the contract shall be performed, and that he shall be put in the position in which he would have been if the representation made had been true.
Comparison between fraud and misrepresentation
Similarities: There are basically two similarities in case of fraud and misrepresentation as follows:
In both the cases, a false representation is made by a party;

In both the cases, the contract is voidable at the option of the party whose consent is obtained by fraud or misrepresentation.

5. Mistake
Meaning of mistake [section 20]
A mistake is said to have occurred where the parties intending to do one thing by error do something else. Mistake is "erroneous belief" concerning something.
Classification of Mistake of Law:
(a) Mistake of Indian Law(In sense of penalty): The contract is not voidable because everyone is supposed to know the law of his country. e.g. disobeying traffic rules"
(b) Mistake of Foreign Law(void-ab-initio): A mistake of foreign law is treated as mistake of fact, i.e. the contract is void if both the parties are under a mistake as to a foreign law because one cannot be expected to know the law of other country.

Mistake of fact
Mistake of fact be either Unilateral mistake or Bilateral mistake.
Unilateral mistake [section 22]: The term 'unilateral mistake' means where only one party to the agreement is under a mistake. According to section 22, "A contract is not voidable merely because it was caused by one of the parties to it being under a mistake as to matter of fact."
Bilateral mistake [section 22]: The term 'bilateral mistake' means where both the parties to the agreement are under a mistake. According to section 20, "where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void." thus, the following three conditions must be satisfied before declaring a contract void under this section:

Both the parties must be under a mistake
Mistake must be of fact but not of law.
According to explanation to section 20. "An erroneous opinion as to the value of the thing which forms the subject matter of agreement is not to be deemed a mistake as to a matter of fact."

Unlawful Consideration and Object

According to Section 23, in the following cases consideration or object of an agreement is unlawful:
1. If it is forbidden by law:
Where the object of a contract is forbidden by law, the agreement shall be void. An act is said to be forbidden if it is punishable by criminal law or any special statute, or if it is prohibited by any law or order made in exercise of powers or authority conferred by the legislature.
Example:
(1) A and B agreed to deal in smuggled goods. It is forbidden by law and therefore void.
(2) A committed B's murder in the presence of C. A promises to pay Rs. 500 to C, if C does not inform the police about the murder.
The agreement in example No. 2 given above is illegal as its object is unlawful. Besides, A and C will be liable for the act of murder and its concealment under the Indian Penal Code.

2. If it is of such a nature that if permitted, it would defeat the provisions of any other law:
The object of an agreement may not be directly forbidden but indirectly, it may defeat the object of any other law, the agreement would be void in such a case.

Example:
(1) A failed to pay his land revenue. Therefore, his estate was sold for arrears of revenue by the Government. By the law, the defaulter is prohibited from purchasing the land again. A asks B to purchase the estate and later on, transfer the same to him at the same price. The agreement is void as it will defeat the object of the law which prohibits a defaulter to purchase back the land, for indirectly A will again become the owner of the estate.

The second agreement is also void as it would defeat the provision or object of the law of limitation. [Rama Murthy y Goppayya],

3. If it is fraudulent:
If the object of an agreement is fraudulent, i.e., to cheat people, it is void. Example:
A, B & C enter into an agreement to sell bogus plots of land in Delhi. The agreement is void as it is fraudulent and thereby unlawful.

4. If it involves or implies injury to the person or property of another: Law protects property and person of its citizens. It cannot permit any contract which results in an injury to the person or property of any one.
Examples:
A promises to pay Rs. 500 to B if B beats C. It involves injury to C, hence it is unlawful and void.

5. If the Court regards it as immoral or opposed to public policy: If the object of an agreement is immoral or opposed to public policy, it will be void. Morality here means something which the law regards as immoral.

Examples:
(1) A agrees to give his house on rent to a prostitute for her immoral purpose. A cannot recover the rent of his house if he prostitute refuse to pay. However, he may be allowed to get his house vacated from the prostitute as it will put an end to the immoral purpose.
(2) A agrees to give his daughter on hire to B for concubinage. The agreement is void because it is

immoral, though the letting may not be punishable under the Indian Penal Code.

Effect of Illegality :

1. An illegal agreement is void: It is not enforceable at law.
2. Collateral transactions to illegal transactions are also void:
Not only the illegal agreement is void but also the collateral transactions are void.

Example:
A borrows Rs. 2,000 from B to buy a revolver to shoot C. Since the object of the transaction is illegal, B cannot recover his Rs. 2,000 if he has given the loan, knowing that A is taking the loan to purchase a revolver to shoot C.
Thus people will be discouraged to finance or assist illegal transaction when they know that they will not be able to recover their loans.

3. Law does not help any party:
Where the agreement is illegal, the law will not help any of the parties. The reason is that both the parties are equally guilty and the law does not help a guilty person. The law wants to discourage both the parties.

Example:
A promise to pay a bribe of Rs. 200 to B, if B does his work. The agreement is illegal. B cannot recover the amount of Rs. 200 after doing A's work. Similarly, if A has paid the bribe in advance, he cannot get it back if B does not do his work.

4. Indirectly defendant is helped:

Defendant is a person against whom the suit is filed. When the law does not help any of the parties, it means the party who has paid the amount will not be able to get it back as we have seen in the above example. The party who has received the amount is thus helped to keep the money with it and is not asked by the Court to return it. The Court is neutral and the defendant gets the benefit of the Court's neutrality. In the example given above, B can keep Rs. 200, even if B does not do the work of A. The Court will not ask B to return the amount. Thus B is indirectly benefited or helped by the refusal of the Court to intervene.

5. In cases of fraud, coercion, etc., money or property transferred can be recovered:
Where the illegality is the result of coercion and fraud of the other party, the Court can compel the guilty to return the money paid or property transferred.

6. Agreement partly legal and partly illegal (Sec. 24):
An agreement may consist of promises which are legal and illegal. If the legal promise can be separated from the illegal one, the legal promise can be enforced. In Such a case the illegal part will be void.
Where the legal promise cannot be separated from the illegal one, the whole of it would be void.
Where there is a single consideration for one or more unlawful objects, the agreement is void.

Example:
(1) A promises to manage B's factory, where genuine and bogus motor parts are manufactured. B agrees to pay A (Manager) a salary of Rs. 1,000 per month.
The agreement is void as partly it is legal and illegal and the legal part cannot be separated as the

salary is for both the parts.

7. Reciprocal promises, legal and illegal (Sec. 57):
Where persons reciprocally promise, firstly to do certain things which are legal, and secondly under specified circumstances to do certain other things which are illegal, the first set of promise is a contract, but the second is a void agreement.

Example:
A and B agree that A shall sell a house to B for Rs. 10,000 but that if B uses it as a gambling house, he shall pay A Rs. 50,000 for it.
The first set of promise, i.e., to sell the house and to pay Rs. 10,000 is a contract.
The second set of promise, i.e., B may use the house as a gambling house and pay Rs. 50,000 is a void agreement.

8. Alternative promise, legal and illegal (Sec. 58):
In the case of an alternative promise, one branch of which is legal and the other illegal, the legal branch alone can be enforced.

Discharge of Contract

A Contract may be discharged in any of the following ways
Discharge by Performance.
Discharge by Mutual Consent or Agreement
Novation - When a new contract is substituted for an existing contract
Alteration
Rescission
Remission - Accepting the lesser sum of amount than what was contracted for
Discharge by subsequent illegality or impossibility
Destruction of Subject-matter
Failure of ultimate purpose
Death or personal incapacity of Promisor
Change of Law
Discharge by lapse of time
Discharge by operation of law
Discharge by breach of contract
Anticipatory breach
Actual breach

Discharge by performance

Fulfilment of obligations by a party to the contract within the time and in the manner prescri bed in the contract.
(a) Actual performance – no party remains liable under the contract. Both the parties performed.
(b) Attempted performance or tender.:- Promisor offers to perform his obligation under the contract but the promise refuses to accept the performance. It is called as attempted performance or tender of performance but the contract is not discharged.

Discharge by mutual agreement

(a) Novation [Sec 62] – Novation means substitution of a new contract in the place of the original contract new contract entered into in consideration of discharge of the old contract. The new contract may be.
Between the same parties (by change in the terms and condition)
Between different parties (the term and condition remains same or changed)

Following conditions are satisfied :-
(1) All the parties must consent to novation
(2) The novation must take place before the breach of original contract.
(3) The new contract must be valid and enforceable.

Example:
A owes B Rs.50,000. A enters into an agreements with B and gives B a mortgage of his estate for Rs.40,000 in place of the debt of Rs.50,000. (Between same parties)

A owes money Rs.50,000 to B under a contract. It is agreed between A, B & C that B shall henceforth accept C as his Debtor instead of A for the same amount. Old debt of A is discharged, and a new debt from C to B is contracted. (Among different parties)

(b) Rescission [62]:- Rescission means cancellation of the contract by any party or all the parties to a contract. X promises Y to sell and deliver 100 bales of cotton on 1 st oct his go down and Y promises to par for goods on 1 Nov. X does not supply the goods. Y may rescind the contract.
(c) Alteration [62] :- Alteration means a change in one or more of the terms of a contracts with mutual consent of parties the parties of new contracts remains the same.
Ex:- X Promises to sell and delivers 100 bales of cotton on 1 oct. and Y promises to pay for goods on 1st Nov. Afterwards X and Y mutually decide that the goods shall be delivered in five equal installments at is godown . Here original contract has been discharged and a new contract has come into effect.

(d) Remission [63]:- Remission means accepting a lesser consideration than agreed in the contract. No consideration is necessary for remission. Remission takes place when a Promisee-
(a) dispense with (wholly or part) the performance of a promise made to him.
(b) Extends the time for performance due by the promisors
(c) Accept a lesser sum instead of sum due under the contract
(d) Accept any other consideration that agreed in the contract
A promise to paint a pictured for B. B after words for him to do so. A is no longer bound to perform the promise.
(e) Waiver:- Intentional relinquishment of a night under the contract.
(f) Merger :- conversion of an inferior right into a superior right is called as merger. (Inferior right end)

Discharge by operation of law
(a) Death :- involving the personal skill or ability, knowledge of the deceased party one discharged automatically. In other contract the rights and liability passed to legal represent. Example : A promises to perform a dance in B's theatre. A dies. The contract comes to an end.
(b) Insolvency:- when a person is declared insolvent. He is discharged from his liability up to the date of insolvency.
Example: A contracts to sell 100 bags of sugar to B. Due to heavy loss by a major fire which leaves

nothing to sell, A applies for insolvency and is adjudged insolvent. Contract is discharged.

(c) By unauthorized material alteration – without the approval of other party – comes to an end – nature of contract substance or legal effect.

Example : A agrees upon a Promissory Note to pay Rs.5,000 to B. B the amount as Rs.50,000. A is liable to pay only Rs.5,000.

(d) Merger: When an inferior right accruing to a party in a contract mergers into a superior right accruing to the same party, then the contract conferring inferior right is discharged.

Example: A took a land on lease from B. Subsequently, A purchases that land. A becomes owner of the land and ownership rights being superior to rights of a lessee, the earlier contract of lease stands terminated.

(e) Rights and liabilities vest in the same person: Where the rights and liabilities under a Contract vest in the same person, the contract is discharged.

Example: A Bill of Exchange which was accepted by A, reaches A's hands after being negotiated and endorsed through 4 other parties. The contract is discharged.

Discharge by Lapse of time

Where a party fails to take action against the other party within the time prescribe under the limitation Act, 1963. All his rights to come end. Recover a debt – 3 Years recover an immovable property – 12 years

Discharge by Breach of contract

Failure of a party to perform his part of contract

(a) Anticipatory Breach of contract :- Anticipatory breach of contract occurs when the part declares his intention of not performing the contract before the performance is due .

(i) Express repudiation: - 5 agrees to supply B 100 tunes of specified category of iron on 15.01.2006 on 31.12.2005. 5 express his unwillingness to supply the iron to B.

(ii) Party disables himself: - Implied by conduct.

Ex.:- 5 agrees to sell his fiat car to B on 15.01.2006 on 31.12.05 5 sells his fiat car to T.

(b) Actual Breach of contract :- If party fails or neglects or refuses to perform his obligation on the due date of performance or during performance. It is called as actual breach.

During performance – party has performed a part of the contact.

Consequences of Breach of contract:- The aggrieved party (i.e. the party not at face it) is discharged from his obligation and get rights to proceed against the party at fault. The various remedial available to an aggrieved party.

Performance, Impossibility of performance and frustration

Sec 37:- That the parties to a contract must either perform or offer to perform, their respective promises unless such performance is dispensed with or excused under the provisions of contract Act, or of any other law.

Performance: - Two types

1. Actual performance – actually performed – liability of such a party comes to an end.
2. Attempted performance or tender of performance refusal to accept offer of performance by promisee .

Promisor is not responsible for non performance and they can sue the promisee for breach of contract – nor he (promisor) thereby lose his rights under the contract.

A. Tender or offer of performance to be valid must satisfy the following conditions:-

(i) It must be unconditional

Ex :- 'X' offers to 'Y' the principal amount of the loan. This is not a valid tender since the whole amount of principal and interest is not offered.

(ii) It must be made at a proper time and place.

Ex:- If the promisor wants to deliver the goods at 1 am. This is not a valid tender unless it was so agreed;

(iii) Reasonable opportunity to examine goods.

Ex:- Delivery of something to the promise by the promisor promise must have reasonable opportunity of inspection.

(iv) It must be for the whole obligation :- goods and amount.

Ex:- 'X' a debtor, offer's to pay 'Y' the debt due in installments and tenders the first installment. This is not a valid tender minor deviation – not invalid [Behari lal v ram gulam]

(v) It must be made to the promise or his duty authorized agent.

Ex:- It must be person who is willing to person his part of performance.

(vi) In case of payment of money, tender must be of the exact amount due and it must be in the legal tender.

Type of Tender

Tender of goods and services

When a promisor offers to delivery of goods or service to the promise, it is said to be tender of goods or services, if promisee does not accept a valid tender, It has the following effects:

(i) The promisor is not responsible for non – performance of the contract.

(ii) The promisor is discharged from his obligation under the contract. Therefore, he need not offer again.

(iii) He does not lose his right under the contract. Therefore, he can sue the promise.

Tender of money

Tender of money is an offer to make payment. In case a valid tender of money is not accepted, it will have the following effects:

(i) The offeror is not discharged from his obligation to pay the amount.

(ii) The offeror is discharged from his liability for payment of interest from the date of the tender of money.

Effect of refusal of party to perform promise Wholly Sec 39.

Promisor – Refuse – Promise – wholly

Promisee can put – can end of the contract or – he can continue the contract if he has given his consent either by words or – by conducts in its continuance.

Result – claim damages.

Who can demand performance?

1. Promisee – stranger can't demand performance of the contract.

2. Legal Representative – legal representative can demand Exception performance.

- contrary intention appears from the contract
- contract is of a personal nature.

3. Third party – Exception to "stranger to a contract"

Person by whom promise is to be performed Sec 40.
[who will perform the contract]

1. Promisor himself :- include personal skill, taste or art work.

Ex:- 'A' promises to paint a picture for 'B' as this promise involves personal skill of 'A'. If must be performed by 'A'.

2. Promisor or agent :- [does not involves personal skill]

3. Legal Representative [does not involve personal skill and taste]

4. Third person [Sec 41] :- Acceptance of promise from the third party:-

If the promisor accepts performance of a contract by a third party, he can't after wards enforce the performance against the promisor although the promisor had neither authorized not ratified the act of the third party.

Performance of Joint Promises:-
Two or more person make a promise
Performed by all the joint promisor [42]
All the joint promisor – liable
Thus in India the liability of joint promisors is joint as well as several.
In England, however the liability of the joint promisors is only joint and not several and accordingly all the joint promisors must be sued jointly.

Liability of joint promisor [43]
1. Liability – joint as well as several [unless express A + B + C 900 D. D may compel either A, B or C or any of two of them or all of them.
2. Where a joint promisor has been compelled to perform the whole promise, be may compel every other joint promisor to contribute equally with himself to the performance of the promise (unless a contrary intention appears from the contract).

Impossibility of Performance and Frustration
Section 56 of the Indian Contract Act, 1872 provides:

AGREEMENT TO DO IMPOSSIBLE ACT – An agreement to do an act impossible in itself is void.
Contract to do act afterwards becoming impossible or unlawful – A contract to do an act which, after the contract is made, becomes impossible, or, by reason of same event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.

For an example: A agrees with B to discover treasure by magic. The agreement is void.
A and B contract to marry each other. Before the time fixed for the marriage, A goes mad. The contract becomes void.

HISTORICAL OVERVIEW

In the seventeenth century the judges in Paradine vs. Jane laid down what is sometimes called the rule as to absolute contracts. It amounts to the law casts a duty upon a man which, through no fault of

his, he is unable to perform, he is excused for non performance; but if he binds himself by contract absolutely to do a thing, he cannot escape liability for damages for proof that as events turned out performance is furtile or even impossible. It was held that "when the party by his own contracts creates a duty, he is bound to make it good, if he may, notwithstanding any accident by inevitable necessity, because he might have provided against it by his contract; though the land be surrounded or gained by the seas, or made barren by wildfire, yet the lessor will have his whole rent.

If a contract is made, and for whatever reason it later becomes impossible to for one party to perform their obligations, then we need to think about frustration. Be careful to note that frustration is about subsequent impossibility; if a contract was impossible to perform right from the outset, then the issue is one of mistake and not frustration!

The doctrine of frustration, the frustration is divided into two important parts:

Initial impossibility: Section 56 first lays down the simple principal that "an agreement to do an act impossible in itself is void." For example, an agreement to discover a treasure by magic, being impossible of performance, is void.

Subsequent Impossibility: Section 56 lays down the effect of subsequent impossibility of performance. Sometimes the performance of a contract is quite possible when it is made by the parties. But some event subsequently happens which renders its performance impossible or unlawful. In either case the contract becomes void. Where, for example, after making a contract of marriage, one of the parties goes mad, or where a contract is made for the import of goods and the import is thereafter forbidden by a government order. In this context there was a famous case of Chamanlal Jain vs. Arun Kumar Jain, in this case the court held that where a singer contracts to sing and becomes too ill to do so, the contract in each case becomes void.

MEANING OF FRUSTRATION

To understand the concept of frustration first we analyze one famous case decided by BLACKBURN J in the case of Taylor vs. Caldwell[4], "rule is only applicable when the contract is positive and absolute, and not subject to any condition either expressed or implied". The fact of the case is that the defendants had agreed to let the plaintiffs the use of their music hall between certain dates for the purpose of holding a concert there. But before that first day on which a concert was to be given, the hall was destroyed by fire without the fault of either party.

The plaintiff sued the defendants for their loss. It was held that the contract was not absolute, as its performance depended upon the continued existence of the hall. It was, therefore, "subject to an implied condition that the parties shall be excused in case, before breach, performance becomes impossible from the perishing of thing without default of the contractor."

Thus, the doctrine of frustration comes into play in two types of situation, first, where the performance is physically cut off, and, second, where the object has failed. The Supreme Court of India has held that Section 56 will apply to both kinds of frustration. Referring to the section, B. K. MUKHERJEA J of the Supreme Court observed in Satyabrata Ghose vs. Mugneeram Bangur & Co. as follows:

This much is clear that the word "impossible" has not been used here in the sense of physical or literal impossibility. The performance of an act may not be literally impossible but it may be impracticable and useless from the point of view of the object and purpose which the parties had in view. And if an untoward event or change of circumstances totally upsets the very foundation upon which the parties rested their bargain, it can very well be said that the promisor finds it impossible to do the act which he promised to do.

THEORIES OF FRUSTRATION

The theories of frustration are divided into two important parts:

Theory of Implied Term

The theory of implied term was explained by LORD LOREBURN in F.A. Tamplin co ltd vs. Anglo – Mexican Petroleum Products co ltd in these words: A court can ought to examine the contract and the circumstances in which it was made, not of course to vary, but to explain it, in order to see whether or not from the nature of it the parties must have made their bargain on the footing that a particular thing or state of things would continue to exist. And if they must have done so, then a term to that effect will be implied, though it be not expressed in the contract.
In another case LORD SUMNER observed in Joseph Constantine steamship Line Ltd VS. Imperial smelting corpn Ltd in this case Lordship observed that the meaning of the frustration of contract and its application to the actual occurrences, the court has to decide, not what the parties actually intended but what as reasonable men they should have intended.

Just and Reasonable Solution
According to DENNING LJ attempted to explain the doctrine of frustration on a different basis in the case of British Movie to news Ltd vs. District Cinemas Ltd. He said the court really exercises a qualifying power a power to qualify the absolute, literal or wide terms of the contracts in order to do what is just and reasonable in the new situation.
Theories not Applicable in India
Referring to the theories B.K. MUKHERJEA J of the supreme court said in Satyabrata case, in India the only doctrine that we have to go by is that of supervening impossibility or illegality as laid down in section 56 of the contract Act, taking the word 'impossible' in its practical and not literal sense. Section 56 does not leave the matter to be determined according to the intention of the parties.
Commercial Hardship
The alteration of circumstances must be "such as to upset altogether the purpose of the contract. Some delay or some change is very common in all human affairs, and it cannot be supposed that any bargain has been made on the tacit condition that such a thing will not happen in any degree. It is observed by Lord LOREBURN in F.A. Tamplin steamship Co. v Anglo Mexican Petroleum Products. A situation like this has been described as one of commercial hardship, which may make the performance unprofitable or more expensive or dilatory, but is not sufficient to excuse performance, for it does "not bring about a fundamentally different situation such as to frustrate the venture." The doctrine of frustration or impossibility does not apply to a situation so as to excuse performance. "Where performance is not practically cut off, but only rendered more difficult or costly. Such cases may not fall within the purview of section 56 and this is amply shown by the Privy Council decision in Harnandrai Fulchand v. Pragdas, in this case the privy council held that the adventure was not frustrated as the stipulation as to delivery did not make delivery by the mills a condition precedent. It was a simple case of breach.

F. Breach: Anticipatory and Present
A breach of Contract takes place when a party corresponding consents formally to abandon his liability under it, or by his own act makes it impossible that he should perform his obligations under it or fully or partially fails to perform such obligations. In the case of Food corporation v. J.P Kesharwani , 1994 Supp (1) SCC 531, where one party making unilateral alterations without any intimation to the other and then cancelling the contract, this amounted to breach (repudiation). Therefore it can be correctly stated that, any kind of contract may be examined as broken once a party refuses to perform under the contract as promised, regardless of when performance is supposed to occur. This unconditional refusal is known as a repudiation of contract.
The courts generally recognize three different types of repudiation:

When the refusal made to the other party stands positive and unconditional (express repudiation) in such cases, the renunciation must be clear, straightforward, and directed at the party thereto in the contract. (for example: "A" contracts to sell crops to "B" within a due date, however before the due date he gives a written application to "B" saying, " I'll not deliver the crops as promised").
When it comes to repudiation, sometimes action makes it impossible for the other party to perform. Action speaks as loudly as words. Such a case may be cited with an example, 'A' being a renowned businessman, was supposed to repay his bank loan. However, just before the due date he became bankrupt, which made it impossible for him to pay back his loans, his reckless voluntary actions that led to his insolvency was counted as a repudiation of the loan agreements.
If the contract is for the sale of property, repudiation occurs when one party transfers (or makes a deal to transfer) the property to a third party.
A breach of contract maybe of two types, viz,
(1) Anticipatory breach of contract,
(2) Present breach.
The failure to perform the obligations may take place at the time of performance or at a date even before that. Examples given below may be cited to explain it,
If 'A' enters into a contract to sell 200mtrs of cloth to an 'XYZ' garment manufacturing firm, on say, May 15th and eventually on April 17th 'A' corresponds saying he has changed his mind and declines his services, and thereby his contract. Then the said situation leads to an anticipatory breach of contract. And in such cases the aggrieved or injured party may sue him for damages for breach. The injured party has the option to sue immediately or till the time the act was to be performed. This was an anticipatory breach of contract by express repudiation.
If 'X' promised to assign 'G', within seven years from the date of his promise, all his interest in a lease for the sum of Rs. 80,000/- . Before the end of seven years he assigned his interest to another person. Held, this was anticipatory breach of contract by implied repudiation.
Anticipatory breach of contract is a declaration made by one of the contracting parties of his intention not to fulfill the contract. And proclaim that he will no longer remain bound by it.
The anticipatory renunciation or repudiation that has affected and gave away immediate rights of action upon the contracting parties thereto, was recognized as early as 1853 in the case of Hochester v. De La Tour (1853) 2E &B 678:95RR 747: 118Er 922: 22LJQB 455, where in April, De La Tour engaged Hochester as his courier for three months from 1st June 1852 onwards, and was told to accompany him to a tour around the European Continent. However on the 11th of May of that year, (De La Tour) the defendant had written to say that the plaintiff's services were no longer required. Thus on May 22nd Hochester sued. The defendant's counsel very powerfully argued that Hochester was still under an obligation to stay ready and willing to perform till the day when the performance was due and there could commence no action before. But Lord Campbell CJ ruled out the objection, and allowing the claim pointed out that a contract is contract from the date it is made and not from the date that its performance is due.

However the principle also applies to contingent contract, as was the case in Frost v Knight (1872) 7Exch 111. The defendant promised to marry the plaintiff on the event of the death of his father. The father was then still living and the defendant proclaimed his intention that he would not fulfill his promise on the event of his father's death off the engagement. The plaintiff did not wait for the death of the father, but immediately brought an action for the breach of contract. He asserted that the breach could arise only on the contingency taking place. But CockBurn CJ held that the case falls within the principle of Hochester v. De La Tour, hence the option is with the aggrieved party to sue immediately or wait for the performance.

In 1957 case, Universal Cargo, Justice Delvin said:
"Anticipatory breach means that a party is in breach from the moment that his actual breach becomes

inevitable. Since the reason for the rule is that a party is allowed to anticipate an inevitable event and is not obliged to wait till it happens, it must follow that the breach which he anticipates is of just the same character as the breach which would actually have occurred if he had waited."

A failure to perform a contract whether it is total or a partial failure will not constitute an anticipatory breach of contract. The reason for this is that, this breach can only take place once performance of the contract is due. Accordingly this will constitute an actual breach of contract rather than an anticipatory breach of contract.
Renunciation is the main avenue by which a party can show that there has been an anticipatory breach of the contract.
The following four key factors will be taken into consideration in determining whether there has been a dismissal of a contract amounting to an anticipatory breach:
If there has been a clear case of refusal to perform contractual obligations that it goes to the root of the contract.

The renunciation or repudiation to perform a contract cannot be conditional on certain circumstances taking place. The refusal, therefore should be absolute.
When deciding whether there has been a sufficient refusal to perform contractual obligations, it must be judged according to whether a reasonable person in the position of the innocent party would regard the refusal as being clear and absolute.
There are however some consequences of not accepting the repudiation. If the aggrieved or injured party does not accept the repudiation and lets the contract remain alive the consequences will be as follows:

The party, repudiating the contract may nevertheless opt to perform when the time arrives and the promisee will be bound to accept the same.
If while the contract lies open such event occurs which dismisses the contract otherwise than by repudiation for example , by supervening impossibility or frustration, the promisor would also be entitled to take advantage of the changed circumstances. The most suitable example which can be cited is that of Avery v. Bowden (1855) 5 E & B 714: 25 LJ QB 49: 103 RR 695. In this particular case the defendant had chartered the plaintiff's ship and agreed to load it with a cargo at Odessa within a period of 45 days. On arrival of the ship at that place, the defendant told him that the Captain had no cargo for him and requested to go away. The Captain however stayed there, having a hope in his mind that the defendant would fulfill his contract. But before the specified period of 45 days had expired a war broke out which thereby rendered the performance illegal. The plaintiff then brought about an action for breach. It was held by the court that the contract had ended by frustration and not by breach.
In case the anticipatory repudiation is accepted, damages for breach would be assessed at the time when the repudiation takes place. Where the promisee does not accept the repudiation, damages will be assessed at the time fixed for performance of the contract and the promisee takes the risk of market rate declining in the mean time, he will have to take all the reasonable steps to keep his loss to the minimal.

This law has been explained in plain and simple terms in the speech of Viscount Simon LC in Heyman v Darwin Ltd 1942 AC 356 at p 361: (1942) 1 All ER 337 at p 341. It has been held by the Supreme Court in State of Kerala v Cochin Chemical Refineries Ltd AIR 1968 SC 1316 that by refusing to advance the loan which the state had undertaken to advance, its obligation to purchase groundnut cake from the company did not come to an end. That repudiation just by one party alone does not bring an end to the contract. It has to be repudiation, on one side and acceptance of repudiation on the other. This law was emphasized by Lords in White and Carter (councils) ltd v Mc

Gregor 1962 AC 413: (1962) 2 WLR 17: (1961) 3 All ER 1178(HL). A contract for display advertisement for three years of motor garage business was struck between advertisement contractors and the agent of the garage owner, but the latter repudiated the contract by writing an issuing a letter of cancellation. The contractors, however did not pay any heed to his request, refused it and subsequently displayed the advertisement. The contract provided for the annual payments and in event of any default in the payment for all the three years was to become due. Accordingly the contractors went on to claim full payment. Their lordships held that the contractors where in the process of only claiming what was due to them under the contract, and, therefore where entitled to it. In order to lay emphasis upon another aspect of repudiation, the Supreme Court has thereby observed that whatever be the implications. The acceptance by the other party may have certain remedial purposes, as far as the repudiating party is concerned he becomes free from the contract, to the same extent as if the contract has ended. This disqualification, if any meant for the election purposes by virtue of the contract would end as soon as the contract is repudiated.

Where the anticipatory breach of contract is established by the innocent party, three essential remedial measures are made available, first and the most likely remedy is damages. Damages are a monetary sum to compensate for actual loss suffered taking into account whether the loss suffered arose naturally from the breach and whether it would have been reasonably foreseeable to the guilty party.

The other two remedies are specific performance (an order from the court requiring the guilty party to honour the contract) or an injunction (an order from the court preventing the guilty party carrying out a specific action) and in practice they are less likely to be used over damages.

The case of Aslhing v L.S. John, (1984) 1 SCC 205, whereby the respondent who was a party to a subsisting contract with the government for widening of a road, had written a letter to the concerned Executive Engineer stating that he was closing the said contract. The appellant contended that the contents of the letter did not have the effect of putting an end to the contract. In this case the judgement of the court was delivered by Fazal Ali J. it was argued that the contents of the said letter made no effect in closing the contract. However after going through the contents of the letter it was absolutely made clear, that the contractor unilaterally dismissed the contract and informed the concerned department, also he resigned from the contractors list's of PWD Manipur. Thus after this letter the contract got repudiated and acceptance of the letter by the authorities was unnecessary for putting an end to the contract although breach may give rise to an action for damages.

Unit IV: REMEDIES AND QUASI CONTRACTS

Breach

Contract is made between the parties who are intended to bind together in a legal obligation i.e.to serve the interest of both the parties. The parties, in order to govern themselves and to safeguard their interest make their own terms and conditions. And when such terms and conditions are accepted by both the parties, there is an enactment of the contract i.e. the liability is imposed on the party to the contract and to function in accordance with the terms and conditions of the contract.

Though many a times, the contracting parties work according to the terms and conditions of the other party, there are instances when one party back steps, thus leading to the loss to other party.

This is referred as repudiation. According to the section 39 of the Indian contract Act, "Any intimation whether by words or by conduct that the party declines to continue with the contract is repudiation, if the result is likely to deprive the innocent party of substantial the benefit of the contract" Thus, repudiation can occur when the either party refuses to perform his part, or makes it impossible for him to perform or even fails to perform his part of contract in each of the cases in such a manner as to show an intention not to fulfill his part of the contract.

Breach of contract is defined is a legal cause of action in which a binding agreement or bargained for exchange is not honored by one or more parties to the contract by non-performance or interference with the other partys performance. It the party does not fulfill his contractual promise, or has given information to the other party that he will not perform his duty as mentioned in the contract or if by his action and conduct he seems to be unable to perform the contract, he is said to be breach of contract.

Thus when a party having a duty to perform a contract fails to do that, or does an act whereby the performance of the contract by him becomes impossible, or he refuses to perform the contract, there is said to be a breach of contract on his part. On the breach of contract by the one party, the other party is discharged of his obligations to perform his part of the obligations.

Breach of a contract does not discharge the contract, thereby automatically termination the obligation of the innocent party. It gives an opinion to the innocent party to regard itself as discharged. The innocent party rescinds the contract, the primary obligation of both the parties is over, but the defaulting parties become liable for payment of compensation for the breach. The innocent party may also waive the defective performance and elect to accept damages instead of ending the contract.

The breach of contract may be either: (i) actual, i.e. non-performance of the contract on the due date of performance, or (ii) anticipatory, i.e. before the due date of the performance has come. Thus, when the party to the contract refuses to do an act or does an act at the time of the performance of the contract then it is said to be the actual breach of the contract, but when the party to the contract refuses to do an act or does an act before the time of performance by which the performance of the contract is not possible, the such breach is known as the anticipatory breach of contract.

Fundamental Breach of Contract

In todays globalized world, thousands of companies engage in business which involves millions of consumers. Thus, it would be difficult for these companies to draw up separate contract with every individual, they came out with Standard Form Of Contract, whereby a standard form with a large number of terms and conditions are there restricting the liability of the party to the contract. The individuals can hardly bargains with the massive organizations and therefore the only option available to them is either to accept it or reject it.

Remedies :

Damages: Kinds

REMEDIES FOR BREACH

A contract being a correlative set of rights and obligations for the parties would be of no value, if there were no remedies to enforce the rights arising there under. The Latin maxim ‘Ubi jus, ibi remedium’ denotes where there is a right, there is a remedy.

The remedies for breach of contract are:

1. Suit for damages or compensation
2. Suit for specific performance
3. Suit for injunction
4. Suit for rescission
5. Punitive damages

The law on this issue is dealt with in two statues viz., The Specific Relief Act, 1963 and The Indian Contract Act, 1872.

SUIT FOR DAMAGES

The word ‘damages’ means monetary compensation for the loss suffered. Whenever a breach of contract takes place, the remedy of ‘damages’ is the one that comes to mind immediately as the

consequence of breach. The aggrieved party may seek compensation from the party who breaches the contract.
When the aggrieved party claims damages as a consequence of breach, the court takes into account the provisions of law in this regard and the circumstances attached to the contract. The amount of damages would depend upon the type of loss caused to the aggrieved party by the breach. The court would first identify the losses caused and then assess their monetary value.

Section 73 of the Indian Contract Act, 1872 lays down the basic guidelines for identifying the losses. Section 73 reads as follows:
"Compensation for loss or damage caused by breach of contract: When a contract has been broken, the party who suffers by such breach is entitled to receive, form the party who has broken the contract, compensation for any loss of damage caused to him thereby, which naturally arose in the usual course of things from such breach or which, the parties knew when they made the contract to be likely to result from the breach of it.
Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach."
Keeping in view the provisions of section 73 and the court judgments, the aggrieved party would be entitled to one of the following types of damages, depending upon the circumstances of the case:

A. General or ordinary damages.
Damages arising naturally and directly out of the breach in the usual course of the things.

B. Special damages.
Compensation for the special losses caused to the aggrieved party by the special circumstances attached to the contract.

C. Exemplary damages.
Damages for the mental or emotional suffering also caused by the breach.
In Ghaziabad Development Authority V Union of India (AIR 2000 SC 2003), the Hon'ble court held that in case of breach of contract mental anguish not a head of damages in ordinary commercial contract.
In order to claim damages, party has to plead specifically the manner in which he suffered the loss. [State V Pratibha Prakash Bhawan AIR 2005 Ori 58]. The Plaintiff to the suit must prove damage and the amount of the damage. [AIR 1962 SC 366]

LIQUDATED DAMAGES AND PENALTY
Where the contract itself addresses the issue of consequences of a breach and stipulated a penalty, section 74 of the Indian Contract Act will come into play. When such a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, the party complaining of breach is entitled, to receive from the party who has broken the contract a reasonable compensation not exceeding the amount so named.

The Hon'ble Supreme court in Fateh Chand V Balkishan Das [AIR 1963 SC 1405], had held that the jurisdiction of the court to award compensation under section 73 in case of breach of contract is unqualified except as to the maximum stipulated, and compensation has to be reasonable. This section has to be read in conjunction with section 74, section 74 emphasizes that in case of breach of contract, the party complaining of the breach is entitled to receive reasonable compensation whether or not the actual loss is proved.
There is no impediment or any obstacle for the parties to a contract to make provisions of liquidated damages for specific breaches only, leaving other types of breaches to be dealt with as unliquidated

damages. There is no principle which requires that once the provision of liquidated damages has been made in the contract, in the event of breach of one of the parties, such clause has to be read covering all types of breaches although parties may not have intended and provided for compensation in express terms of all types of breaches. [Steel Authority of India V Gupta Brothers Steel Tubes Ltd. (2009) 10 SCC 63.]

In Oil and Natural Gas Corporation Ltd V Saw Pipes Ltd [AIR 2003 SC 2629], the Supreme court laid down the following guidelines:
1. Terms of the contract are required to be taken into consideration before arriving at the conclusion whether the party claiming is entitled to the same;
2. If the terms are clear and unambiguous stipulating liquidated damages in case of the breach of the contract, unless it is held that such estimate of damages/compensation is unreasonable or is by way of penalty, the party who has committed the breach is required to pay such compensation and that is what is provided in section 73 of the Contract Act.
3. Section 74 to be read along with section 73 and, therefore, in every case of breach of contract, the person aggrieved by the breach is not required to prove actual loss or damage suffered by him before he can claim a decree. The court is competent to award reasonable compensation in case of breach even if no actual damage is proved to have been suffered in consequences of the breach of the contract.
4. In some contracts, it would be impossible for the court to assess the compensation arising from breach and if the compensation contemplated is not by way of penalty or unreasonable, the court can award the same if it is a genuine pre-estimate by the parties as the measure of reasonable compensation.

SUIT FOR SPECIFIC PERFORMANCE
In certain cases of breach of a contract, damages may not be an adequate remedy. Then the court may direct the party in breach to carry out his promise according to the terms of the contract. This is an order of the court requiring performance of a positive contractual obligation. But in general, courts do not wish to compel a party to do that which he has already refused to do. Part II of the Specific Relief Act, 1963 lays down detailed rules on the specific performance of contracts.

Specific performance is not available in the following circumstances:
1. Damages provide an adequate remedy.
2. Where the order could cause undue hardship.
3. Where the contract is of such a nature that constant supervision by the court would be required.
4. Where the party seeking the order has acted unfairly.

Cases where specific performance may be ordered:
1. Where there exists no standard for ascertaining the actual damage caused to the aggrieved party by the non-performance.
2. Where monetary compensation will not be adequate relief.
3. Where the act to be done is in the performance of trust.
4. In general the court will only grant specific performance where it would be just and equitable to do so.

SUIT FOR INJUNCTION
An injunction is an order of the court requiring a person to perform a negative obligation. But for performance of the positive terms of the contract, the aggrieved party may seek other remedies.

The right to relief by way of injunction is contained in part III of the Specific Relief Act, 1963.

Section 36 provides that preventive relief may be granted at the discretion of the court by injunction, temporary or perpetual. Section 38 indicates when perpetual injunctions are granted and section 39 indicates when mandatory injunctions are granted. Section 40 provides that damages may be awarded either in addition to or in substitution of injunctions. Section 41 provides for contingencies when an injunction cannot be granted. Clause (e) of section 41 specifically provides that no injunction can be granted to prevent the breach of contract the performance of which would not be specifically enforced. Section 42 provides for injunction to perform negative agreement. Section 42 states; if the court is unable to compel the specific performance of the affirmative agreement shall not preclude it from granting an injunction to perform the negative agreement, provided Plaintiff has not failed to perform the contract.

SUIT FOR RESCISSION

The breach of contract no doubt discharges the contract, but the aggrieved party may sometimes need to approach the court to grant him a formal rescission, i.e., cancellation, of the contract. This will enable the Plaintiff to be free from his own obligations under the contract.

PUNITIVE DAMAGES

Punitive damages are damages intended to reform or deter the defendant. Although the purpose of punitive damages is not to compensate the plaintiff, the plaintiff will in fact receive all or some portion of the punitive damage award. Punitive damage are often awarded where compensatory damages are deemed an inadequate remedy. The court may impose them to prevent under-compensation of plaintiffs, to allow redress of undetectable torts and taking some strain away from the criminal justice system.

Quantum Meruit

Quantum Merit means "As much as earned or deserved", "as much as is merited". The principle of law provides for payment of compensation under certain circumstances, to a person who has rendered goods or services to another person under a contract which could not or has not been fully performed. The action of Quantum Meruit is allowed in Indian Courts under Section 70 of the Contract Act. The claim of quantum merit arises in the following cases:

1. Breach of Contract:

Where there is a breach of contract, the injured party is entitled to claim reasonable compensation for what he has done under the contract.

2. When a contract is discovered to be void:

When a agreement is discovered to be void or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it, to the person from whom he received it. (Section 65).

3. Where something has been done non-gratuitously:

Where work is done or goods delivered by a person without an intention to do so gratuitously, and the benefit of the same is enjoyed by the other party, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or so delivered. For example, X forgets certain goods at Y's house. He had no intention to leave them with him gratuitously. Y uses those goods for his personal benefit. X can compel Y to pay for those goods.

4. Where the contract is divisible:

Where a contract is divisible, and a party to the contract has done a part of his obligation, he may sue

on quantum merit. This rule applies even though the party claiming on quantum merit is himself guilty of breach of contract.

Doctrine of 'quantum merit is, however, subject to the following two limitations:

1. In a contract which is not divisible into parts and a lumpsum of money is promised to be paid for the complete work, part performance will not entitle the party to claim any payment.
2. A person, who himself is guilty of breach of contract, cannot be allowed to claim any payment under the doctrine of quantum merit.

But this rule is subject to following exceptions:

1. If the contract is divisible, part performance will also entitle the defaulting party to claim compensation on the basis of quantum merit if the other party has taken the benefit of what has been done.
2. If a lump sum is to be paid for the compensation of an entire work and the work has been completed in full though badly, the defaulting party can recover the lumpsum less a deduction for bad workmanship.
Hoeing vs Isaacs. In this case, A agreed to decorate B's flat for a lump sum of Rs. 750. A did the work, but B complained of faulty workmanship. B got the defect removed by paying Rs. 294. Held, A could recover Rs. 750 less 294.

3. Any claim based upon the doctrine of quantum merit cannot be entertained unless there is an evidence of an express or implied promise to pay for the work which has already been done.
4. Where one party to the contract is prevented from performing the contract by the other party or by impossibility or illegality.
Clay vs Yates. In this case, printing of a book had to be abandoned as it contained libelous matter. He was held entitled to recover on quantum merit.

Quasi Contracts
There are certain situations wherein certain persons are required to perform an obligation despite the fact that he hasn't broken any contract nor committed any tort. For instance, a person is obligated to restore the goods left at his home, by mistake, and keep it in good condition. Such obligations are called quasi-contracts.

Rationale
The rationale behind "quasi-contract" is based on the theory of Unjust Enrichment. Lord Mansfield is considered to be the founder of this theory. In Moses v. Macferlan, he explained the principle that law as well as justice should try to prevent "unjust enrichment", i.e., enrichment at the cost of others.
A liability of this kind is hard to classify. Since it partly resembles liabilities under the law of tort and partly it resembles contract since it owed to only a party and not a person or individual generally. Therefore, it comes within the ambit of an implied contract or even natural justice and equity for the prevention of unjust enrichment.

However, in Sinclair v. Brougham, the theory of implied-in-fact was adopted.
Facts: a building society undertook banking business which was outside its object, and therefore, ultra vires . the society came to wound up. After paying up all outside creditors, a mixed sum of money was left which represented partly the shareholders money and partly that of the ultra vires depositors, but the money wasn't sufficient to pay all of them. The depositors tried to get priority by resorting to the quasi-contractual action for recovery of money had and received for the depositors'

benefit, else the shareholders would have been unjustly enriched.
The House of Lords allowed pari passu distribution of the mixed funds among the claimants, but did not allow any remedy under quasi-contract. It was maintained that the common law knows personal actions of only two classes, viz.,
a) those founded on contract;
b) those founded on tort.

" when it speaks of action arising quasi ex contractu it refers only to a class of action in theory which is imputed to the defendant by a friction of law." This approach dominated the scene for quite some time and quasi contracts were taken to be fictional contracts.

Since this approach was restricting the scope of relief and was leading to "unjust enrichment", the theory of unjust enrichment was again restored in Fibrosa Spolka Akeyjna v. Fairbain Lawson Combe Barbour Ltd. by Lord Wright. While referring the ratio decidendi of the decision in Sinclair v. Borogham, he stated that it was against public policy to allow the recovery of an ultra vires deposit, whether the claim is based on contract or quasi-contract. The observations in this particular case were merely the obiter dicta of the Sinclair Case.
In Indian context, the quasi-contracts are put under chapter V of the Indian Contract Act as " OF CERTAIN RELATIONS RESEMBLING THOSE CREATED BY CONTRACTS". The framers avoided the direct term "quasi-contract" in order to avoid the theoretical confusion regarding the same.

Sections 68 to 72 provide for five kinds of quasi-contractual obligations:
1. Supply of necessities [s.68]
2. Payment by interested persons [s.69]
3. Liability to pay for non-gratuitous acts [s.70]
4. Finder of goods [s.71]
5. Mistake of coercion [s.72]

Supply of necessities [S.68]
When necessities are supplied to a person who is incompetent of contract or to someone who is legally bound to support, the supplier is entitled to recover the price from the property of the incompetent person. "incompetency to contract", here, would mean parties that are not competent to contract as per sec. 10 of the Act, i.e., in following circumstances:
Minors
Persons of unsound mind
Persons disqualified by law to which they are subject

Payments by interested persons [S.69]
A person who is interested in the payment of money which another is bound by law to pay and who therefore pays it is entitled to be reimbursed by the other.

This section s subject to certain conditions:
The plaintiff must be interested in making the payment. The interest which the plaintiff seeks to protect must be legally recognizable;
It is necessary that the plaintiff himself should not be bound to pay. He should be interested in making the payment in order to protect his own interest;
The defendant should have been "bound by law" to pay the money;
The plaintiff should have made the payment to another person and not to himself.

Liability for non-gratuitous act [S.70]
S.70 creates liability to pay for the benefit of an act which the doer did not intend to do gratuitously. Where a person does something for another person not intending to do so gratuitously and such person is entitled to enjoy benefits from it. And then such a person who has used the thing has to compensate the other or restore or deliver the thing.

For example, A, a tradesman, leaves goods at B's house by mistake. B, treats the goods as his own. He is bound to pay A for them. Conditions of liability under this section are as follows:
One of the purposes of the section is to assure payment to a person who has done something for another voluntarily and yet with the thought of being paid.
The person for whom the act is being done is not bound to pay unless he had the choice to reject the services.
It is necessary that the services should have been rendered without any request.
Services should have been rendered lawfully.
The person rendering services should not have intended to act gratuitously.

Finder of goods [S.71]
Section 71 lays down the responsibility of a finder of goods. The duties and liability of a finder is treated at par with the bailee. The finder's position, therefore, has been considered along with bailment.

Mistake or coercion [S. 72]
Section 72 states that payments or delivery made under mistake or coercion must be made good or be returned. In Sri Shiba Prasad Singh v. Maharaja Srish Chandra Nandi, it was made clear that money paid under mistake is recoverable whether the mistake is of fact or of law. If a mistake either of law or of fact is established, the assessee is entiled to recover the money and the party receiving it is bound to return it irrespective of any other consideration. The scope of the word "mistake" has been clarified by the Supreme Court in Tilokchand Motichand v.Commissioner of Sales Tax.

Recovery proceedings generally are instituted by way of writ petition. There is no period of limitation in writs. The only requirement is that there should not be unreasonable delay amounting to laches. In Chrisine Hoaden India Ltd. v. N.D. Godag, it was held that the period of limitation would not begin to run until the applicant has discovered the mistake or could have discovered it with reasonable diligence. The claim was laid within one month of the mistake of law becoming known. It was held that the claim could not b e defeated on the ground of limitation. The term "coercion" is used in this section in its general sense and not as defined in Sec.15.

Nature of quasi-contractual obligations
The English Law identified quasi-contractual obligations first, the framers of the Indian Contract Act modified it and placed it in the Act as- "certain relations resembling those created by contracts". Therefore the elements that are present in the English Quasi-contract are also found in that of the Indian Contract Act.

1] Payments to the defendant's use.
Two principles govern this liability they are:
· payment should have been made under pressure and not voluntarily;
· The defendant should have been bound to pay and has been relieved of his liability by the payment

made by the plaintiff.
The kind of pressure that the law recognizes for the purposes of this remedy is clearly understood by the case of Exall v. Partridge, where, the plaintiff had left his carriage upon the premises which the defendant was leaving as a tenant. The landlord lawfully seized all the goods on the premises including the carriage for non-payment of rent and would have sold them in execution of his claim. The plaintiff paid the outstanding rent to get back his carriage and then sued the defendant for the amount. He was held entitled to it.

2] Voluntary payments
Payments made under the mistake of fact can be recovered provided that the party paying would have been liable to pay if the mistake of fact were true. In this respect one must look at the case of Kelly v. Solary, where the money was paid under a life insurance policy which to the knowledge of the company had lapsed. But, the fact of lapse having been forgotten at the moment, the company was held entitled to recover back the money. One of the essential conditions of this action is that the mistake must be of fact and must make the person liable to pay the money.

3] Quantum Meriut
There are situations wherein a party does the performance of a contract and further performance is made useless by the other party. In such cases the former can recover reasonable compensation from latter. An authority over the principle of "quantum meruit" is the case of Plinche v. Colburn,
FACT: the plaintiff was the author of several dramatic entertainments. He was engaged by the defendants, who were the publishers of a work called "The Juvenile Library" that used to illustrate the history of armour and costumes from the earlier times. For this he was to be paid 100 guineas. The plaintiff made several drawings and completed a considerable part of the manuscript when the defendants discontinued his services. The plaintiff claimed an amount of 50 guineas for his work. Due to the principle of quantum meruit the plaintiff was held to be entitled to the claim.
Conclusion
The principle of quasi-contract is often ignored but still it holds a very important place, since the principle is grounded on the principles of justice and equity. Despite the fact that quasi contract are moulded in the Indian Contract Act under a new name. However, the basic nature and essence of the principle remains same without any drastic change. Thus, quasi-contracts form an integral part of the contracts act and it definitely comes to an aid of the victim when a person is enriched unjustly over the former.

LEGAL ENGLISH & COMMUNICATION SKILLS (105)

Unit 1: Comprehension and Composition

- **Reading Comprehension of General and Legal Texts.**

Meaning of the term "reading comprehension" and its importance in law

Law and the practice of law involve the comprehension of general and legal texts that are dense, vast, extensive and heavy in terms of vocabulary and varied details. These include cases, contracts, evidences and decisions. It requires proper reading, understanding, analysis and application of the

text. The study of law requires a penetration into the content of the text and decoding of the unfamiliar and challenging aspects of the content.

Reading comprehension refers to one's ability to read and understand a text. "Reading", here has many connotations, it's about reading between the lines, making comparisons and connections between various meanings of the text. Thus, one's level of understanding depends on how good the vocabulary of the person is. A person with small vocabulary will have shallow understanding of the text. To improve comprehension skills, one needs to improve his/her vocabulary and posses language skills like phonology, semantics, and morphology. The comprehension is recommended for the study in law because a student learns how to understand and grasp legal writing quickly and effectively.

There are various strategies that improve the comprehension of complex texts.

1. Reading and re reading of the text i.e. trying to read between the lines. A close interaction of the reader with the text is of utmost importance.
2. Summarizing and drawing inferences out of the text. Finding out the main idea or purpose that is stated and drawing inferences as to bring out its inherent meaning and purpose.
3. Asking questions to one self and inquiring about the real purpose and import of subject of the text. It's important to have an opinion of your own while analyzing and comprehending the text.
4. Synthesizing the text after determining its purpose is very important. It involves making comparisons and analyzing with other texts.
5. Making connections and parallels. To have a deeper and better understanding of text, one needs to read beyond the lines and try identifying with the text on a personal level. It's important to connect one's personal feelings, experiences and knowledge of previous texts with the context of the text in order to comprehend better.

- **Paragraph and Paragraph writing**

  Writing a paragraph refers to a group of sentences that illustrate or develop one particular idea or topic. There is no particular number of sentences to be used in a paragraph; there could 8, 10 or 15 sentences. Content of the paragraph determines its length.

1. **Clarity** of the subject matter that needs to be developed in a paragraph. Confusion with the theme to be developed can mar the purpose of paragraph writing.
2. **Unity** of the idea that needs to be presented in the paragraph. The whole paragraph should be unified around one main idea, mentioned distinctly in the very first sentence of the paragraph. The following sentences should follow a proper order and develop the main idea or theme.
3. **Coherence** of the matter presented in a paragraph. Coherence indicates that the text should be meaningful and should be in context with the larger text as a whole. Transition words such as 'just' and 'then' should be used to make the paragraph coherent.
4. **Completeness.** Completeness in a paragraph is characterized by completion of the idea developed and elaborated by the supporting sentences in a paragraph. The last sentence of the paragraph must summarize the main idea and then the next paragraph should develop a new idea or a theme.

- **Précis Writing**

  The word 'précis' is derived from French which means a 'summary'. It's an abridgment, summary or a synopsis. Précis writing refers to summarizing of a passage or a paragraph by extracting its main points and conveying them as accurately and as briefly as possible. It should be an effective piece of writing. It should be clear, coherent, complete, short and concise.

  Important rules to be followed while writing a précis:

1. Read the given passage twice, thrice to have a broad understanding of the main idea and main points of the text.
2. Underline the central idea or argument of the text and prepare a rough draft keeping important points in mind.
3. Précis should be approximately one third of the original passage.
4. Omit unnecessary example, words, phrases given in the passage and focus on the central idea.
5. Write the main points in your own words but sticking to the original statements in the passage.
6. Précis should be written in third person account and in reported speech.
7. Avoid grammar and spelling mistakes as they are unacceptable, also avoid exceeding its word limit.
8. Give your précis a suitable title and revise your final draft to make sure that it's accurate and effective.

- **Abstract writing.**

  Abstract is a brief, compact statement of long, detailed legal documents or papers. It contains all the main points of a detailed account in an abridged or abbreviated form. For example, an abstract of a land title will necessarily have the list of the names of all the previous owners of the land as well as the present owner with the conveyances, mortgages, will and all other documents and agreements.

  Abstract for an official record will begin by stating the proceedings of the case in court in order to review the entire history of the case, the actions taken place and whether the issue presented has been properly reviewed in lower courts or not.

- **Note- taking**

a. While taking notes in a law school, one has to make sure that the notes are personalized as it becomes easy to abide by them.

b. It's important to go through your previous notes to facilitate making new notes. Examining previous notes help familiarizing with the context of the subject to be discussed in the next class.

c. It's important to give a structure to your notes and organize them properly. Haphazard writing of notes reflect one's confused state of mind.

d. Prefer to make hand written notes than typed.

e. Be selective in choosing words and cut out all unnecessary information.

f. Try to use bullets or pointers while making notes.

g. Create your own abbreviations for better understanding to the subject and saving time.

h. Recurring themes and issues raised in the topic should be kept in mind as they are important.

i. Lastly, review and revise the notes after you finish making them as they are still fresh in your memory and will aid the learning process.

- **Drafting of reports and projects.**

  Law report is a record of judicial opinions, facts, legal discussions and judgments of different cases. An outline of a document is called drafting and the person who does the drafting is called a draftsman. Drafting of law reports is similar to brief writing in law. Drafting should be done in a concise manner with the presentation of complete details of the case decided by the court. Mostly, the legal reporters of newspapers and magazines are engaged in drafting of law reports and it is expected that they should be familiar with legal language and the terminology associated with law.

  Drafting of reports and projects in legal profession includes a narrative of the facts of the document which is to be presented in a summarized form. It should bring out the issues involved or framed, contentions raised and the case laws cited.

a. It should be based purely on facts as there is no room for any kind of imagination or assumptions.
b. It should be written in an absolute clear, compact and effective language.
c. Proper sequence of the case/incident should be maintained.
d. The draft must be a third person narrative written in past tense.

- **Petition Writing**

  Petition is a formally written request appealing to an authority like a government body or any government official or a public entity to provide some relief in a particular matter or grant them favors in a particular case. It can be signed by a single person or many people as well. In the case of law, petition is a formal request or a complaint to have a legal matter heard and processed upon.
  Petition for a public cause needs to be written in the best and most effective way possible as it has to garner support from people. Petition should be a simple, clear document stating the cause clearly. There should be a header that denoting the title, the purpose of your petition. Main part of the petition consists of rows and lists of names and their signatures of those who have come forward and showed their support. The end should express the urgent desire to improve the entire situation and do the needful.

  Legal Petition or a petition in law is an official document given to the court. The petitioner who writes a petition to the court has one important purpose i.e. to inform the defendant with the notice for the impending law suit. The petition should provide the basic outline or an overview of the case. What must be included in a petition varies according to the state and the law but it is basically a complaint, a brief summary of the wrongs done by the defendant and the demands of a plaintiff.

  The term “petition” is often confused with “complaint”, though both are similar but there is one significant difference. Complaint in a lawsuit asks for the damages done or the property destroyed whereas petitions include the demand for writs, Mandamus and orders to produce show cause notice.

Unit 2: Language, Communication and Law

- **Meaning of communication and communication process**

What is communication and why is it important to study communication skills in a profession like law.

Communication is derived from the Latin word "communicare" which means tom share. Communication is the sharing or conveying of messages or information from one person to another person or a group of people. A person can communicate with himself as well by conveying his thoughts and ideas with himself. The goal of communication is successful conveying of message by the sender and the understanding of the meaning of the message by the receiver.
Taking example from the earlier times, tribes in Ajanta Alora caves used to communicate with each other through drawings, carvings and pictorial representations on the rocks. Their engravings on the rocks have been successful in conveying their culture, lifestyle to the coming generations. Here, their drawings and inscriptions become the medium of communication. Thus, a communication process requires a medium of communication. The basic communication process requires a sender, a receiver and a medium to convey particular information. The sender has a thought, an idea or a concept that he encodes into words and uses a medium like letters, T.V, newspaper to convey his thoughts to the receiver. Receiver does the encoding part of the communication process i.e. interpreting the message and perceiving its meaning. Feedback is another important aspect of the communication process as it checks whether the receiver has received and understood the message properly or not. For example, nowadays printed and online forms for hotels, shops are there which demands the feedback of the customer. The feedback of the customer is important to determine the quality of service provided by the shop or hotel to them. Thus, communication is a two way process as the receiver receives the message sent by the sender and then sends a response back to the sender after receiving and understanding the message successfully.

Possession of good communication is one of the most important qualities of a good lawyer. Good communication skills are desired both in our personal lives as well as professional careers. Being a good listener only aids the whole communication process. Being a person of law or a lawyer, one has to communicate with his/her clients, staff, other lawyers, judges and put forth your argument clearly, effectively and convincingly. One has to be well versed with his subject and value the time given as it is important to put your point of argument persuasively within as given time frame. A successful lawyer has to have great persuasive power to build the trust of his clients and to sway thoughts and feelings of the audiences as well. Great persuasive verbal skills will help put forth the point of argument before the judge and jury believably. The argument being presented should be absolutely detached and nothing, not even ones personal thought should hamper your communication and at as a barrier to it.

- **Barriers to effective communication**

There are barriers to effective communication which can retard or distort the message being conveyed and there could be complete failure in conveying the true intention of the message. These include filtering, selective perception, information overload, emotions, language, silence, communication apprehension and gender differences.

This also includes a lack of expressing "knowledge-appropriate" communication, which occurs when a person uses ambiguous or complex legal words, medical jargon, or descriptions of a situation or environment that is not understood by the recipient.

Physical barriers: Physical barriers are present in the environment and the surroundings around us. For example if staff is located in different buildings or on different sites, poor or outdated equipment, particularly the failure of management to introduce new technology, may also cause problems. Staff shortages are another factor which frequently causes communication difficulties for an organization.

System design: System design faults refer to problems with the structures or systems in place in an organization. Examples might include an organizational structure which is unclear and disorganized and one doesn't know with whom to know whom to communicate. Other examples could be inefficient or inappropriate information systems, a lack of supervision or training, and a lack of clarity in roles and responsibilities which can lead to staff being uncertain about what is expected of them.

Attitudinal barriers: Attitudinal barriers come about as a result of problems with staff in an organization. For example, poor management, lack of consultation with employees, personality conflicts which can result in people delaying or refusing to communicate, the personal attitudes of individual employees which may be due to lack of motivation or dissatisfaction at work, or by insufficient training to enable them to carry out particular tasks, or just resistance to change due to entrenched attitudes and ideas.

Ambiguity of words/phrases: Words sounding the same but having different meaning can convey a different meaning altogether. Hence the communicator must ensure that the receiver receives the same meaning. It is better to avoid such ambiguous words and use alternative words whenever possible.

Individual linguistic ability: The use of jargon, difficult or inappropriate words in communication can prevent the recipients from understanding the message. Poorly explained or misunderstood messages can also result in confusion. However, research in communication has shown that confusion can lend legitimacy to research when persuasion fails.

Physiological barriers: These may result from individuals' personal discomfort, caused—for example by ill health, poor eyesight or hearing difficulties.

- **Types of Communication**

People communicate with each other in a number of ways that depend upon the message and its context in which it is being sent. Choice of communication channel and your style of communicating also impacts the communication process.

Types of communication based on the communication channels used are:

1. Verbal Communication
2. Nonverbal Communication

1. Verbal Communication

Verbal communication refers to the form of communication in which message is transmitted verbally; communication is done by word of mouth and a piece of writing. Objective of every communication is to have people understand what we are trying to convey. In verbal communication remember the acronym **KISS** (keep it short and simple).

When we talk to others, we assume that others understand what we are saying because we know what

we are saying. But this is not the case. Usually people bring their own attitude, perception, emotions and thoughts about the topic and hence creates barrier in delivering the right meaning.

So in order to deliver the right message, you must put yourself on the other side of the table and think from your receiver's point of view. Would he understand the message? How it would sound on the other side of the table?

Verbal Communication is further divided into:

- Oral Communication
- Written Communication

Oral Communication

In oral communication, Spoken words are used. It includes face-to-face conversations, speech, telephonic conversation, video, radio, television, voice over internet. In oral communication, communication is influence by pitch, volume, speed and clarity of speaking.

Advantages of Oral communication are:
It brings quick feedback.
In a face-to-face conversation, by reading facial expression and body language one can guess whether he/she should trust what's being said or not.

Disadvantage of oral communication
in face-to-face discussion, user is unable to deeply think about what he is delivering, so this can be counted as a

Written Communication

In written communication, written signs or symbols are used to communicate. A written message may be printed or hand written. In written communication message can be transmitted via email, letter, report, memo etc. Message, in written communication, is influenced by the vocabulary & grammar used, writing style, precision and clarity of the language used.

Written Communication is most common form of communication being used in business. So, it is considered core among business skills.

Memos, reports, bulletins, job descriptions, employee manuals, and electronic mail are the types of written communication used for internal communication. For communicating with external environment in writing, electronic mail, Internet Web sites, letters, proposals, telegrams, faxes, postcards, contracts, advertisements, brochures, and news releases are used.

Advantages of written communication includes:
Messages can be edited and revised many time before it is actually sent.
Written communication provides record for every message sent and can be saved for later study.
A written message enables receiver to fully understand it and send appropriate feedback.

Disadvantages of written communication includes:
Unlike oral communication, Written communication doesn't bring instant feedback.
It takes more time in composing a written message as compared to word-of-mouth. And number of people struggles for writing ability.

2. Nonverbal Communication

Nonverbal communication is the sending or receiving of wordless messages. We can say that communication other than oral and written, such as gesture, body language, posture, tone of voice or facial expressions, is called nonverbal communication. Nonverbal communication is all about the body language of speaker.

Nonverbal communication helps the receiver in interpreting the message received. Sometimes nonverbal response contradicts the verbal response which results in distortion of the message being conveyed.

Nonverbal communication has the following three elements:

Appearance

Speaker: clothing, hairstyle, neatness, use of cosmetics

Surrounding: room size, lighting, decorations, furnishings
Body Language
facial expressions, gestures, postures
Sounds
Voice Tone, Volume, intonation

- **NON-VERBAL COMMUNICATION IN THE COURTROOM**

Nonverbal Communication Law

Nonverbal communication—such as facial expressions, gestures, posture, and tone of voice—is an important component of most human communications, including, of course, business communications. Most people use nonverbal signals when communicating. Even the blind use nonverbal communications to aid in both sending and receiving messages since nonverbal techniques includes such things as tone of voice and physical proximity. Understanding nonverbal communication techniques can help a small business owner to get a message across or successfully interpret a message received from another person. On the other hand, nonverbal communication can also send signals that interfere with the effective presentation or reception of messages. "Sometimes nonverbal messages contradict the verbal; often they express true feelings more accurately than the spoken or written language,".

In fact, studies have shown that between 60 and 90 percent of a message's effect may come from nonverbal clues. Therefore, it is important for small business owners and managers to be aware of the nonverbal messages they send and to develop the skill of reading the nonverbal messages contained in the behaviour of others. There are three main elements of nonverbal communication: appearance, body language, and sounds.

It is generally agreed by experts in the field that over 60% of the impact of meaning of the communicated message resides in the non-verbal behaviour accompanying the oral message. The ability to read and decode this leakage is of invaluable aid to the trial lawyer. It can be used in detecting deception during the interview or interrogation; it can be used in orchestrating your conduct and your witness's conduct during the course of the trial; it can be used to enhance your ability to communicate to the jury or to the court.

As attorneys, we must be aware of the fact that we are communicating before we open our mouths to speak. We constantly create impressions which we may or may not want to create and which we may or may not be aware of. Physical appearance, dress, clothing colour, facial expressions, gestures, tone or voice and personal distance are but some of the areas of non-verbal behaviour which may modify the verbal message by reinforcing or contradicting it. When non-verbal and verbal messages conflict, our instinct invariably relies on the non-verbal; we trust our actions more than we trust our words. While the verbal language is conscious, rational and describes emotion, the non-verbal language is unconscious, subjective and expresses emotion.

1. ***Facial Expressions***

Facial expressions are responsible for a huge proportion of nonverbal communication. Consider how much information can be conveyed with a smile or a frown. The look on a person's face is often the first thing we see, even before we hear what they have to say.

While nonverbal communication and behaviour can vary dramatically between cultures, the facial expressions for happiness, sadness, anger, and fear are similar throughout the world.

2. ***Gestures***

Deliberate movements and signals are an important way to communicate meaning without words. Common gestures include waving, pointing, and using fingers to indicate numeric amounts. Other gestures are arbitrary and related to culture.

In courtroom settings, lawyers have been known to utilize different nonverbal signals to attempt to sway juror opinions.

An attorney might glance at his watch to suggest that the opposing lawyer's argument is tedious or might even roll his eyes at the testimony offered by a witness in an attempt to undermine his or her credibility. These nonverbal signals are seen as being so powerful and influential that some judges even place limits on what type of nonverbal behaviours are allowed in the courtroom.

3. Paralinguistic

Paralinguistic refers to vocal communication that is separate from actual language. This includes factors such as tone of voice, loudness, inflection and pitch. Consider the powerful effect that tone of voice can have on the meaning of a sentence. When said in a strong tone of voice, listeners might interpret approval and enthusiasm. The same words said in a hesitant tone of voice might convey disapproval and a lack of interest.

Consider all the different ways simply changing your tone of voice might change the meaning of a sentence. A friend might ask you how you are doing, and you might respond with the standard "I'm fine," but how you actually say those words might reveal a tremendous amount of how you are really feeling. A cold tone of voice might suggest that you are actually not fine, but you don't wish to discuss it.

A bright, happy tone of voice will reveal that you are actually doing quite well. A sombre, downcast tone would indicate that you are the opposite of fine and that perhaps your friend should inquire further.

4. ***Body Language and Posture***

Posture and movement can also convey a great deal on information. Research on body language has grown significantly since the 1970's, but popular media have focused on the over-interpretation of defensive postures, arm-crossing, and leg-crossing. While these nonverbal behaviours can indicate feelings and attitudes, research suggests that body language is far more subtle and less definitive that previously believed.

5. Proxemics

People often refer to their need for "personal space," which is also an important type of nonverbal communication. The amount of distance we need and the amount of space we perceive as belonging to us is influenced by a number of factors including social norms, cultural expectations, situational factors, personality characteristics, and level of familiarity. For example, the amount of personal space needed when having a casual conversation with another person usually varies between 18 inches to four feet. On the other hand, the personal distance needed when speaking to a crowd of people is around 10 to 12 feet.

6. Eye Gaze

The eyes play an important role in nonverbal communication and such things as looking, staring and blinking are important nonverbal behaviours. When people encounter people or things that they like, the rate of blinking increases and pupils dilate. Looking at another person can indicate a range of emotions including hostility, interest, and attraction.

People also utilize eye gaze a means to determine if someone is being honest. Normal, steady eye contact is often taken as a sign that a person is telling the truth and is trustworthy. Shifty eyes and an inability to maintain eye contact, on the other hand, is frequently seen as an indicator that someone is lying or being deceptive.

7. ***Hepatices***

Communicating through touch is another important nonverbal behaviour. There has been a substantial amount of research on the importance of touch in infancy and early childhood. Study demonstrated how deprived touch and contact impedes development. Baby monkeys raised by wire mothers experienced permanent deficits in behaviour and social interaction. Touch can be used to communicate affection, familiarity, sympathy, and other emotions.

8. Appearance

Our choice of colour, clothing, hairstyles, and other factors affecting appearance are also considered a means of nonverbal communication. Research on colour psychology has demonstrated that different colours can evoke different moods. Appearance can also alter physiological reactions, judgments, and interpretations. Just think of all the subtle judgments you quickly make about someone based on his or her appearance. These first impressions are important, which is why experts suggest that job seekers dress appropriately for interviews with potential employers.

Researchers have found that appearance can play a role in how people are perceived and even how much they earn. One 1996 study found that attorneys who were rated as more attractive than their peers earned nearly 15 percent more than those ranked as less attractive. Culture is an important influence on how appearances are judged. While thinness tends to be valued in Western cultures, some African cultures relate full-figured bodies to better health, wealth, and social status.

9. Artefacts

Objects and images are also tools that can be used to communicate nonverbally. On an online forum, for example, you might select an avatar to represent your identity online and to communicate information about who you are and the things you like. People often spend a great deal of time developing a particular image and surrounding themselves with objects designed to convey information about the things that are important to them. Uniforms, for example, can be used to transmit a tremendous amount of information about a person. A soldier will don fatigues, a police offers will wear a uniform, and a doctor will wear a white lab coat. At a mere glance, these outfits tell people what a person does for a living.

Nonverbal communication plays an important role in how we convey meaning and information to others, as well as how we interpret the actions of those around us. The important thing to remember when looking at such nonverbal behaviours is to consider the actions in groups. What a person actually says along with his or her expressions, appearance, and tone of voice might tell you a great deal about what that person is really trying to say.

There has been limited research done on the role of non-verbal communication in law. A study of legal literature suggests that what little research has been done on non-verbal communication in law has focused mainly on the courtroom environment. Considering that the legal profession places a great deal of emphasis on communication, it is difficult to fathom that such little research has been done on the impact of non-verbal communication in the legal sector.

Lawyers live in a world of communication. The spoken and unspoken discourse forms the very foundation of the legal discipline. On a professional level, they communicate in court, they communicate at the office, and they communicate to court officials, clients and colleagues on a daily basis.

It is a profession that requires them to be competent communicators and predictors of outcomes. Within the domain of the legal arena, non-verbal signs serve a multitude of functions.

The most significant of these are creating good first impressions of us and stereotyping others, influencing others, communicating our attitudes and thoughts, promoting interaction, facilitating speech production and being actively involved in detecting and engaging in deception. The ability to detect and analyse non-verbal signs within the legal domain is the mark of a skilled lawyer.

In a courtroom environment, nonverbal signals may at times influence the judgment of the presiding officer or even the testimony of the witnesses. It has been widely accepted that in countries where the jury system is applied, knowledge of non-verbal techniques is fundamental to influencing the jury and controlling trial proceedings

"In the courtroom, nonverbal communication subtly affects the entire proceedings of a trial. It is constantly present and being asserted, yet the attorney is often unaware of its existence."

Likewise, negative non-verbal cues such as hostile gestures and lack of eye contact can be devastating to the attorney's prospect of success in the case. The attorney's ability to elicit favourable information out of a witness depends largely on non-verbal cues such as eye contact, facial expressions, body positioning, tone of voice and intonation.

It therefore becomes important to look at non-verbal communication within the context of the attorney, client consultation at the office which is the primary setting where all lawyers, litigators and non-litigators alike conduct their "groundwork". The first consultation process between the attorney and client is the most important in the legal process, as the client's statement forms the basis of her case. The consultation process is pivotal to obtaining pertinent information from client. Despite there being some research done on the impact of non-verbal communication in the courtroom, little work has been done on the impact of non-verbal communication on the attorney, client interview process.

- **Types of Communication Based on Purpose and Style i.e. formal and informal communication**

Based on style and purpose, there are two main categories of communication and they both bears their own characteristics. Communication types based on style and purpose are:

1. Formal Communication
2. Informal Communication

1. Formal Communication

In formal communication, certain rules, conventions and principles are followed while communicating message. Formal communication occurs in formal and official style. Usually professional settings, corporate meetings, conferences undergo in formal pattern. In formal communication, use of slang and foul language is avoided and correct pronunciation is required. Authority lines are needed to be followed in formal communication.

The communication in which the flow of information is already defined is termed as Formal Communication. The communication follows a hierarchical chain of command which is established by the organisation itself. In general, this type of communication is used exclusively in the workplace, and the employees are bound to follow it while performing their duties.

2. Informal Communication

Informal communication is done using channels that are in contrast with formal communication channels. It's just a casual talk. It is established for societal affiliations of members in an organization and face-to-face discussions. It happens among friends and family. In informal communication use of slang words, foul language is not restricted. Usually informal communication is done orally and using gestures. Informal communication, unlike formal communication, doesn't follow authority lines. In an organization, it helps in finding out staff grievances as people express more when talking informally. Informal communication helps in building relationships. The communication which does not follow any pre-defined channel for the transmission of information is known as informal communication. This type of communication moves freely in all directions, and thus, it is very quick and rapid. In any organization, this type of communication is very natural as people interact with each other about their professional life, personal life, and other matter.

Difference between Formal and Informal Communication

It is said very correctly "The very attempt of, not to speak, speaks a lot."Communication plays a crucial role in our life, as people interchange their ideas, information, feelings, and opinions by

communicating. Formal communication is one that passes through predefined channels of communication throughout the organization. On the contrary, Informal communication refers to the form of communication which flows in every direction, i.e. it moves freely in the organization. Communication could be verbal – spoken or written, or non-verbal i.e. using sign language, body movements, facial expressions, gestures, eye contact or even with the tone of voice.
In an organization, there are two channels of communication – formal communication and informal communication. People often confuse between these two channels, so here we have presented an article which explains the difference between formal and informal communication network.

- **Culture and language sensitivity**

Speech language should be culturally sensitive, unbiased, simple, concise, concrete, and vivid. Cultural sensitivity is a conscious attempt to be considerate of cultural beliefs, norms, or traditions that are different from one's own.

Biased language is a language that relies on unfounded assumptions, negative descriptions, or stereotypes of a given group's age, class, gender, or geographic, ethnic, racial, or religious characteristics; also includes language that is sexist, or ageist. Use of sexist Pronouns refers to the exclusive use of he, she, him, her, when talking about both men and women.

Language can, intentionally or not, cause offense or perpetuate discriminatory values and practices by emphasizing the differences between people or implying that one group is superior to another. Beware of the possible consequences of the words they choose. Before looking at the words themselves, it is important to note that offensive or insensitive speech is not limited to a specific group of words. One can be hurtful and insulting by using any type of vocabulary, if that is one's intent.

In most cases it is easy to avoid blatantly offensive slurs and comments, but more subtle bias are an inherent part of our language or a habit of a lifetime and are much harder to change. Insensitive use of language can send discriminatory or negative messages to other people: can affect learning, self-esteem, and career choices. In a business environment, interactions with co-workers and relationship with clients can be affected. Thus, there should be some general guidelines for using written and spoken language that are diversity- and culture sensitive

Gender

Scientific communications (articles, presentations, etc.) should be free of implied or irrelevant evaluation of the sexes

Sexist communication is not logical or accurate. Some adjectives connote bias: e.g., ambitious men and aggressive women. Some signify that gender in some way makes a difference: e.g., male secretary, female manager

Race, Ethnicity and National Origin

Styles and preferences for words referring to ethnic and racial groups change over time. Sometimes even members of a group disagree about the preferred name at a specific time. Ask/learn the most acceptable current terms and use them

In graphics, photos and examples, show people from all racial and ethnic backgrounds.

Disabilities

A person is not a condition. Place the person before the disability: Use "person with a disability" rather than "disabled/handicapped person."

Age

Older people should be given equal importance.
Younger people at times can be more matured than older people.
Language usage builds or destroys trust and by being appropriate, accurate, and showing conviction for your topic, you demonstrate your trustworthiness towards others.

Avoid gender specific phrasing

Use "Employees should read their packets carefully," and not "Each employee should read his packet carefully."Or use pronoun pairs: "Each employee should read his or her packet carefully."Practice of using *he* and *man* as generic terms poses a common problem *He* and *man* used generically can mislead the audience

Research shows that average reader's tendency is to imagine a male when reading *he* or *man,* even if the rest of the passage is gender neutral. Therefore, you cannot be sure that your reader will *see* the woman on the job if you refer to every technician as *he,* or that your reader will *see* the woman in the *history of man.*

Race, Ethnicity, and National Origin

Some words and phrases that refer to racial and ethnic groups are clearly offensive. Avoiding Language that excludes or Unnecessarily Emphasizes differences related to age, sex, religion, race, and the like should be included only if they are relevant.

- **Legal Maxims.**

  Legal maxims are short, concise, technical sayings or sentences often used while arguing the case before the court of law. These are Latin words and idioms that are widely accepted on their own merits and used in the language of judgment. These maxims are the nectar of all the judicial administration which has been taking place all these years. According to Salmond, “Maxims are the proverbs of the law”. Maxims are similar to proverbs having same merits and demerits of proverbs but are brief, pithy and concise. These maxims provide a meaning to the leading, complicated doctrines of law in a brief, crisp and intelligible way.

Here are some of the Latin words used in legal language:

- **Ab Initio**- Ab Initio is a Latin word meaning ‘from the beginning’. In legal language, it is often used with the word ‘void’. For example, void ab initio means that the document is rendered ineffective from the very beginning. There is a difference between ‘void’ and ‘voidable’. The document that is voided in legally invalid whereas a document that is voidable has not yet been voided but is capable of being voided or cancelled.

- **Ad idem**- Ad idem is a Latin word which means 'same' or having the 'same effect'. For example, there was no unanimous opinion ad idem. Hence, no legal contract could be executed. Ad idem refers to the meeting of two minds or opinions on a particular contract.
- **Alibi**- Alibi means being 'somewhere else'. If a person has an alibi for the day and time when the crime was committed, then it is impossible for him to take part in the crime. The court has explained that the plea of alibi is not a specific or general exception in the Indian penal code, 1860. It is related to the rule of evidence which is recognized under the Section 11 of Evidence Act 1872. The court asks to provide an alibi for the day the crime is said to have taken place and if the claimant fails to provide the piece of evidence that he was elsewhere, the court then considers the plea for alibi invalid or cancelled.
- **Corpus delicti**- it refers to the body of crime. It can also be the evidence that proves that crime was committed, for example a dead body or a damaged property. It refers to the physical object upon which the crime was committed like the murdered body of the victim.
- **Ambiguitas latens**- doubts and ambiguities that do not appear prima facie i.e. on the very first appearance of a document. They are hidden doubts in the document which are not caused by the language of the document but by external factors. They can be changed or removed by correcting the extrinsic evidence.
- **Ambiguitas patens**- it is a Latin term meaning patent ambiguity. These are ambiguities and doubts that appear on the very face of the document. These doubts cannot be corrected by removing or correcting external evidence as the language used in the legal document is ambiguous, vague and defective and vague.
- **Amnicus Curaie**- the literal meaning of this word is 'friend of the court'. Amnicus curaie is a person who helps the court by bringing courts attention to a particular point or evidence that the court had overlooked previously. He should be an impartial adviser to a court of law. For example, a senior official or counsel is specially invited to the court to render his assistance in a particular case as an amnicus curaie.
- **Audi alteram partem**- this is a Latin phrase meaning, 'listen to the other side'. Every person or party deserves an equal hearing as every case has another side of the story as and it's impartial to ignore the other side of the coin. This phrase is based on the principle of natural justice and equality. It is also called the principle of fair play.
- **Bona fide**- literally means "in good faith". It means having made, done and presented in good faith without any kind of deception or fraud. It refers to being honest and genuine; the word is used both as a noun and a verb adjective.
- **Caveat emptor**- it is a Latin term that means "let the buyer or purchaser beware'. It aims to caution and make the buyer beware of the product he is buying under common law. It is the responsibility of the buyer alone for checking the quality of the goods before making a purchase. The seller is not necessarily bound to reveal every defect of the product and this makes the buyer even more responsible while purchasing the product.
- **De facto**- it is a Latin word which means in fact, in reality, in actuality or as a matter of fact. The expression denotes recognition of the state and its sovereignty. It refers to the existence or holding of a specified position especially without lawful authority. For example, the de facto head of state.
- **De jure**- this expression refers to the existence or holding a specified position by legal right. It means by right or by lawful title or as a matter of right.

- **De novo-** the Latin expression "de novo" means afresh, anew, from the beginning. Literal meaning of the term is "of new". For example, the court reviews a summary judgment "de novo".
- **Ex- officio-** the Latin term literally means 'from the office'. The expression denotes by virtue of one's office i.e. his position or status. For example, the Vice President to be ex-officio Chairman of the Council of States.
- **Ex-parte –** this term is with respect to only one side. An example of an ex-parte hearing is when the victim is not represented. It is a legal term used when one of the parties involved are not present or represented.
- **Ex- post facto-** the expression means by a subsequent act. An ex-post facto law has a retrospective effect as it is literally a law made after an act is done or has an effect upon the act after it is done. It is the law that punishes improper use of given legal rights.
- **Facts Probantia-** it refers to a fact that is absolutely evident and related to the issue. Facts given in evidence to prove other facts and this can be proved by testimony, documents and other kinds of evidences.
- **Felo de se-** the term is Latin for "a felon of himself". It is a legal term referred to the one who commits suicide. Under the section 309 of the Indian penal code, 1860, a person attempting to commit suicide is considered a legal offense.
- **Fiat justicia-** it is a Latin phrase which means "let the justice be done". The term "fiat" means "judge" and the term "justicia" means an institution that has been instituted to protect the public from any unlawful or tyrannical act.
- **In choate-** the expression refers to the beginning or an early state, not yet complete. An offense such as inciting or conspiring against someone but not yet committed a crime, it is in anticipation of a criminal act.
- **In Limine-** it means on the threshold, at a preliminary state. It refers to the motion before the real trial of the case begins.
- **Injuria sine damno-** this maxim means wrong or injury without damages. It means injury to a legal right without any damage or monetary loss. Even though the plaintiff suffers no loss, the defendant is liable as there has been violation of legal right.
- **In rem-** this expression indicates that an action is not taken against any person but against a thing. For example, legal action directed towards property but not any particular person.
- **In personam-** this expression indicates an action taken against a person, proceedings taken against a particular person.
- **Locus standi-** this expression denotes a place to stand and a right to be heard. It denotes sufficient interest or legal capacity to challenge any particular decision.
- **Prima facie-** it is a Latin word which means first appearance or on the face of it. Prima facie case is the one in which the evidence in favor of a particular party is sufficient to call for an answer from the opposition party.
- **Ultra vires-** the term means "beyond the powers". The term refers to excess of legal power and authority. It describes the actions taken by the government bodies or corporations that exceed the limit of power given to them by law. The constitution of the country is the measuring stick that determines one's limit of power.
- **Actus non facit reum, nisi mens sit rea-** The legal maxim means that the act itself does not constitute guilt unless done with a guilty intent. The maxim embodies a cardinal doctrine of English

Criminal law. The presence of "mens rea" is necessary to prove that the mind is guilty and under the Penal Law, there are two elements of crime- "actus rea" and "mens rea". The term "actus rea" means the body is guilty and the term "mens rea" means the mind is guilty.

- **Res Ipsa Loquitur-** this maxim means that the thing speaks for itself and this doctrine is frequently invoke in the Law of Tort. In other words, event itself speaks that the defendant was negligent and therefore, plaintiff is relieved of burden of proof. This maxim is a rule of evidence and not a rule of substantive law.
- **Ubi jus ibi remedium-** this maxim means that where ever there is right, there will be a remedy. The court propounded that no right can exist without a remedy. Under the common law, where there is right, it provides protection. For example, any kind of interference with the private property is seen as an encroachment rather than trespassing. A person who faced damages is entitled to claim damages as well as compensation by the court.
- **Volentie non fit injuria**- this maxim means that to which a person consents cannot be considered an injury. Term referring to the harm suffered with the plaintiff is freely given assent and with his prior knowledge of the risk involved, and hence, a general defense in tort. Knowledge is not assent, but merely evidence of assent. A person does not necessarily assent to a situation because he has knowledge of its potential danger.

- **Counseling and interviewing**

  The aim of Client's Interview and Consultation Skills is to make a lawyer adept in; listening skills, advising skills, communication skills, analytical skills and questioning skills. This is evident in the case of a lawyer who though is quite knowledgeable in the substantive law, but is far less effective and skilful with people. The skills of a successful lawyer lie in the mastery of human interaction and in the subtle awareness of the emotions, concerns and anxieties of others. One of the lawyer's functions is to guide a client into safer and better courses of conduct. The lawyer-client relationship with all its human and conceptual content must be employed, taught and learned.

  It is glaring that the intense training of rationalism in law school lacks a sense of how legal problems must be solved for those who lack enough recourses for doing so. For most lawyers and law students, the strict legal side, the book and research thing is fairly easy, but what is harder is to know how to use the results of that work effectively with people .So, the essence of Client's Interview and Counselling Skills is to master the art of becoming a good lawyer. They should know how to listen, how to persuade, how to meet emotional and psychological needs of clients, opponents, judges, and even everyone they dealt with emotionally.

The Very Basics of Legal Interviewing

1. **Motivate the Client's Participation** (Develop Rapport through Active Listening**):** A legal interview often concerns sensitive topics that an individual would not necessarily tell a stranger. Thus, the first step in the interview is developing rapport and motivating the client to talk freely. The client may be reluctant to reveal information for several reasons—for instance, she may believe the information will hurt the legal case, she may not understand its relevance, or she may find the

information too traumatic to discuss. Countervailing factors will motivate the client to talk, however. The client's desire to resolve the problem favourably may overcome her reluctance to talk. Or she may respond to appeals to help others, recognition of her efforts, or simply the expectations expressed by the lawyer. The lawyer can gently bring into play each of these factors. As a lawyer one should put himself in the position of the client to understand his point and empathize with the client's problems better. (Active listening can also involve non-verbal signals of attention, such as head nodding, eye contact, or phrases of reassurance).

2. **Ask open minded questions**. Open-ended questions encourage the client to talk, and allow her to provide information that the lawyer would not otherwise obtain. Begin interviews with broad, open-ended questions that allow the client to tell her story in her own words, and "get her problem off her chest." Content free questions avoid skewing the data received. Prompt the client by asking questions like, "What happened next?" and then what?"In later stages of an interview open-ended questions often do not elicit enough detail and will not stimulate the client's memory, so you will need to use narrow questions to probe for more information. Leading questions suggest an answer and thus pose the risk for distorting the client's answer and promoting unethical behaviour by the lawyer. Use leading questions only to confirm information provided by the client, or to obtain information that the client may be reluctant to admit.

(3) **Allow the Client to Tell the Story Initially**. The client comes to the interview with crucial information – what brings him to the lawyer, and usually, what result he wants. The lawyer has important information also – knowledge about the law and what facts are relevant given the law. Lawyers tend to use their knowledge to focus on the specifics of the case, and take control before giving the client a chance to tell his whole story. As a result, the client may feel like he never got a chance to tell his story, and the lawyer may fail to understand what the client really wants.

(4) **Structure the Interview:** By using the following structure for an interview, the lawyer can ensure that the client has a chance to tell his story:

(a) Briefly Explain What Will Happen in the Interview.

Tell the client what will happen in the interview, and how long you expect the interview to last. Emphasize that what the client says in the interview will remain confidential. Although awkward, some lawyers talk about fees at this point to avoid misunderstanding. Let the client know that you will discuss the client's legal rights and possible solutions at the end of the interview.

(b) Preliminarily Identify the Problem.

Ask the client for a general description of the underlying transaction and the relief desired. Ex.: "Tell me what your problem is, how it came about, and what you think you'd like to have done about it." When the client has completed his description of the problem, summarize your understanding of it.

(c) Get a Chronological Overview of the Problem.

Ask the client for a detailed step-by-step chronological description of what has happened. Prompt the client with open-ended, non-leading questions like "what happened next?" but do not probe for detail at this stage. Listen carefully and remember, this is the client's chance to tell his story. You will obtain fuller information if you let him focus on his concerns at this stage.

(d) Develop and Verify Theories

Based on the information obtained in the first stages of the interview, the lawyer can mentally generate theories supporting possible legal claims. The lawyer should consider all plausible possible legal claims. The lawyer should consider all plausible theories, and then proceed to obtain relevant

information that would support or negate a claim using each theory. This is the time to pursue questions that occurred to you while the client was going through the overview, and to obtain greater detail on relevant facts.

(e) Conclude the Interview.

Give the client a brief summary of the law governing his legal rights, and the questions that you must research. Tell the client what you will do next and when you will get back to the client.

The benchmark of a good interview is simple: the client will feel that he has consulted an attorney who is a caring human being. These suggestions on building rapport, questioning technique, and structuring the interview can provide a framework for approaching the interview and help you communicate your concern. However, remember that the client will recognize the difference between caring and technique.

Unit 3: Legal Communication

- **LEGAL COMMUNICATION**

What is legal communication and communications law?

Communications law encompasses the laws and regulations concerning public communication, such as newspapers, the internet, and cable, as well as the mechanisms by which people communicate privately, through telephone, emails, and texts. As communications technology evolves and proliferates at a dizzying pace, becoming ever more omnipresent and critical for personal and professional needs, there is need for attorneys with expertise governing this industry. Attorneys may specialize in media, such as telephones, cable, and the internet, while others focus on information technology itself. In the United States, the Federal Communications Commission, which is an independent federal agency, regulates interstate and international communications by radio, wire, satellite, and cable and is the primary authority for communications law and regulation. The rapid rise of cloud "computing" and the use of mobile devices is an especially "hot" topic matter in this sector.

Role of lawyers in legal communication

The attorney's primary role is to help clients navigate the complicated laws and policies. Given the complexity of the field and the continuous changes in the practice, communication attorneys enjoy a wide variety of daily activities. Attorneys in private law firms and in-house advice companies on

commercial transactions including mergers and acquisitions, negotiate contract terms and disputes, and manage compliance and tax issues. Attorneys in government practice may focus on policy issues, such as competition and cyber security. Expertise in administrative law and knowing who to "go to" in the agency in question is particularly important. Advocates for the public interest may focus on issues including privacy and the effect of mergers on low-income and disadvantaged communities. In all areas, the successful practitioner will have excellent research, analytical and writing skills, in addition to interpersonal, teamwork and negotiation skills.

Over the course of our lives we learn may qualities such as:

- we learn to appreciate the effect that tone and content have on meaning and how our communications are received;
- we learn to appreciate silence and non-verbal communication;
- we develop fluency with written communication; and
- We understand the rules that govern communication in our society, including distinguishing communications that are considered acceptable from communications that fall below the societal norm.

Lawyers provide information services, and effective communication skills represent the qualities of good lawyers because lawyers have sworn a professional oath, they are expected to communicate at a higher standard than members of the general population.

Many of the complaints the Law Society receives could have been avoided (or dismissed) if the lawyer:

1. listened to his or her client in order to understand the client's needs, and determine at the outset whether the client was a good match for the lawyer's experience, personality and style of practice
2. advised the client (in realistic and clear terms) of potential outcomes, and the cost associated with the legal services;
3. told the client what the lawyer would do, and would not do, and kept his or her word;
4. established an understanding with the client regarding future communications between them (both the preferred method of communication and the lawyer's process for responding to communications in a timely fashion);
5. confirmed his or her understanding of the existence and scope of the retainer using a written retainer, or if not retained, by sending a non-engagement letter;
6. kept the client informed of progress on the file, even if only to explain why matters have been delayed or are in a holding pattern;
7. responded promptly to communications from his or her client as agreed, other lawyers, the Law Society, and other interested parties;
8. ensured that the tone of every communication was civil and that their content was limited to relevant matters;
9. avoided delay in billing and ensured that bills were fully explained; and
10. Managed his or her client's expectations.

Lawyers are subject to numerous stereotypes, many of them negative. Consequently, few people approach a lawyer without a set of assumptions and perceptions already in place. Poor or disrespectful communication skills diminish your standing within the profession and reinforce the public's negative perception of the entire profession. There is no practical benefit to such behaviour, and the harm associated with it is very real. The best opportunity you have to overcome negative

perceptions is to adhere to a high standard of conduct and communication.

- **Mooting and moot courts**

  Moot court is an extracurricular activity that takes place in many law schools in which participants take part in simulated court proceedings, usually involving drafting memorials or memoranda and participating in oral argument. The term "moot" traces its origins to Anglo-Saxon times, when a moot was a gathering of prominent men in a locality to discuss matters of local importance. The modern activity differs from a mock trial, as moot court usually refers to a simulated appellate court or arbitral case, while a mock trial usually refers to a simulated jury trial or bench trial. Moot court does not involve actual testimony by witnesses, cross-examination, or the presentation of evidence, but is focused solely on the application of the law to a common set of evidentiary assumptions and facts to which the competitors are introduced. In most countries, the phrase "moot court" may be shortened to simply "moot" or "mooting." Participants are either referred to as "mooters" or "mooties".

  Moot court and law review are the two key extracurricular activities in many law schools. Depending on the competition, students may spend a semester researching and writing the memorials, and another semester practicing their oral arguments, or may prepare both within the span of a few months. Whereas domestic moot court competitions tend to focus on municipal law such as criminal law or contract law, regional and international moot competitions tend to focus on subjects such as public international law, international human rights law, international humanitarian law, international criminal law, international trade law, international maritime law, international commercial arbitration, and foreign direct investment arbitration. Procedural issues pertaining to jurisdiction, standing, and choice of law are also occasionally engaged, especially in arbitration moots.

  In most moot competitions, each side is represented by two speakers (though the entire team composition may be larger) and a third member, sometimes known as of counsel, may be seated with the speakers. Each speaker usually speaks between 10 and 25 minutes, covering one to three main issues. After the main submissions are completed, there will usually be a short round of rebuttal. Depending on the format of the moot, there may be one or two rounds of rebuttal. In larger competitions, teams have to participate in up to ten rounds. The knockout/elimination stages are usually preceded by a number of preliminary rounds to determine seeding. Teams almost always must switch sides throughout a competition, and, depending on the format of the moot, the moot problem usually remains the same throughout. The scores of the written submissions are taken into consideration for most competitions to determine qualification and seeding, and sometimes even up to a particular knockout stage.

  Clinical legal education has an important role in transforming a law student to a good advocate. In this transformation, moot courts play a vital role. In this article let us try to understand the importance of moot courts OR in other words, the advantages of moot courts OR the educational value of moot courts.

  Major advantages of active participation in moot courts are given below

1. It rectifies the defects of class room lecture methods.
2. Each branch of law, which is connected with the moot problem, is simultaneously taught in functional manner.
3. An effective technique of teaching law by means of practical training.

4. It helps the law student to develop his argumentative talent. At the same time, moot court will also help him to check his irrelevant behaviours.
5. Without attending the ordinary courts, students can learn the court procedures by participating in moot court.
6. By participating in a moot court, students learn about the relevant facts of the moot problem, arguments of both the sides, and the judgment.
7. Moot court helps the law students to learn the theory of law by way of practical approach.
8. Moot court enhances argumentative talent of the law student as well as his presentation skills in a timely manner.
9. Moot court further enhances the research skills of the students.
10. Moot court helps to develop self-possession, fluency, clarity or enunciation, practice of court procedure, and the art of persuasion and presentation of moot problem (cases).
11. Moot court helps the student to develop his ability to argue for the party with Court etiquette.
12. Moot court will also help the law students to learn the duties of an advocate. It further helps the students to develop their presentation skills as well as court mannerisms.

How is mooting done?

The Problem

A typical moot problem is concerned solely with a point (or points) of law. Normally it will take the form of a case heard on appeal from a lower court with the grounds of appeal clearly stated.

The Teams

A moot usually consists of four speakers, divided into two teams, each consisting of a leading and junior counsel. One team represents the appellants, the other the respondents. Mooters may be judged individually or as a team.

The Moot Court

The moot 'court' should reflect, as far as possible, a courtroom scenario in reality. The moot is presided over by at least one judge who delivers a judgment at the end of the moot on the law and on the result of the moot itself. The presiding judge is supported by the clerk of the moot who also times the moot speeches. The two teams of mooters sit at separate tables, taking turns to stand to present their arguments to the moot court.

A moot 'speech' will normally have a time limit of between 15 and 20 minutes. So be prepared to be on your feet, either presenting your argument or answering questions about your argument, for that amount of time. For the duration of their arguments the mooters are required to maintain the appropriate courtroom manner (remembering, amongst other things, to address the court and fellow counsel in the accepted form).

Unit 4: Literature and law.

- **The play "Justice" by John Galsworthy.**

  Galsworthy's plays deal with social problems, concerned with the naturalistic aspects of life. The play 'Justice' is about Falder, a weak-willed person, who forges a cheque to help Ruth, who is harassed by her husband Honeywill. He is caught, brought to court and imprisoned, thus, justice

being done according to the law but, Galsworthy talks about the injustice done to Falder who tried to rescue Ruth. He says that from a humanitarian point of view Falder was right on his part and makes the audience sympathise with him. The decision to imprison him was taken from the 'blind' rigid side of law depicting inhuman nature. The play shows the defect of the legal system in its rigidity in treating prisoners inhumanly and that no follow up is done to rehabilitate the discharged prisoners which in turn alienate them from society.

Crime of any nature is never supportable, neither the crime committed by Falder. Falder was given a cheque for encashment and he tampered with the figured amount thus, misguiding the bank. He had to pay the penalty for his deed in multiple magnitudes. In the jail he was in solitary confinement and was treated horribly. He became an out-cast and was reabsorbed conditionally. But, the shadow of country's law was in constant pursuit and that caused his doom. So, when the custodian of justice serves little in rectification and worsens the state of the individual, the condition of the individual brings out the justness of the so called “just” system.

Important characters:

Falder:
Falder is the most important character in the play around whom the story of the play revolves. Unlike the great, tragic heroes in literature, Falder is not a towering personality. He is just an ordinary junior clerk working in solicitor’s office of James and Walter How. The most striking aspect of Falder’s character is his weak nature. In his first conversation with Ruth in Act I, his nervous nature becomes apparent. We note that he has “rather scared eyes”. When we meet him in the opening Act of the play, Falder is not a habitual criminal and the extreme pressure of the circumstances force him to commit the crime. He is not calm and composed and his nervous nature is visible in the very act of alters the cheque to get the cash in the simplest possible way. He wanted the money so badly in order to save a distressed woman from the cruelties of her husband. It is possible to accept that Falder was sincere in his love for Ruth. He becomes upset to hear about her husband’s brutality towards her and becomes all the more desperate to rescue her. The way he tries to get the money for her help depicts a lot about his weak mind and personality. There is something pathetic in Falder all through the play. The way he tries to rescue a woman in distress, the way he tortures himself in his solitary confinement , the way he tries to start all over again by forging references , the way he was treated by his relatives and acquaintances in his past convict life, bring out a pathetic side of his character . When he comes to know of Ruth’s relationship with her employer, we feel that with his love lost, it is all over with him. The suicide is inevitable in his case.

Ruth:
Ruth is the only woman character in Galsworthy’s play Justice. She is married to a drunken, inhuman person and her life has been a nightmare. The conventions and shackles of social morality make her a helpless victim. But she does not appear as helpless as the weak-minded Falder. She presents herself as a strong-willed, determined woman who is conscious of her position in relation to the society but not willing to submit to it tamely. She is determined to run away with Falder rather than live with a brutal husband. But when Falder is arrested on the charge of forging the cheque, she has to fend for herself. She leaves her husband by taking the children with her and finds an employment. However,

though she got involved with her employer, her love for Falder was alive in her. Hence, in the court scene when Frome asked her if he still loved Falder, she made no hesitation in replying that he had ruined himself for her. A little later she told the jury "I would have done the same for him; I would indeed." Even when Falder was in prison she felt that Falder was the only thing in her life. It is this love for Falder and her own stern dignified manner that is the most striking side of her character. However, at the end of the play when Ruth confronts the dead body of Falder in the outer office of the solicitors' firm, her passions for Falder become fairly revealing. Her heart- broken whisper, 'my dear', my pretty' are indeed the revelations of a lovelorn heart. Outwardly she has poise and self-control but, in fact, her passion for Falder is evident throughout the ply. She suffers much indeed and undoubtedly this is largely due to her love for a person with a weak will and nervousness.

Cokeson:

Robert Cokeson is introduced in Galsworthy's play Justice as the managing clerk of the solicitor's firm of James and Walter How. Unlike the other characters of the play, Cokeson displays different perspectives of his character in his dealings with the other characters of the play. The first striking feature that we notice in Cokeson's character is the innate goodness of his nature. When Ruth visited the office to see Falder, a junior clerk, he was a little taken aback. He suggested that she should go to his private address as it was rather unusual to have private meetings in the office. He liked everything in the office to be in proper order, to be "jolly together" but when Falder confessed his guilt of forging the cheque he was greatly disturbed. All he could say was, "Dear, dear! What a thing to do! However such a thing could have come into your head!" He was startled that someone who was working in the office could break the law like that. Cokeson has great affection for Falder and is full of appreciation for his sincerity in work. So he is rather puzzled when Falder commits the offence. Nevertheless, his affection for Falder has not been affected. In fact, he not only gives the court positive evidence in support of his good behaviour but also visits the prison to see him during the period of his solitary confinement. He is rather disappointed that the prison Governor didn't allow the meeting.

- **George Bernard Shaw's "Arms and the Man"**

The main themes running in this novel weave the story of the novel. Major themes are as follows:

DISILLUSIONMENT WITH WAR

The play discusses how war is made, how it is fought, and how parties sue for peace at the close of it. Indeed, the play's title is a direct quote from Virgil's *Aeneid*, the Roman epic that glorifies war. Shaw used this quote ironically, drawing attention to how war should not be seen as romantic.The Serb-Bulgarian War is not addressed directly in the text, although that is the historical template on which Shaw bases his production. Bluntschli is a Swiss mercenary who has hired himself to the Serb cause, along with soldiers from other nations. Sergius is supposed to representing the "heart" of the Bulgarian enterprise, with his gutsy charge at the start of the work demonstrating just how powerfully he wishes to defend his nation's honour. What becomes clear as the play progresses, however, is that war is simply a job for soldiers, and nothing more. Sergius is not the hero he is initially thought to be. He romanticizes war to such an extent that he leads a foolish charge against the enemy, and only does so in order to climb the ranks for recognition. Bluntschli also

destroys Raina's romantic idea of war and heroism when he proves that the best soldiers are often not identified as such on the outside.

For Shaw, war is simply a way for men to occupy themselves, perhaps in redrawing small parts of the national borders, while others on the domestic front, who are predominantly women, shape many more aspects of life. Though Catherine and Raina are ostensibly dependent upon the outcome of the war, in dealing with Bluntshli they are also active participants in some of its intrigues. In harboring an enemy and ultimately marrying him, they add to the argument that war and its divisiveness can be meaningless.

THE COMPLEXITY OF ROMANTIC LOVE

The interactions of characters are primarily driven by romantic love, or lack of it. Social conventions of love during Shaw's time period included public and formal courting, parental approval, and consideration of social status and wealth of each partner. However, the characters in this play defy the norms and each end up with a person that is best suited to them.

Characters slowly disabuse themselves of the features of romantic love they have most cherished all their lives, and realize that it is far more complex. For example, Raina does appear to love Sergius in the beginning of the play, but when she falls in love with Blunstshcli, she realizes her love for Sergius was superficial. Perhaps Raina only felt this way because Sergius was lauded as a hero and because Catherine and Petkoff supported the union to maintain the family's social status.

By contrast, Louka, though engaged to her fellow servant Nicola, does not appear to have ever been in love with him, and demonstrates that she is willing to work hard to marry into a higher rank. Romantic love does not seem to be a factor in her decisions. The beginnings of Louka's relationship with Sergius are illicit, and defy social norms of courtship. Bluntschli's introduction to Raina is also unconventional, as they meet secretly in her bedroom. And when they finally become engaged, Bluntschli, the pragmatic and calculating soldier, surprises everyone by revealing himself to be a lifelong romantic.

THE ARBITRARY NATURE OF SOCIAL STATUS

The social station of the characters in the play is one of the dynamics that becomes most pronounced by its end. Louka wants to be more than a servant, whereas Nicola seems content to remain one. Bluntschli appears to be middle class, but reveals later that he is far, far wealthier than the noble Petkoffs. Petkoff and Catherine want Raina to reinforce the family's position however she can, either by marrying the ostensibly bravest man in Bulgaria, Sergius, or by adding greatly to the family's coffers by joining with Bluntschli.

As in any marriage narrative of the nineteenth century, romantic love might be a part of the marriage calculation, as it certainly didn't hurt to love one's partner. But that is far from the point of marriage in this time period. Characters want to unite noble families and improve financial situations. What romantic love tends to do in these situations, then, is cut across and destabilizes what might be the otherwise orderly transfer of money between families.

Some of the important symbols in the novel are:

PETKOFF'S COAT

Catherine and Raina lend Bluntschli Major Petkoff's coat to escape the estate in the fall, under cover of darkness. The coat is a symbol of the various instances of deception around which the novel unfolds. Bluntschli brings the coat back to the Petkoffs without realizing that Raina has left an inscribed picture of herself in its pocket, thus indicating to anyone who might see it that she loves Bluntschli despite being engaged to Sergius. The coat literally hides Raina's love for Bluntschli, and this love is only revealed once Raina's photograph is removed from the coat. Petkoff cannot find the coat in his closet until Nicola, on Catherine's urging, places the coat there after Bluntschli's return in an attempt to cover up the story. Major Petkoff is as sure the coat is not in his closet as he is that nothing is the matter between Raina, Bluntschli, and Sergius in that moment. When Nicola produces the coat, the turmoil between the characters is revealed, and Major Petkoff is just as shocked at both revelations.

CHOCOLATE CREAMS

Raina keeps candies, including chocolate creams, in her bedroom. She appears not to like chocolate creams, as they're the only candies left in the box. But Bluntschli loves them especially, and famished as he is after the battle, he eats them greedily when Raina offers. From then on, she calls him "the chocolate cream soldier."

Chocolate creams are a symbol of delicacy and high society, as well as a symbol of youthfulness. However, Bluntschli's willingness to stuff them in his pockets in place of ammunition indicates that they are also a symbol of maturity and knowledge. Bluntschli knows how difficult war is. He is a veteran, not a rookie. Thus the creams are over-determined in the play, meaning there is no single significance that can be placed on them. This is similar to how Raina and Bluntschli are neither paragon of total good nor total evil, but complex humans who behave practically as best they can.

THE LIBRARY

For the Petkoffs, the library is a sign of cultivation and status in the family, which they perceive as rare among Bulgarians. The Petkoffs worry that the Bulgarians are not as refined as their Russian enemies, and Raina is quick to point out to Bluntschli that their library is perhaps the only one in the area but it's only a small room with dusty old volumes scattered on the shelves. The library symbolizes both the Petkoffs' preoccupation with what they see as fine taste, and the reality of the family that falls far short of this ideal.

- The Play "Final Solutions" by Mahesh Dattani

Mahesh Dattani is a contemporary writer who writes specifically in English. Dattani plays question a few of the norms and conventions of society. In the process, interesting questions arise regarding gender and other conditions like homo-sexuality, lesbianism, child sexual abuse. Dattani tackles issues that afflict societies the worldwide. Dealing with issues like male-female ascendance divide, the patriarchal tradition, consumerism, communalism, Dattani holds back nothing. His plays deal with contemporary issues. They're plays of today sometimes as actual concerning cause controversy, but at the same time they are plays which embody many from the classic concerns of world drama. Dattani's play has a universal appeal. They could be staged anywhere on earth, they would draw full attention of the crowd. Dattani moulds his subject in such a way that it is both topical as well as appealing. His plays speak across linguistic and cultural barriers. Dattani makes an abundant use of Indian mythology, rituals and traditions and contemporary problems, India is beset with but he elevates these themes to a higher level, touching the human chords that emanate love, happiness, sexual fulfilment and problem of identity. Though he lives in Karnataka, he writes about the entire nation of India, in regards to the whole world he lives in. It's in the fitness of stuff that we must make an work for balance evaluating the playwright thematic concerns along with his exploration of, and experimentation with stage. His last play, *Final Solutions*, which imaginatively examines what really lies at the core of communal fear and hatred of the Hindus for the Muslims, and the other way round, is perhaps the most on target. And frighteningly clairvoyant. Written before the mosque in Ayodhya was destroyed and the repercussions of the act, it brings to the surface and articulates communal prejudice with embarrassingly brutal frankness. Dattani is an authentic contemporary voice whose plays are rooted in contemporary urban experience and yet have a significance which can travel beyond India's borders.

- **Draupadi The Symbol of Retaliation**

Take Mahasweta Devi's story *Draupadi*, for instance. Named after Mahabharata's heroine Draupadi, Devi's lower-caste protagonist is given the name by her upper-caste mistress. We're told she can't even pronounce it—as Gayatri Chakravorty Spivak explains in her rather lengthy translator's note, the Dalit tongues and dialects simply don't form those syllables, and she is called "Dopdi" instead—and we're told the regional police are after her since she is suspected of being a guerrilla Maoist. Wrung in a manner only Devi's stories are, this one too explores the tensions between the remnant colonial morality (embodied in the police force) and the Subaltern. The tale ends with Dopdi in captivity, gang-raped by the police officers. Unlike Mahabharata's Draupadi, this one doesn't ask Lord Krishna to come save her (she knows he doesn't listen to her anyway), but struts back to the officers, naked and defiant, asks them to rape her again, and they turn their eyes away in shame. I wish I could ever fully convey what a powerful moment that is, having such a revered religious epic overturned like that, in an instant, and before you know it Dopdi has charmed you with her resistance and retaliation.

To Devi and Spivak's credit, the awe and wonder of such a moment doesn't compromise the rape, nor does it take away the pain. However, the story does posit law enforcement as a body that occurs *after* colonization, and suggests that if we were to move beyond it, we'd find our revolution, and by extension says that power simply changed hands between the old colonial masters and the ruling elites today, but the nature and location of power has remained the same. Wish it were that simple, but as we know, history never is. There is no utopia before colonization—my culture as well as yours were and are entrenched in power dichotomies; such "declension narratives" do more harm than good. In India, this translates to seeing a time before colonization as one of a harmonious society, completely sidelining slavery, patriarchy, and the oppressive caste system.

Devi's *Draupadi* hits all the marks—it has a lower-caste protagonist actively subverting the Hindu/Colonial regime, is extremely empathetic to not just its protagonist but also the communities it talks about, and it still manages to portray exclusion from the "mainstream" as a privilege. Celebrations of resistance, congratulations on portraying diversity "correctly" serve an extremely limited purpose at best, and actively engender a frame of seeing the "always resisting marginalized body" (in a warped way, justifying the marginalization because the "strong Dalit women can handle it anyway"). "Good representations" harm too, and it's quite imperative we remember that as we congratulate ourselves on "resisting the Empire." Resistance isn't a medal one can flash—not when one's survival depends on it.

The backdrop of this story is the 1971 war between Pakistan and Bangladesh in which thousands of women were victims of genocidal rape. The Pakistani millitary killed thousands of Bengali civilians, students, intelligentsia, religious minorities, and armed personnel. Draupadi is a tribal woman who is captured by Senanayak, a Third World Army officer who is also a First World scholar. The army brutally rapes her under his orders. Ironically, the rapists later tell her to cover herself up, but Draupadi defies them and remains publicly naked. Senanayak is befuddled as she strips her clothes and confronts him with her gaping wounds. After it becomes clear that they cannot succeed in breaking her psychologically through their weapon of rape, she brazenly declares

There isn't a man here that I should be ashamed… What more can you do?

As Spivak suggests in an essay preceding the story, *Draupadi* can be interpreted as a story that rewrites an episode of the Mahabharata, where Draupadi's eldest husband "gambles" her away. As the enemy chief pulls and pulls at her sari, there is more and more of it. She cannot be stripped, thanks to the divine intervention of Krishna.

In Devi's story, it is not male leadership but Draupadi's strength and courage to challenge the patriarchy that bring resolution to the story. Devi understood the essence of *rape culture*, long before the term became famous in feminist jargo.

PRINCIPLES OF MANAGEMENT (113)

UNIT-1

Concept of management

The concept of management has acquired special significance in the present competitive and complex business world. Efficient and purposeful management is absolutely essential for the survival of a business unit. Management concept is comprehensive and covers all aspects of business. In simple words, management means utilizing available resources in the best possible manner and also for achieving well defined objectives. It is a distinct and dynamic process involving use of different resources for achieving well defined objectives. The resources are: men, money, materials, machines, methods and markets. These are the six basic inputs management process (six M's of management) and the output is in the form of achievement of objectives. It is the end result of inputs and is available through efficient management process.

The term 'management' is used extensively in business. It is the core or life giving element in business. We expect that a business unit should be managed efficiently. This is precisely what is

done in management. Management is essential for the conduct of business activity in an orderly manner. It is a vital function concerned with all aspects of working of an enterprise.

According to Mary Parker Fallett**, "Management is the art of getting things done through people".**

Process of Management

Planning: It is the primary function of management. It involves determination of a course of action to achieve desired results/objectives. Planning is the starting point of management process and all other functions of management are related to and dependent on planning function.

Planning is the key to success, stability and prosperity in business. It acts as a tool for solving the problems of a business unit. Planning plays a pivotal role in business management. It helps to visualize the future problems and keeps management ready with possible solutions.

Organizing: It is next to planning. It means to bring the resources (men, materials, machines, etc.) together and use them properly for achieving the objectives. Organization is a process as well as it is a structure. Organizing means arranging and means to the execution of a business plan. It provides suitable administrative structure and facilitates execution of proposed plan. Organizing involves different aspects such as departmentation, span of control delegation of authority, establishment of superior-subordinate relationship and provision of mechanism for co- ordination of various business activities.

Staffing: Staffing refers to manpower required for the execution of a business plan. Staffing, as managerial function, involves recruitment, selection, appraisal, remuneration and development of managerial personnel. The need of staffing arises in the initial period and also from time to time for replacement and also along with the expansion and diversification of business activities.

Every business unit needs efficient, stable and cooperative staff for the management of business activities. Manpower is the most important asset of a business unit. In many organizations, manpower planning and development activities are entrusted to personnel manager or HRD manager. 'Right man for the right job' is the basic principle in staffing.

Directing (Leading): Directing as a managerial function, deals with guiding and instructing people to do the work in the right manner. Directing/leading is the responsibility of managers at all levels. They have to work as leaders of their subordinates. Clear plans and sound organization set the stage but it requires a manager to direct and lead his men for achieving the objectives.

Directing function is quite comprehensive. It involves Directing as well as raising the morale of subordinates. It also involves communicating, leading and motivating. Leadership is essential on the part of managers for achieving organizational objectives.

Controlling: It is necessary in the case of individuals and departments so as to avoid wrong actions and activities. Controlling involves three broad aspects: (a) establishing standards of performance, (b) measuring work in progress and interpreting results achieved, and (c) taking corrective actions, if required. Business plans do not give positive results automatically. Managers have to exercise effective control in order to bring success to a business plan. Control is closely linked with other managerial functions. It is rightly treated as the soul of management process. It is true that without planning there will be nothing to control It is equally true that without control planning will be only an academic exercise

Controlling is a continuous activity of a supervisory

nature.

Nature of management

• Management is a managerial process: Management is a process and not merely a body of individuals. Those who perform this process are called managers. The manager's exercise leadership by assuming authority and direct others to act within the organization.

Management process involves planning, organizing, directing and unifying human efforts for the accomplishment of given tasks.

• Management is a social process- Management takes place through people. The importance of human factor in management cannot be ignored. A manager's job is to get the things done with the support and cooperation of subordinates. It is this human element which gives management its special character.

• Management is action-based: Management is always for achieving certain objectives in terms of sales, profit, etc. It is a result-oriented concept and not merely an abstract philosophy. It gives importance to concrete performance through suitable actions. It is an action based activity.

• Management involves achieving results through the efforts of others: Management is the art of getting the things done through others. Managers are expected to guide and motivate subordinates

and get the expected performance from them. Management acts as an activating factor.

• Management is a group activity: Management is not an isolated individual activity but it is a collective activity or an activity of a group. It aims at using group efforts for achieving objectives. Managers manage the groups and coordinate the activities of groups functioning in an organization.

• Management is intangible: Management is not directly visible but its presence is noticed in the form of concrete results. Management is intangible. It is like invisible spirit, which guides and motivates people working in a business unit. Management is like government, which functions but is not visible in physical form.

• Management is aided, not replaced by computers: The computer is an extremely powerful tool of management. It helps a manager to widen his vision. The computer supplies ocean of information for important decision-making. The computer has unbelievable data processing and feedback facilities. This has enabled the manager to conduct quick analysis towards making correct decisions. A computer supports manager in his managerial work. However, it cannot replace managers in business. They were required in the past, at present and also in future. Their existence is absolutely essential in the management process.

• Management is all pervasive: Management is comprehensive and covers all departments, activities and employees. Managers operate at different levels but their functions are identical. This indicates that management is a universal and all pervasive process.

• Management is an art, science as well as a profession: Management is an art because certain skills, essential for good management, are unique to individuals. Management is a science because it has an organized body of knowledge. Management is also a profession because it is based on advanced and cultivated knowledge.

Significance of management

• **Optimum utilization of resources**: Management facilitates optimum utilization of available human and physical resources, which leads to progress and prosperity of a business enterprise. Even wastages of all types are eliminated or minimized.

• **Competitive strength**: Management develops competitive strength in an enterprise. This enables an enterprise to develop and expand its assets and profits.

• **Cordial industrial relation**: Management develops cordial industrial relations, ensures better life and welfare to employees and raises their morale through suitable incentives.

• **Motivation of employees**: It motivates employees to take more interest and initiatives in the work assigned and contribute for raising productivity and profitability of the enterprise.

• **Introduction of new techniques**: Management facilitates the introduction of new machines and

new methods in the conduct of business activities. It also brings useful technological developments and innovations in the management of business activities.

- **Effective management**: Society gets the benefits of efficient management in terms of industrial development, justice to different social groups, consumer satisfaction and welfare and proper discharge of social responsibilities.
- **Expansion of business**: Expansion, growth and diversification of a business unit are possible through efficient management.
- **Brings stability and prosperity**: Efficient management brings success, stability and prosperity to a business enterprise through cooperation among employees.

Managerial levels

- **Top-level managers**

It consists of board of directors, president, vice-president, CEOs, etc. They are responsible for controlling and overseeing the entire organization. They develop goals, strategic plans, company policies, and make decisions on the direction of the business. In addition, top-level managers play a significant role in the mobilization of outside resources and are accountable to the shareholders and general public.

According to Lawrence S. Kleiman, the following skills are needed at the top managerial level. Broadened understanding of how: competition, world economies, politics, and social trends effect organizational effectiveness.

- **Middle-level managers**

Consist of general managers, branch managers and department managers. They are accountable to the top management for their department's function. They devote more time to organizational and directional functions. Their roles can be emphasized as executing organizational plans in conformance with the company's policies and the objectives of the top management, they define and discuss information and policies from top management to lower management, and most importantly they inspire and provide guidance to lower level managers towards better performance. Some of their functions are as follows:

Designing and implementing effective group and intergroup work and information systems. Defining and monitoring group-level performance indicators.

Diagnosing and resolving problems within and among work groups. Designing and implementing reward systems supporting cooperative behavior.

- **Low-level managers**

Consist of supervisors, section leads, foremen, etc. They focus on controlling and directing. They

usually have the responsibility of assigning employees tasks, guiding and supervising employees on day-to-day activities, ensuring quality and quantity production, making recommendations, suggestions, and up channeling employee problems, etc. First-level managers are role models for employees that provide:

Basic supervision Motivation Career planning

Performance feedback supervising the staffs

Managerial skills

1. **Conceptual Skills**

Conceptual skill is the ability to visualize (see) the organization as a whole. It includes Analytical, Creative and Initiative skills. It helps the manager to identify the causes of the problems and not the symptoms. It helps him to solve the problems for the benefit of the entire organization. It helps the manager to fix goals for the whole organization and to plan for every situation. According to Prof. Daniel Katz, conceptual skills are mostly required by the top-level management because they spend more time in planning, organizing and problem solving.

2. **Human Relations Skills**

Human relations skills are also called **Interpersonal** skills. It is an ability to work with people. It helps the managers to understand, communicate and work with others. It also helps the managers to lead, motivate and develop team spirit. Human relations skills are required by all managers at all levels of management. This is so, since all managers have to interact and work with people.

- **Technical Skills**

A technical skill is the ability to perform the given job. Technical skills help the managers to use different machines and tools. It also helps them to use various procedures and techniques. The low-level managers require more technical skills. This is because they are in charge of the actual operations.

Functions of Management

The essential elements/components of Management functions are four.

1. Planning
2. Organizing
3. Staffing
4. Directing and
5. Controlling.

We may add some more elements in the management functions. Such elements are:- Motivating Co-coordinating Staffing Communication **Roles of a manager**

1. Interpersonal Roles

2. Informational Roles
3. Decision Roles

1. Interpersonal Roles

Under this role, the Manager is taking a major portion of responsibility to manage different things Under Management. The following are the most important roles under this i.e.,

a) The figure head role
b) The Leader's Role
c) The Liaison Role

2. Informational Roles

This is the role that the manager plays coordination with all the superiors and Subordinates to manage the things sophisticatedly. Under this the following are the informational roles

a) The recipient role: This relates to receiving the information from their superiors
b) The Disseminator Role: Which relates to passing the information to the subordinates?
c) The spokes person role: This relates to transmitting the information to those outside of the organization and simultaneously receives or collects the information from outsiders of the organization.

3. Decision Role

Under this role, the Manager plays a very important and active part and here the Manager is taking full responsibility to manage and decide the things even the administrative point of view also.

Under this the following are the important decision

a) The Entrepreneurial role
b) A disturbance handler role
c) The resource allocator role
d) The negotiator role, which relates to dealing with trade unions, inside parties and outside parties etc.

Management V/s Administration

According to *Theo Haimann*, "Administration means overall determination of policies, setting of major objectives, the identification of general purposes and laying down of broad programmes and projects". It refers to the activities of higher level. It lays down basic principles of the enterprise.

	Management	**Administration**

Definition	Art of getting things done through others by directing their efforts Towards achievement of pre-Determined goals.	Formulation of broad Objectives, plans & policies.
Nature	executing function function, doing	decision-making function, thinking function
Scope	Decisions within The framework set by The Administration.	Major Decisions of Enterprise as a whole. an
Level of authority	Middle level activity	Top level activity
Status	Group of Managerial personnel who use Their specialized Knowledge to	Consists of owners who invest capital in and receive profits from an enterprise.
	fulfill the objectives of an Enterprise.	
Usage	Used in business enterprises.	Popular with government, military, educational, and religious organizations.
Influence	Decisions are influenced By the values, opinions, beliefs and decisions Of the managers.	Influenced by public opinion, government policies, customs etc.
Main functions	Motivating and controlling	Planning and organizing

Abilities	Handles the employees.	Handles the business aspects such as finance.

Leadership vs. Management

What is the difference between management and leadership? It is a question that has been asked more than once and also answered in different ways. The biggest difference between managers and leaders is the way they motivate the people who work or follow them, and this sets the tone for most other aspects of what they do.

Many people, by the way, are both. They have management jobs, but they realize that you cannot buy hearts, especially to follow them down a difficult path, and so act as leaders too.

Managers have subordinates

By definition, managers have subordinates - unless their title is honorary and given as a mark of seniority, in which case the title is a misnomer and their power over others is other than formal authority.

Authoritarian, transactional style

Managers have a position of authority vested in them by the company, and their subordinates work for them and largely do as they are told. Management style is transactional, in that the manager tells the subordinate what to do, and the subordinate does this not because they are a blind robot, but because they have been promised a reward (at minimum their salary) for doing so.

Work focus

Managers are paid to get things done (they are subordinates too), often within tight constraints of time and money. They thus naturally pass on this work focus to their subordinates.

Seek comfort

An interesting research finding about managers is that they tend to come from stable home backgrounds and led relatively normal and comfortable lives. This leads them to be relatively risk-averse and they will seek to avoid conflict where possible. In terms of people, they generally like to run a 'happy ship'.

Leaders have followers

Leaders do not have subordinates - at least not when they are leading. Many organizational leaders do have subordinates, but only because they are also managers. But when they want to lead, they have to give up formal authoritarian control, because to lead is to have followers, and following is

always a voluntary activity.

Charismatic, transformational style

Telling people what to do does not inspire them to follow you. You have to appeal to them, showing how following them will lead to their hearts' desire. They must want to follow you enough to stop what they are doing and perhaps walk into danger and situations that they would not normally consider risking.

Leaders with a stronger charisma find it easier to attract people to their cause. As a part of their persuasion they typically promise transformational benefits, such that their followers will not just receive extrinsic rewards but will somehow become better people.

People focus

Although many leaders have a charismatic style to some extent, this does not require a loud personality. They are always good with people, and quiet styles that give credit to others (and takes blame on themselves) are very effective at creating the loyalty that great leaders engender.

Although leaders are good with people, this does not mean they are friendly with them. In order to keep the mystique of leadership, they often retain a degree of separation and aloofness.

This does not mean that leaders do not pay attention to tasks - in fact they are often very achievement-focused. What they do realize, however, is the importance of enthusing others to work towards their vision.

Seek risk

In the same study that showed managers as risk-averse, leaders appeared as risk-seeking, although they are not blind thrill-seekers. When pursuing their vision, they consider it natural to encounter problems and hurdles that must be overcome along the way. They are thus comfortable with risk and will see routes that others avoid as potential opportunities for advantage and will happily break rules in order to get things done.

A surprising number of these leaders had some form of handicap in their lives which they had to overcome. Some had traumatic childhoods, some had problems such as dyslexia, others were shorter than average. This perhaps taught them the independence of mind that is needed to go out on a limb and not worry about what others are thinking about you.

DEVELOPMENT OF MANAGEMENT THOUGHT

Management thought has a long history. It is as old as human civilization itself. Management in one form or the other has been a significant feature of economic life of mankind throughout ages. Management thought is an evolutionary concept It has develop along with and in line with the growth of social, political, economic and scientific institutions. The contributor’s to management

though are many. They include Management philosophers, management practitioners and scholars. Modem management is based on the solid foundations laid down by management thinkers from the early historical period.

Historical Background of Management

The recorded use of organized management dates back to 5000 B.C. when the agricultural evolution had taken place. These agricultural civilizations existed in India, China and Egypt According to Peter Drucker these irrigation civilizations "were not only one of the great ages of technology, but it represented also mankind's most productive age of social and political innovation". As the villages grew and civilizations evolved, the managers too grew and evolved. They became the priests, the kings, the ministers holding power and wealth in the society.

In ancient India Kautilya wrote his Arthashastra in about 321 B.C. the major theme of which was political, social and economic management of the State. The study of administration of the cities of Mohenjodaro and Harappa of the ancient Aryans in 2000 B. C., Buddha's order and the Sangha in 530 B. C., provide evidence about the use of the principles of management.

During the 13th and 14th centuries AD the large trading houses of Italy needed a means of keeping records of their business transactions. To satisfy their needs Luca Pacioli published a treatise in 1494 describing the Double Entry System of Book-keeping for the first time.

New theories and principles were suggested along with new developments in the business field. The new thoughts supplemented the existing thoughts and theories. This is how developments are taking place continuously in regard to management thoughts/theories. Management thinkers and thinkers from other fields such as economics, psychology, sociology and mathematics have also made their contribution in the evolution of management thought.

Evolution of Management Thought

This evolution of management thought can be studied in the following broad stages:

1. **The Classical Theory of Management (Classical Approach): 1900 to 1930.**

It includes the following three streams of thought:

(i) Bureaucracy,

(ii) Scientific Management; and (iii)Administrative Management

2. **The Neo-classical theory of Management: 1930 to 1960**

It includes the following two streams:

(i) Human Relations Approach and

(ii) Behavioral Sciences Approach.

3. The Modern Theory of Management: 1960 onwards.

It includes the following three streams of thought:

(i) Quantitative Approach to Management (Operations Research);

(ii) Systems Approach to Management and

(iii) Contingency Approach to Management.

Classical Approach

There are three well-established theories of classical management: Taylor,s Theory of Scientific Management, Fayol's Administrative Theory, Weber's Theory of Bureaucracy. Although these schools, or theories, developed historical sequence, later ideas have not replaced earlier ones. Instead, each new school has tended to complement or coexist with previous ones.

Theory recognizing the role that management plays in an organization. The importance of the function of management was first recognized by French industrialist Henri Fayol in the early 1900s. In contrast to the purely scientific examination of work and organizations conducted by F W Taylor, Fayol proposed that any industrial undertaking had six functions: technical; commercial; financial; security; accounting; and managerial. Of these, he believed the managerial function, 'to forecast and plan, to organize, to command, to coordinate, and control', to be quite distinct from the other five. Fayol also identified general principles of management: division of work; authority and responsibility; discipline; unity of command; unity of direction; subordination of individual interest to general interest; remuneration of personnel; centralization; scalar chain of authority; order; equity; stability of tenure of personnel; initiative; and esprit de corps. Fayol's views on management remained popular throughout a large part of the 20th century.

Evolution of Classical Approach to Management

Traditional process of learning is either through observation and experiment. Nature or environment is considered uniform and when we observe certain phenomenon or events uniformly leading to the same result or results, we conclude a cause and effect relationship between the two. This is learning by observation or in other words by experience.

Earlier thinkers on management followed this approach in developing theories of management.

Learning principally is through empirical process and through analysis of the data collected through observation. Draw the principles of management by looking at and anyalysing the jobs that all managers commonly do. This approach served as a starting point for pioneers on management science to verify the validity and improve the applicability of the principles and practices of management. Analysis of observed data is what constitutes a case study. The observational method of case study helps arriving at logical conclusions about past experience and to test the same as standards for future events.

The German socialists, Max Weber followed the classical approach and developed his theory of Bureaucracy,which portrays the structure and design of organization characterized by a hierarchy of authority, formalized rules and regulations that serve to guide the coordinated functioning of an organization.

Basic Postulates of the Classical Approach by Max Weber

- Management of an organization is considered as a chain of inter-related functions. The study of the scope and features of these functions, the sequence through which these are performed and their inter-relationship leads one to draw principles of management suitable for universal application.
- Learning principles of management is done through the past experiences of actual practicing. Managers.
- As business environment consists of uniform cycles exhibiting an underlying unity of realities, functions and principles of management derived through process of empirical reasoning are suitable for universal application.
- Emerging new managers through formal education and case study can develop skill and competency in management concepts and practices.

5. The classical approach also recognized the importance of economic efficiency and formal organizational structure as guiding pillars of management effectiveness.

6. Business activity is based on economic benefit. Organizations should therefore control economic incentives

Neo-Classical Approach

The **neoclassical theory** was an attempt at incorporating the behavioral sciences into management thought in order to solve the problems caused by classical theory practices. The premise of this inclusion was based on the idea that the role of management is to use employees to get things done in organizations.

Rather than focus on production, structures, or technology, the neoclassical theory was concerned with the employee. Neoclassical theorists concentrated on answering questions related to the best way to motivate, structure, and support employees within the organization. Studies during this time, including the popular Hawthorne Studies, revealed that social factors, such as employee relationships, were an important factor for managers to consider. It was believed that any manager who failed to account for the social needs of his or her employees could expect to deal with resistance and lower performance. Employees needed to find some intrinsic value in their jobs, which they certainly were not getting from the job that was highly standardized. Rather than placing employees into job roles, where they completed one specific task all day with little to no interaction with coworkers, employees could be structured in such a way that they would frequently share tasks, information, and knowledge with one another. The belief was that once employees were placed into this alternate structure, their needs for socialization would be fulfilled, and thus they would be more productive.

Behavioral Approach

With the human relations movement strongly in place, theorists became increasingly interested in exploring the individual employee and the nature of work itself. Remember, many employees at the time were left searching for some intrinsic value in their work due to standardization of jobs. Because workers were performing the same tasks day after day, their individual skills and capabilities were not being challenged.

The **behavioral movement** worked to change all that by researching ways to help employees find personal satisfaction in their jobs by providing meaningful work. The behavioral theory of thought was based on the work of **Abraham Maslow**, **Douglas McGregor**, **and Frederick Herzberg**, and **David McClelland,** all of whom searched for ways to help motivate employees based on their personal needs. Behavioral psychologists argued that we have a human desire to work towards personal growth, accomplishment, and achievement. Therefore, in addition to providing sufficient pay and showing that managers value their employees, employers must also provide employees with a path to personal development and achievement.

System Approach

A system is a set of inter-connected and inter-related elements directed to achieve certain goals. This theory views organization as an organic and open system composed of many sub-systems. As a system organization is composed of a number of sub-systems viz. production, supportive, maintenance, adaptive managerial, individuals and informal groups.

All these sub-systems operate in an interdependent and interactional relationship. The various subsystems or parts of an organization are linked with each other through communication, decisions, authority responsibility relationships, objectives, policies, procedures and other aspects of coordinating mechanism. Organizations as systems have a variety of goals. The important among them are survival, integration and adaptation with environment and growth.

The major features of the approach to the study of management may be summed up as under:

1. A system consists of inter-related and interdependent parts.

(2) The approach emphasizes the study of the various parts in their inter-relationships rather than in isolation from each other.

(3) The approach brings out the complexity of a real life management problem much more sharply than any of other approaches.

(4) The approach may be utilized by any of the other approaches.

(5) The approach has been utilized in studying the function of complex organizations and has been utilized as the base for new kinds of organization.

The Systems Approach has an edge over the other approaches insofar as its closeness to reality is concerned. However the problem with the approach is its utter complexity particularly when it comes to a study of large and complex organizations. The conceptual framework of management provided by this approach is too abstract to be useful to practicing managers. The approach recognizes the input of environment but does not functionally relate it to management concepts and techniques.

Contingency approach

The contingency school of management can be summarized as an "it all depends" approach. The appropriate management actions and approaches depend on the situation. Managers with a contingency view use a flexible approach, draw on a variety of theories and experiences, and evaluate many options as they solve problems.

Contingency management recognizes that there is no one best way to manage. In the contingency perspective, managers are faced with the task of determining which managerial approach is likely to be most effective in a given situation. For example, the approach used to manage a group of teenagers working in a fast□food restaurant would be very different from the approach used to manage a medical research team trying to find a cure for a disease.

Contingency thinking avoids the classical "one best way" arguments and recognizes the need to understand situational differences and respond appropriately to them. It does not apply certain

management principles to any situation. Contingency theory is recognition of the extreme importance of individual manager performance in any given situation. The contingency approach is highly dependent on the experience and judgment of the manager in a given organizational environment.

Management vs. Administration:

Management and administration may seem the same, but there are differences between the two. Administration has to do with the setting up of objectives and crucial policies of every organization. What is understood by management, however, is the act or function of putting into practice the policies and plans decided upon by the administration.

Administration is a determinative function, while management is an executive function. It also follows that administration makes the important decisions of an enterprise in its entirety, whereas management makes the decisions within the confines of the framework, which is set up by the administration.

Administration is the top level, whereas management is a middle level activity. If one were to decide the status, or position of administration, one would find that it consists of owners who invest the capital, and receive profits from an organization. Management consists of a group of managerial persons, who leverage their specialist skills to fulfill the objectives of an organization.

Administrators are usually found in government, military, religious and educational organizations. Management is used by business enterprises. The decisions of an administration are shaped by public opinion, government policies, and social and religious factors, whereas management decisions are shaped by the values, opinions and beliefs of the mangers.

In administration, the planning and organizing of functions are the key factors, whereas, so far as management is concerned, it involves motivating and controlling functions. When it comes to the type of abilities required by an administrator, one needs administrative qualities, rather than technical qualities. In management, technical abilities and human relation management abilities are crucial.

Administration usually handles the business aspects, such as finance. It may be defined as a system of efficiently organizing people and resources, so as to make them successfully pursue and achieve common goals and objectives. Administration is perhaps both an art and a science. This is because administrators are ultimately judged by their performance. Administration must incorporate both leadership and vision.

Management is really a subset of administration, which has to do with the technical and mundane facets of an organization’s operation. It is different from executive or strategic work. Management

deals with the employees. Administration is above management, and exercises control over the finance and licensing of an organization.

Summary:

1. Management is the act or function of putting into practice the policies and plans decided upon by the administration.
2. Administration is a determinative function, while management is an executive function.
3. Administration makes the important decisions of an enterprise in its entirety, whereas management makes the decisions within the confines of the framework, which is set up by the administration.
4. Administrators are mainly found in government, military, religious and educational organizations. Management, on the other hand, is used by business enterprises.

Unit-II

Planning

Planning is thinking in advance or before doing something. All kinds of organization do planning. Planning helps us in looking into the future. Planning establishes goals or objectives and identifies the ways to achieve them. A plan is a predetermined course of action to be taken in future.

Types of plans

Managerial planning comprises various types of plans, which are also known as elements of good planning. Some of the important types of plans may be discussed as follows, which must be included in a sound planning system.

1. Objectives

Objectives may be defined as the targets people seek to achieve over different time periods. Objectives give direction to human behavior and effort. Hence, an essential task of management it to formulate, classify and communicate organizational objectives. Managers are required to set both general and specific objectives. Survival, growth and development are general objectives of a business enterprise. The specific objectives include the goals set for various departments, divisions, groups and individuals. The general objectives are long term in nature, where as the specific objectives are short range, though the short range objectives are and should be a part of long term objectives. Departmental objectives must be consistent with the conductive to the overall, corporate objectives.

2. Policies

A policy is a general statement that guides thinking, action and decision making of managers for the successful achievement of organizational objectives. Policies define the limits within which decision

are to be made. This ensures consistent and unified performance and exercise of discretion by managers. Top management generally frames the policies. However, a manager at any other level may lay down policies within the limits of his authority and also within boundaries set by policies of his seniors. A policy is not static and may be modified or reviewed
in the light of changes the environment. A policy may be verbal, written or implied. A well defined policy helps the manager to delegate authority without undue fear, because the policy lays down the limits for decisions by the subordinates.

3. Procedures

A procedure prescribes the sequence of steps that must be completed in order to achieve a specific purpose. A procedure is a guide to action rather than to thinking. It details the exact manner in which a certain activity must be accomplished. Its essence is chronological sequence of required actions or steps. A procedure is generally established for repetitive activity so that same steps are followed each time when that activity is performed. The procedures do not allow much latitude in managerial decision making because they lay down a definite way of doing certain things. Procedures are designed to execute policies and achieve objectives. Procedures are used in all major functional areas. Purchase procedure, materials issue procedure, costumer's order executing procedure, accounting procedure, grievance handling procedure, etc, are some of the examples of usual procedures.

4. Rules

Like a procedure, a rule is a guide to action. But it does not lay down any sequence of steps as in the case of a procedure. A role tells us whether a definite action will be taken or will not be taken in case of a given situation. Examples of rules are: (i) Customer's complaint must be replied within one day (under customer satisfaction policy), (ii) No smoking in the factory (under safety policy). Thus, a rule is prescribed course of action or conduct that must be followed. As such, a rule does not leave any scope for discretion on the part of the subordinates. Rules are definite and rigid because there must be no deviation from the stated action, except in very exceptional cases.

5. Strategy

Strategy is a pattern or plan that involves matching organization competences (i.e. internal resources and skills) with the opportunities and risks created by environmental change, in ways that will be both effective and efficient over the time such resources will be deployed. Effective formal strategies contain three elements: (i) the most important goals, (ii) the most significant policies, (iii) the major programmed. Strategy deals with unpredictable and unknowable. It is developed around a few key concepts and thrusts. A well-formulated strategy helps to marshal

and allocate and organization's resources into a unique and viable posture in relation to the strengths and weaknesses of the organization, the anticipated changes in the environment and the contingent moves of the opponents. Generally when we walk of organizational strategy, it refers organization's top level strategy. However, strategies exist at other levels also.

6. Program

A program lays down the principal steps for accomplishing a mission and sets an approximate time for carrying out each step. George Terry says, A program can be defined as a comprehensive plan that includes future use of different resources in an integrated pattern and establishes a sequence of required actions and time schedules for each in order to achieve stated objectives. Program outline the actions to be taken by whom and where. A program is made up of objectives, policies, procedures, task assignment, budgets, schedules etc. Examples of program are, building program, expansion program, moral improvement program, acquisition of the new line of business program, training program, development of a new product program, advertising program and so on. Program may be measure or minor, primary or derivative and long-term, medium term or short term.

7. Projects

Often a single step in a program is set up as a project. In fact a project is simply a cluster of activities that is relatively separate and clear cut. Thus, projects have some features of a program but are usually parts of some program. Building a hospital, designing a new package, building a new plant, are some examples of projects. The chief virtue of a project lies in identifying a nice, neat work package within a bewildering array of objectives, alternatives and activities.

8. Budgets

A budget is a statement or a plan of expected results expressed in numerical terms, such as man hours, units of production, machine hours, and amount of expenditure or any other quantitatively measurable term. Then it may be expressed in time, money, materials or other quantitative units. Budget is prepared prior to a definite period of time of the policy to be pursued during that period for a purpose of a given objective. It introduces the idea of definiteness in planning. A budget is an important control device also because it provides standards against which actual performance may be measured. Examples of budgets are, production budget, sales budget, material budget, cash budget, capital expenditure budget, expenses budget and so on.

9. Schedules

A schedule is an operational plan, timetable of work that specified time-periods (with beginning and completion time points) within which activity or activities are to be accomplished.

In order to keep the schedule realistic and flexible, minimum and maximum time-periods may be specified. Three main elements are involved in planning a schedules, (i) identification of activities or tasks, (ii) determination of their sequence, (iii) specification of starting and finishing dates for each activity as well as for the sequence as a whole. Scheduling is the process of establishing a time sequence for the work to be done. Schedules translate program into actions.

Scheduling is necessary in all organizations with a view to providing for an even flow of operations and to ensure completing of each task at the right time. While planning schedule, the availability of resources, processing time and the delivery commitments should be kept in view. Due allowance should be made for delays created by factors beyond the control of management as well as for non-productive time.

10. Forecasts

Planning presupposes forecasting as the former is defined as deciding what is to be done in future. Henri Fayol has described a plan as the synthesis of various forecasts - annual, long-term, short-term, special etc. The targets cannot be fixed with any degree of precision unless forecasts are made. Forecasts are estimates of future events, providing parameters to planning. Forecasts do not involve any kind of commitment of organizational resources. Planning without forecasts is not possible. In fact, forecasts are predictions or estimates of the changes in the environment, which may affect the business plans. A manager has to make forecasts keeping in view the planning premises. There are various types of forecasts, such as economic, technological, political, and social and so on. However, sales forecast is the basis of most planning.

Objective of planning

1. Helps management to clarify, focus, and research their business's or project's development and prospects.
2. Provides a considered and logical framework within which a business can develop and pursue business strategies over the next three to five years.
3. Offers a benchmark against which actual performance can be measured and reviewed.

Scope of planning

When it comes to project planning, defining the project scope is the most critical step. In case if you start the project without knowing what you are supposed to be delivering at the end to the client and what the boundaries of the project are, there is a little chance for you to success. In most of the instances, you actually do not have any chance to success with this unorganized approach.

If you do not do a good job in project scope definition, project scope management during the project execution is almost impossible.

The main purpose of the scope definition is to clearly describe the boundaries of your project.

Clearly describing the boundaries is not enough when it comes to project. You need to get the client's agreement as well.

Therefore, the defined scope of the project usually included into the contractual agreements between the client and the service provider. SOW, or in other words, Statement of Work, is one such document.

In the project scope definition, the elements within the scope and out of the scope are well defined in order to clearly understand what will be the area under the project control. Therefore, you should identify more elements in detailed manner and divide them among the scope and out of scope.

Process of planning

The various stages in the process of planning are as follows:

1. **Goal setting:**

Plans are the means to achieve certain ends or objectives. Therefore, establishment of organizational or overall objectives is the first step in planning. Setting objectives is the most crucial part of planning. The organizational objectives should be set in key areas of operations.

They should be verifiable i.e., they should as far as possible be specified in clear and measurable terms. The objectives are set in the light of the opportunities perceived by managers.

Establishment of goals is influenced by the values and beliefs of executives, mission of the organization, organizational resources, etc.

Objectives provide the guidelines (what to do) for the preparation of strategic and procedural plans. One cannot make plans unless one knows what is to be accomplished. Objectives constitute the mission of an organization. They set the pattern of future course of action.

The objectives must be clear, specific and informative. Major objectives should be broken into departmental, sectional and individual objectives. In order to set realistic objectives, planners must be fully aware of the opportunities and problems that the enterprise is likely to face.

2. **Developing the planning premises:**

Before plans are prepared, the assumptions and conditions underlying them must be clearly defined these assumptions are called planning premises and they can be identified through accurate forecasting of likely future events.

They are forecast data of a factual nature. Assessment of environment helps to reveal opportunities and constraints. Analysis of internal (controllable and external (uncontrollable) forces is essential for sound planning premises are the critical factors which lay down the bounder for planning.

They are vital to the success of planning as they supply per tenant facts about future. They need revision with changes in the situation. Contingent plans may be prepared for alternate situations.

3. Reviewing Limitations:

In practice, several constraints or limitations affect the ability of an organization to achieve its objectives. These limitations restrict the smooth operation of plans and they must be anticipated and provided for.

The key areas of Imitations are finance," human resources, materials, power and machinery. The strong and weak points of the enterprise should be correctly assessed.

4. Deciding the planning period:

Once the broad goals, planning premises and limitations are laid down, the next step is to decide the period of planning. The planning period should be long enough to permit the fulfillment of the commitments involved in a decision.

This is known as the principle of commitment. The planning period depends on several factors e.g., future that can be reasonably anticipated, time required to receive capital investments, expected future availability of raw materials, lead time in development and commercialization of a new product, etc.

5. Formulation of policies and strategies:

After the goals are defined and planning premises are identified, management can formulate policies and strategies for the accomplishment of desired results. The responsibility for laying down policies and strategies lies usually with management. But, the subordinates should be consulted as they are to implement the policies and strategies.

Alternative plans of action should be developed and evaluated carefully so as to select the most appropriate policy for the organization. Imagination, foresight, experience and quantitative techniques are very useful in the development and evaluation of alternatives.

Available alternatives should be evaluated in the light of objectives and planning premises. If the evaluation shows that more than one alternative is equally good, the various alternatives may be combined in action.

6. Preparing operating plans:

After the formulation of overall operating plans, the derivative or supporting plans are prepared. Several medium range and short-range plans are required to implement policies and strategies.

These plans consist of procedures, programmers, schedules, budgets and rules. Such plans are required for the implementation of basic plans.

Operational plans reflect commitments as to methods, time, money, etc. These plans are helpful in the implementation of long range plans. Along with the supporting, plans, the timing and sequence of activities is determined to ensure continuity in operations.

7. **Integration of plans:**

Different plans must be properly balanced so that they support one another. Review and revision may be necessary before the plan is put into operation. Moreover, the various plans must be communicated and explained to those responsible for putting them into practice.

The participation and cooperation of subordinates is necessary for successful implementation of plans. Established plans should be reviewed periodically so as to modify and change them whenever necessary.

A system of continuous evaluation and appraisal of plans should be devised to identify any shortcomings or pitfalls of the plans under changing situations

MBO

"Management by objectives as a performance appraisal and review which intended to: Measure and judge performance;

Relate individual performance to organizational goals;

Foster the increasing competence and growth of the subordinates; Enhance communication between superior and subordinates; Serve as a basis for judgment about promotion and incentives; Stimulate the subordinates' motivation;

Serve as a device for organizational control and integration.

The essence of an MBO system lies in the establishment of common goals by managers and their subordinates acting together. Each person's major areas of responsibility are clearly defined in terms of measurable expected results (objectives). These objectives are used by subordinates in planning their work and by both subordinates and their superiors for monitoring progress.

Performance appraisals are conducted jointly on a continuing basis, with provisions for regular periodic reviews.

Process of MBO

1. Develop overall organizational development
2. Establish specific goals

3. Devise action plans
4. Maintain self control
5. Review the progress
6. Appraisal of performance

Organizational structure and Design:

An organizational structure defines how activities such as task allocation, coordination and supervision are directed towards the achievement of organizational aim. It can also be considered as the viewing glass or perspective through which individuals see their organization and its environment.

Organizations are a variant of clustered entities.

An organization can be structured in many different ways, depending on their objectives. The structure of an organization will determine the modes in which it operates and performs.

Organizational structure allows the expressed allocation of responsibilities for different functions and processes to different entities such as the branch, department, workgroup and individual.

Organizational structure affects organizational action in two big ways. First, it provides the foundation on which standard operating procedures and routines rest. Second, it determines which individuals get to participate in which decision-making processes, and thus to what extent their views shape the organization's actions.

Organizational Design:

Organization design is the deliberate process of configuring structures, processes, reward systems, and people practices to create an effective organization capable of achieving the business strategy. The organization is not an end in itself; it is simply a vehicle for accomplishing the strategic tasks of the business. A well-designed organization helps everyone in the business do her or his job effectively. A poorly-designed organization (or an organization by default) creates barriers and frustrations for people both inside and outside the organization.A healthy and effective organization is one that grows and evolves in response to both external and internal pressures and opportunities.

SPAN OF CONTROL

- **Meaning**.

Number of subordinates or the units of work that an officer can personally direct, control and supervise is known as "Span of Supervision" or Span of Management. It was termed as Span of

Attention by Gracuinas. Span is the length between the thumb and the little finger.Symbolically it refers to one's hold over something.

2) Views on Limitation

1. Hamilton 3 to 4 in his Soul and Body of an Army. 2. Graicunus 5 to 6

3. Urwick 5 to 6 at higher 8 to 12 on lower 4. Haldane 10 to 12

3) **Gullick** identified three factors which determine it (i) Function-technical less span- Time and Space.

3) **Factors Determining. a) Function** - more when the work is easy, routine, mechanical, and homogenous difficult if opposite.

b) Time: Age of the organization – more in old organization

c) Space – Work spot – if under the same roof more. Distinction between "Direct supervision"and access made by Urwick.

d) Personality. It is competence of supervisor as well as supervised. More if a supervisor is intelligent energetic and tactful – If subordinate are trained and experienced.

Departmentation

The process of grouping of activities into units for the purpose of administration is called departmentation. It can be defined "as the process by which activities or functions of enterprise are grouped homogeneously into different groups."

The administrative units are called divisions, units or departments. The followings are the basis of departmentation:

(a) When departmentation is done on the back of functions the departments created are production, marketing, accounting, and finance and personnel departments.

(b) When departmentation is done on the basis of geographical area, the departments are known as eastern department, western department, northern and southern department.

(c) Departmentation can be done on the basis of customers.

(d) Departmentation can be done on the basis of product handled.

TYPES OF DEPARTMENTATION

1. Functional Departmentation: - This is the simplest form of Departmentation when grouping of departments is done on the basis of functions such as production finance marketing sales purchase and personnel etc, it is known as functional Departmentation.

Further sub divisions of the functions may be formed like marketing can be divided in to advertisement sales and after sales service. So we can classify functions into two parts.

Basic functions i.e. Production Marketing Finance and Personnel

Secondary Functions: - These are further parts of basic functions according to the organizational

needs or operations like Production: - Product planning, R&D, Quality control and material handling Functional departmentation is useful where there is production of single product or similar kind of product, for example TV Computer monitor or TFT.

2. Products: - When grouping of activities and departments formed is given name on the basis of products manufactured in an organization, it is called products Departmentation. It is applied where there is a large range of products are manufactured.

When there are several product lines and each product line consists of a variety of items, functional classification fails to give balanced emphasis on each product. Apart from this use; product or services may be made the basis of major divisions by a departmental store, a banking concern and an insurance company. Again, manufacturing a marketing department may subdivide their activities on the basis of products.

3. Territories: - Like the products basis, geographical regions are adopted for main division as well as for subdivision purposes. When activities of an organization are physically dispersed in different locations territorial departmentation is adopted.

- CEO
- HEAD TV DIVISION
- HEAD AC AND REFRIGERATION
- HEAD COMPUTER
- CEO
- PRODUCTION
- FINANCE
- MARKETING
- PERSONAL
- ADVERTISEMENT
- SALES

MARKET RESEARCH that is located at different areas are made so many self-contained divisions of the organization. Marketing activities are very often subdivided on the basis of geographical areas. This form of departmentation can be useful where business is on national or international level. For ex. Indian railways, insurance company use territorial departmentation.

4. Customers: - When departments are formed to cater different kind of customers it is known as customer departmentation this basis of classification is widely followed in subdividing activities of the marketing department. When the products are offered to market through various channels and outlets, it has the special merit of supplying goods in accordance with the peculiar needs of customers. Customers may be classified according to buying capacity or nature like whole sale, retail

and export or government or general public. Most departmental stores may attempt t reach customers preferring low price or higher price

Formal and Informal organization:

On the basis of relationship, an organization may of two types—formal and informal.

Formal organization refers to the structure of well-defined jobs, each bearing a definite measure of authority, responsibility and accountability.

Informal organization refers to the relationship between people in the organization based on personal attitudes, emotions and prejudices, likes and dislikes.

There are five common forms of organization structure—Line, Functional, Line and Staff, Committee and matrix organization.

(1) Line organization —In this, there is a chain of authority which flows from upward to down word.

Advantages- Main advantages of this form of organization are: (i) Simple, (ii) Fixed responsibility, (iii) Flexibility, (IV) Prompt decision, (v) Unified control, (VI) Well-defined authority, (vii) Fixed channel of promotions.

Disadvantages— the system claims the following disadvantages: (i) Unitary administration, (ii) Overloading with work, (iii) Lack of specialization (iv) Lack of communication (v) Succession problem, (vi) Absence of conceptual thinking, (vii) Favorites, (viii) No co-ordination.

(2) Functional organization—In this form of organization all activities in the organization are grouped according to the basic functions, i.e., production, finance, marketing, headed by a specialist.

Advantages- Main advantages of this form are: (i) Specialization, (ii) Large-scale production, (iii)Improved efficiency, (IV) Flexibility, (v) Better industrial relations, (vi) Separation of mental and physical functions.

Disadvantages—following are the disadvantages of this form of organization: (i) Multiplicity of authority, (ii) Indiscipline, (iii) Shifting of responsibility, (iv) Lack of co-ordination, (v) impracticable, (vi) delay in decision making.

(3) Line and Staff Organization—in this form of organization the structure is basically that of line organization but functional experts are appointed to advise the line authority in their respective field.

Advantages: (i) Advantages of the line and the functional organizations, (ii) Specialization, (iii) Sound decisions.

Disadvantages: (i) Conflicts between the line and the staff executives, (ii) Advice of the staff executives are ignored, (iii) No demarcation of authority, (iv)Lack of responsibility, (v) uneconomical.

(4) Committee Organization—Committee is a group of individuals formed permanently or temporarily for a particular purpose through free interchange of ideas.

Advantages—(I) Pooling of ideas, (2) Co-ordination, (3) Motivation through participation, (4) Representation of interest groups, (5) Easy communication, (6) No concentration of power, (7) A tool of management for development.

Disadvantages—(I) Slow decisions, (2) Divided responsibility, (3) Minority tyranny, (4) other abuses.

(5) Project or Matrix Organization—In it authority flows vertically within functional departments.

Advantages-It emphasizes multiple inter-dependenceamong various functions, horizontal relationships and operational flexibility.

Disadvantages—it is of a temporary nature.

Relationship between formal and informal organizations

For a concerns working both formal and informal organization are important. Formal Organization originates from the set organizational structure and informal organization originates from formal organization. For an efficient o organization, both formal and informal organizations are required. They are the two phase of a same concern. Formal organization can work independently. But informal organization depends totally upon the formal organization. Formal and informal organization helps in bringing efficient working organization and smoothness in a concern. Within the formal organization, the members undertake the assigned duties in cooperation with each other. They interact and communicate amongst themselves. Therefore, both formal and informal organizations are important. When several people work together for achievement of organizational goals, social tie ups tends to built and therefore informal organization helps to secure co-operation by which goals can be achieved smooth. Therefore, we can say that informal organization emerges from formal organization.

Authority & Responsibility

Authority signifies hold over knowledge, skill or position. First two are expert. The role of authority is like soul to the body. Administrators do not actually perform duty directly but they get things done. **The right to get things** done is called authority. Authority is **legal or rightful power, a right to command or to act**. In formal organization it is vested with job position and not to the person. Hence it is a bureaucratic concept. Organizations where authority and responsibility are clearly defined are good and less corrupt and hence termed as: Two Pillars on which organization is sustained.

2. Definitions:

(a) Fayol**: It is right to give orders and power to exact obedience.**

(b) Theo Haimann: Rightful legal power to ask a subordinate to do and if not done to take action.

(c) Simon: Superior- subordinate relationships. It is power to make decisions. (d)**Allen**: Sums of powers and rights to make possible the performance.

(e) **Mooney and Reiley** called it as supreme coordinating power that provides legitimacy to the Organizational structure.

(f) **Koont and O Donnell**: Key to management job.

3. Characteristics:

(a) Existence of right (b) legitimate (c) exercised by making decisions and to carry out(d) to control the negative aspects of behavior (e) It is also determined by the personality factors of the possessor.

4. Power and Authority: Authority is institutionalized right of a superior to command and compel his subordinate to perform a certain act. Power is ability of a person to influence another person to perform an act. Power is competent to do an act and authority right to order action by others. Examples of P.M. and Mahatma. Authority is right to command but power is capacity to command.

(ii) Power is ability to make things happen- Follet

(b) Power in democratic society requires control and greater the power greater should be the control—L.D. White

c) Power corrupts and absolute power corrupts absolutely

Delegation & Decentralization

Decentralization is a systematic delegation of authority at all levels of management and in all of the organization. In a decentralization concern, authority in retained by the top management for taking major decisions and framing policies concerning the whole concern. Rest of the authority may be delegated to the middle level and lower level of management.

The degree of **centralization and decentralization** will depend upon the amount of authority elegated to the lowest level. According to Allen, "Decentralization refers to the systematic

effort to delegate to the lowest level of authority except that which can be controlled and exercised at central points.

Decentralization is not the same as delegation. In fact, decentralization is all extension of delegation. Decentralization pattern is wider is scope and the authorities are diffused to the lowest most level of management. **Delegation** of authority is a complete process and takes place from one person to another. While decentralization is complete only when fullest possible delegation has taken place. For example, the general manager of a company is responsible for receiving the leave application for the whole of the concern. The general manager delegates this work to the personnel manager who is now responsible for receiving the leave applicants. In this situation delegation of authority has taken place. On the other hand, on the request of the personnel manager, if the general manager delegates this power to all the departmental heads at all level, in this situation decentralization has taken place. There is a saying that "Everything that increasing the role of subordinates is decentralization and that decreases the role is centralization". Decentralization is wider in scope and the subordinate's responsibility increase in this case. On the other hand, in delegation the managers remain answerable even for the acts of subordinates to their superiors.

Formal organization refers to the structure of well-defined jobs, each bearing a definite measure of authority, responsibility and accountability.

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Principles of Organizing

1. Principle of Specialization

According to the principle, the whole work of a concern should be divided amongst the subordinates on the basis of qualifications, abilities and skills. It is through division of work specialization can be achieved which results in effective organization.

2. Principle of Functional Definition

According to this principle, all the functions in a concern should be completely and clearly defined to the managers and subordinates. This can be done by clearly defining the duties, responsibilities, authority and relationships of people towards each other.

Clarifications in authority- responsibility relationships help in achieving co- ordination and thereby organization can take place effectively..

3. Principles of Span of Control/Supervision

According to this principle, span of control is a span of supervision which depicts the number of employees that can be handled and controlled effectively by a single manager.

According to this principle, a manager should be able to handle what number of employees under him should be decided. This decision can be taken by choosing either from a wide or narrow span.

4. Principle of Scalar Chain

Scalar chain is a chain of command or authority which flows from top to bottom. With a chain of authority available, wastages of resources are minimized, communication is affected, overlapping of work is avoided and easy organization takes place. A scalar chain of command facilitates work flow in an organization which helps in achievement of effective results. As the authority flows from top to bottom, it clarifies the authority positions to managers at all level and that facilitates effective organization.

5. Principle of Unity of Command

It implies one subordinate-one superior relationship. Every subordinate is answerable and accountable to one boss at one time. This helps in avoiding communication gaps and feedback and response is prompt. Unity of command also helps in effective combination of resources, that is, physical, financial resources which helps in easy co- ordination and, therefore, effective organization.

Formal organization refers to the structure of well-defined jobs, each bearing a definite measure of authority, responsibility and accountability.

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Advantages- Main advantages of this form are: (i) Specialization, (ii) Large-scale production, (iii) Improved efficiency, (iv) Flexibility, (v) Better industrial relations, (vi) Separation of mental and physical functions.

Disadvantages—following are the disadvantages of this form of organization: (i) Multiplicity of authority, (ii) Indiscipline, (iii) Shifting of responsibility, (iv) Lack of co-ordination, (v) impracticable, (vi) delay

Decision making: concept

A decision is a choice between alternatives and decision making is the process of choosing one alternative over the others. Making good decisions should be a process. It is a process of identifying problems and resolving them, or of identifying opportunities and taking advantage of them.

Types of Decision making

Decisions are broadly taken at three levels:

Strategic decisions are big choices of identity and direction. Who are we? Where are we heading? These decisions are often complex and multi-dimensional. They may involve large sums of money, have a long-term impact and are usually taken by senior management.

Tactical decisions are about how to manage performance to achieve the strategy. What resources are needed? What is the timescale? These decisions are distinctive but within clearer boundaries. They may involve significant resources, have medium-term implications and may be taken by senior or middle managers.

Operational decisions are more routine and follow known rules. How many? To what specification? These decisions involve more limited resources, have a shorter-term application and can be taken by middle or first line managers

Techniques of decision making

Grid Analysis: Grid Analysis helps you to take decision confidently and rationally. It is particularly powerful where you have a number of good alternatives to choose from, and many different factors to take into account. It is also known as Decision Matrix Analysis, Pugh Matrix Analysis or MAUT, which stands for Multi-Attribute Utility Theory. Here, you create a table and write in possible solutions in different rows and factors responsible in columns. You then rate each solution with the factors responsible and the option with highest mark is the solution.

Paired Comparison Analysis: In paired comparison analysis, different options are compared and the results are tallied with each other. The option with the highest score is the preferred option. It is useful where priorities are not clear. It helps you to set priorities where there are conflicting demands on your resources.

Force Field Analysis: Force Field Analysis is a useful technique for looking at all the forces for and against a decision. This is also a method based on pros and cons. Here, you create a table where you write down the plan in the middle, list all forces for change in one column, and all forces against change in another column. Then assign score to each force.

Star bursting: Star bursting is a form of brainstorming that focuses on generating questions rather than answers. It is more interactive. For example, a colleague suggests a new design of ice skating boot. One question you ask might be "Who is the customer?" Answer: "Skaters". But you need to go further than this to ensure that you target your promotions accurately: "What kind of skaters?" Answer: "Those who do a lot of jumping, who need extra support", and so on.

Stepladder Technique: The Stepladder Technique is a useful method for motivating individual participation in group decision. It encourages all members to contribute on an individual level before being influenced by anyone else. These results in a wider variety of ideas, it prevents people from "hiding" within the group.

Cost/Benefit Analysis: As the name suggest, here the decision is based purely by comparing the cost and the benefit. If the benefit is more, the decision is usually accepted.

The Delphi Technique: As opposed to face- to- face group discussions, Delphi Technique helps generate ideas anonymously. The experts answer questions in two or more rounds.

Thereafter an anonymous summary of the experts from the previous round is provided. Thus, experts are encouraged to revise their earlier answers in light of the replies of other members of their panel. It is believed that during this process the range of the answers will decrease and the group will converge towards the "correct" answer.

Decision making process

There are many decision-making models. Here is another that is not nearly as insightful as the one above, but it is one that many of the students will be familiar with.

1. **Identify the problem.** The first step is to recognize there is a problem and a decision must be made. Some people just react to problems, but good managers seek to understand the problem.

Defining and clarifying the problem helps. Decision making is essentially a problem-solving process. This involves understanding the situation and trying to resolve it.

2. **List alternatives.** Managers need to develop a list of possible courses of action that will solve the problem. Managers must look for standard answers and also creative answers. The technique "brainstorming" is an example of creative thinking that can take place between a manager and the subordinates. In brainstorming, everyone comes up with as many alternatives as possible. A critical point about brainstorming sessions is that no criticism should be allowed. You want to foster a nurturing environment where everyone will feel like contributing. Shooting down an idea will stop the free flow of exchange.
3. **Select the best alternative.** In some models, the next step is evaluating your alternatives, but we are combining the evaluation with the selection. Evaluating is part of selecting. As part of the evaluation, you should list the potential effects of each choice. You should also weigh the advantages and disadvantages. Discuss those effects and make the decision based on what is best for the organization.
4. **Implement the chosen alternative**. Put the alternative into action. This is critical. All of your successful analysis won't do any good if you are afraid to act. Whether the implementation is easy or hard, you must take action.
5. **Evaluate. Earlier we evaluated the alternatives**, but now this final step means to evaluate the action. This is done with feedback. Collect the best feedback you can.

Mechanistic Vs Organic organizations:

MECHANISTIC ORGANIZATION DEFINITION: According to Black's Law Dictionary mechanistic organization is "the organization is hierarchical and bureaucratic. It is characterized by its (1) highly centralized authority, (2) formalized procedures and practices, and (3) specialized functions. Mechanistic organization is relatively easier and simpler to organize, but rapid change is very challenging. Contrast to organic organization."

CHARACTERISTICS: Employees are found to work separately and on their own assigned tasks. There is a definite chain of command and decisions are kept as high up the chain as possible.

Communication is a process between managers and supervisors up to executives, there is little daily interaction if any. There are strict company policies or operating standards with an abundance of documentation. This structure is considered the more stable of the two structures.
STRUCTURE: Companies in a mechanistic organization structure typically hold tight control, over processes and employees; with an iron fist so to speak. Rules are implemented and rarely deviated from while there is also a very clear chain of command to delegate responsibilities and power throughout the organization. Again, it is manufacturing companies that are well known for this type of structure but there are other groups that benefit from mechanistic organization; like universities.
ORGANIC ORGANIZATION DEFINITION: According to BusinessDictionary.com, organic organization is characterized by "(1) Flatness: communications and interactions are horizontal, (2) Low specialization knowledge resides wherever it is most useful, and (3) Decentralization: great deal of formal and informal participation in decision making."
CHARACTERISTICS: Employees are often found working in groups and share input on tasks. There are usually teams that handle one task. Communication is open between employees, managers and executives though they are typically just known as 'the owner'. There is a greater scale of verbal communication between parties. There is also more face-to-face time within the hierarchy of power.
STRUCTURE: Companies in an organic organization structure typically have a more open communication and contribution to tasks at hand. The structure of the business is more adaptable and flexible to changes. The environment is unpredictable but because of the freedom afforded the employees and management it is better maintained. Good examples of this type of structure would be Google and the coveted positions that lie within the Facebook Corporation. Organic organizations have quickly realized that a happy workplace makes for a happy employee.

Organizational Politics:

Workplace politics, (**office politics** or **organizational politics**) is the use of power and social networking within an organization to achieve changes that benefit the organization or individuals within it. Influence by individuals may serve personal interests without regard to their effect on the organization itself. Some of the personal advantages may include access to tangible assets, or intangible benefits such as status or pseudo-authority that influences the behavior of others. On the other hand, organizational politics can increase efficiency form interpersonal relationships, expedite change, and profit the organization and its members simultaneously

Both individuals and groups may engage in office politics which can be highly destructive, as people focus on personal gains at the expense of the organization. "Self-serving political actions can negatively influence our social groupings, cooperation, information sharing, and many other organizational functions." Thus, it is vital to pay attention to organizational politics and create the right political landscape. "Politics is the lubricant that oils your organization's internal gears." Office politics has also been described as "simply how power gets worked out on a practical, day-to-day basis."

Antecedents of Political Behavior Individual Antecedents

There are a number of potential individual antecedents of political behavior. We will start off by understanding the role that personality has in shaping whether someone will engage in political behavior.

Political skill Peoples' interpersonal style, including their ability to relate well to others, self-monitor, alter their reactions depending upon the situation they are in, and inspire confidence and trust

Organizational Antecedents

Scarcity of resources breeds politics. When resources such as monetary incentives or promotions are limited, people see the organization as more political. Any type of ambiguity can relate to greater organizational politics. For example, *role ambiguity* allows individuals to negotiate and redefine their roles. This freedom can become a political process. Research shows that when people do not feel clear about their job responsibilities, they perceive the organization as more political. Ambiguity also exists around *performance evaluations* and *promotions*. These human resource practices can lead to greater political behavior, such as impression management, throughout the organization. As you might imagine, *democratic decision making* leads to more political behavior. Since many people have a say in the process of making decisions, there are more people available to be influenced.

Unit-III

Staffing:

The managerial function of staffing involves manning the organization structure through proper and effective selection, appraisal and development of the personnel to fill the roles assigned to the employers/workforce.

According to Theo Haimann, "Staffing pertains to recruitment, selection, development and compensation of subordinates."

Concept:

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Nature of Staffing Function

1. Staffing is an important managerial function.
2. Staffing is a pervasive activity.
3. Staffing is a continuous activity.
4. The basis of staffing function is efficient management of personnel.
5. Staffing helps in placing right men at the right job.
6. Staffing is performed by all managers

Importance of Staffing

Progressive and successful organizations treat all employees as valuable human resources. Productivity and the resultant financial reward are dependent solely on the quality and skill of people. Some organizations make up for their lack of natural resources by their dedication to the maximum possible development of their human resources. Staffing function provides proper mechanisms for efficient handling of personnel matters, including workers, grievances. Filed research indicates that employees tend to return the favor when they are treated with dignity and respect.

Activities

Staffing activities, though all derived from organization strategy and structure, in turn activate the strategic management and the structure. Strategic orientation in staffing function increases the chances of organizational success.

Process

Staffing process and policies play a considerable role in acquiring right people at right time on right positions. Effective staffing function strives to establish cost-benefit relationship while manning the positions in the organization structure – people are acquired at lower outflows for providing greater efforts, optimal contribution and higher commitment.

Relationship

Staffing is important in its relationship with other managerial functions, because without their human resources, organizations would remain empty skeletons that cannot move to achieve their goals. The functions of planning, organizing, directing and controlling become nonstarters without people n the organization. It is clear that the effectiveness of other managerial functions depends on the degree of efficiency with which the staffing function is done. An organization is healthy, strong and successful to the extent that its people are capable, skillful and committed.

Need

Staffing function takes care of the need for building a sound organization. In a sense, organization widely differs in their quality and competence due to large variations in their human resources.

Staffing Process - Steps involved in Staffing

1. **Manpower requirements**

2. **Recruitment-** Once the requirements are notified, the concern invites and solicits applications according to the invitations made to the desirable candidates.

3. **Selection**

4. **Orientation and Placement-** Once screening takes place, the appointed candidates are made familiar to the work units and work environment through the orientation programes. Placement takes place by putting right man on the right job.

5. **Training and Development**

6. **Remuneration-** It is a kind of compensation provided monetarily to the employees for their work performances. This is given according to the nature of job- skilled or unskilled, physical or mental, etc.

7. **Performance Evaluation-** In order to keep a track or record of the behavior, attitudes as well as opinions of the workers towards their jobs. For this regular assessment is done to evaluate and supervise different work units in a concern.

8. **Promotion and transfer-** Promotion is said to be a non- monetary incentive in which the worker

is shifted from a higher job demanding bigger responsibilities as well as shifting the workers and transferring them to different work units and branches of the same organization. **Motivation**

Motivation is the word derived from the word 'motive' which means needs, desires, wants or drives within the individuals. It is the process of stimulating people to actions to accomplish the goals. In the work goal context the psychological factors stimulating the people's behavior can be -

- Desire for money
- Success
- Recognition
- Job-satisfaction
- Team work, etc

Importance of Motivation

1. Puts human resources into action

Every concern requires physical, financial and human resources to accomplish the goals. It is through motivation that the human resources can be utilized by making full use of it. This can be done by building willingness in employees to work.

2. Improves level of efficiency of employees

The level of a subordinate or a employee does not only depend upon his qualifications and abilities. For getting best of his work performance, the gap between ability and willingness has to be filled which helps in improving the level of performance of subordinates.

3. Leads to achievement of organizational goals

The goals of an enterprise can be achieved only when the following factors take place:-

a. There is best possible utilization of resources,
b. There is a co-operative work environment,
c. The employees are goal-directed and they act in a purposive manner.

4. Builds friendly relationship

Motivation is an important factor which brings employees satisfaction. This can be done by keeping into mind and framing an incentive plan for the benefit of the employees.

5. Leads to stability of work force

Stability of workforce is very important from the point of view of reputation and goodwill of a concern. The employees can remain loyal to the enterprise only when they have a feeling of participation in the management. The skills and efficiency of employees will always be of advantage to employees as well as employees.

As it is said, "Old is gold" which suffices with the role of motivation here, the older the people, more

the experience and their adjustment into a concern which can be of benefit to the enterprise.

Motivation is important to an individual as:

1. Motivation will help him achieve his personal goals.
2. If an individual is motivated, he will have job satisfaction.
3. Motivation will help in self-development of individual.

4. An individual would always gain by working with a dynamic team. Similarly, **motivation is important to a business as:**

1. The more motivated the employees are, the more empowered the team is.
2. The more is the team work and individual employee contribution, more profitable and successful is the business.
3. During period of amendments, there will be more adaptability and creativity.
4. Motivation will lead to an optimistic and challenging attitude at work place.

Types of motivation

Intrinsic Motivation

Intrinsic motivation means that the individual's motivational stimuli are coming from within. The individual has the desire to perform a specific task, because its results are in accordance with his belief system or fulfills a desire and therefore importance is attached to it.

Our deep-rooted desires have the highest motivational power. Below are some examples:

Acceptance: We all need to feel that we, as well as our decisions, are accepted by our coworkers.

Curiosity: We all have the desire to be in the know. **Honor:** We all need to respect the rules and to be ethical. **Independence:** We all need to feel we are unique.

Order: We all need to be organized.

Power: We all have the desire to be able to have influence. **Social contact:** We all need to have some social interactions. **Social Status:** We all have the desire to feel important.

Extrinsic Motivation

Extrinsic motivation means that the individual's motivational stimuli are coming from outside. In other words, our desires to perform a task are controlled by an outside source.

Note that even though the stimuli are coming from outside, the result of performing the task will still be rewarding for the individual performing the task.

Extrinsic motivation is external in nature. The most well-known and the most debated motivation is money. Below are some other examples:

- Employee of the month award
- Benefit package

- Bonuses
- Organized activities

THEORIES OF MOTIVATION

Maslow's Need Hierarchy Model

Abraham Maslow is well renowned for proposing the Hierarchy of Needs Theory in 1943. This theory is a classical depiction of human motivation. This theory is based on the assumption that there is a hierarchy of five needs within each individual. The urgency of these needs varies.

These five needs are as follows

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Abraham Maslow is well renowned for proposing the Hierarchy of Needs Theory in 1943. This theory is a classical depiction of human motivation. This theory is based on the assumption that there is a hierarchy of five needs within each individual. The urgency of these needs varies.

These five needs are as follows1.

Physiological needs- These are the basic needs of air, water, food, clothing and shelter. In other words, physiological needs are the needs for basic amenities of life.

2. **Safety needs-** Safety needs include physical, environmental and emotional safety and protection. For instance- Job security, financial security, protection from animals, family security, health security, etc.

3. **Social needs-** Social needs include the need for love, affection, care, belongingness, and friendship.

4. **Esteem needs-** Esteem needs are of two types: internal esteem needs (self- respect, confidence, competence, achievement and freedom) and external esteem needs (recognition, power, status, attention and admiration).

5. **Self-actualization need-** This include the urge to become what you are capable of becoming / what you have the potential to become. It includes the need for growth and self-contentment. The self- actualization needs are never fully satiable. As an individual grows psychologically, opportunities keep cropping up to continue growing.

According to Maslow, individuals are motivated by unsatisfied needs. As each of these needs is significantly satisfied, it drives and forces the next need to emerge. Maslow grouped the five needs into two categories - **Higher-order needs** and **Lower-order needs**. The physiological and the safety needs constituted the lower-order needs. These lower-order needs are mainly satisfied externally. The social, esteem, and self-actualization needs constituted the higher-order needs.

These higher-order needs are generally satisfied internally.

Herzberg's Two-Factor Theory of Motivation

In 1959, Frederick Herzberg, a behavioral scientist proposed a two-factor theory or the motivator-hygiene theory. According to Herzberg, there are some job factors that result in satisfaction while there are other job factors that prevent dissatisfaction. According to Herzberg, the opposite of "Satisfaction" is "No satisfaction" and the opposite of "Dissatisfaction" is "No Dissatisfaction".

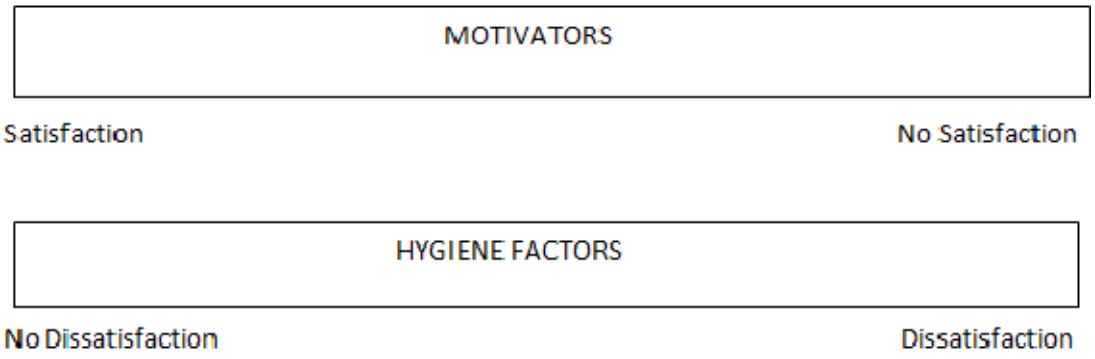


FIGURE: Herzberg's view of satisfaction and dissatisfaction

Herzberg classified these job factors into two categories:

Hygiene factors- Hygiene factors are those job factors which are essential for existence of motivation at workplace. These do not lead to positive satisfaction for long-term. But if these factors are absent / if these factors are non-existent at workplace, then they lead to dissatisfaction. These factors are extrinsic to work. Hygiene factors are also called as **dissatisfies or maintenance factors** as they are required to avoid dissatisfaction. These factors describe the job environment/scenario. Hygiene factors include:

□Pay

□Company Policies and administrative policies

□Fringe benefits

□Physical working conditions

□Status

□Interpersonal relations

□Job Security

b. **Motivational factors-** According to Herzberg, the hygiene factors cannot be regarded as motivators. The motivational factors yield positive satisfaction. These factors are inherent to work. These factors motivate the employees for a superior performance. These factors are called satisfiers. Motivational factors include:

□Recognition

□Sense of achievement

□Growth and promotional opportunities

□Responsibility

□Meaningfulness of the work

Mc Gregor's Theory X and Theory Y

In 1960, Douglas McGregor formulated Theory X and Theory Y suggesting two aspects of human behavior at work, or in other words, two different views of individuals (employees): one of which is negative, called as Theory X and the other is positive, so called as Theory Y. According to McGregor, the perception of managers on the nature of individuals is based on various assumptions. Assumptions of Theory X

□An average employee intrinsically does not like work and tries to escape it whenever possible.

□Since the employee does not want to work, he must be persuaded, compelled, or warned with punishment so as to achieve organizational goals. A close supervision is required on part of managers. The managers adopt a more dictatorial style.

□Many employees rank job security on top, and they have little or no aspiration/ ambition.

□Employees generally dislike responsibilities.

□Employees resist change.

□An average employee needs formal direction. Assumptions of Theory Y

□Employees can perceive their job as relaxing and normal. They exercise their physical and mental efforts in an inherent manner in their jobs.

□Employees may not require only threat, external control and coercion to work, but they can use self-direction and self-control if they are dedicated and sincere to achieve the organizational objectives.

□If the job is rewarding and satisfying, and then it will result in employees' loyalty and commitment to organization.

□An average employee can learn to admit and recognize the responsibility. In fact, he can even learn to obtain responsibility.

□The employees have skills and capabilities. Their logical capabilities should be fully utilized. In other words, the creativity, resourcefulness and innovative potentiality of the employees can be utilized to solve organizational problems.

Thus, we can say that Theory X presents a pessimistic view of employees' nature and behavior at work, while Theory Y presents an optimistic view of the employees' nature and behavior at work. If correlate it with Maslow's theory, we can say that Theory X is based on the assumption that the employees emphasize on the physiological needs and the safety needs; while Theory X is based on the assumption that the social needs, esteem needs and the self-actualization needs dominate the employees.

McGregor views Theory Y to be more valid and reasonable than Theory X. Thus, he encouraged cordial team relations, responsible and stimulating jobs, and participation of all in decision making process.

Theory Z

Lyndall F. Urwick has proposed this theory according to which primary task of every manager is to make or distribute goods or services at prices which the consumers are able and willing to pay and it is to this end he must direct the efforts of those associated with him. The people would be ready to direct their behavior towards organization goals under two conditions: (i) each individual should know the organization goals precisely and the contributions which his attempts are making towards these; and (ii) each individual should be confident that the realization of organizational goals is going to affect his needs satisfaction positively, and that none of his needs is threatened or frustrated by the membership of the organization. Management action consistent with these will motivate employees. Urwick contents that behavior is better reflected by a new theory Z rather than by X or Y. No doubt, this is true, but this is not a new contribution.

It can be made clear that Z does not stand for anything; it is merely the last letter of the alphabet. Perhaps the various authors have used it just to describe a state of affairs in the organization and human behavior as has been done in the case of theories X and Y. Further, theory Z is not a theory—it is a label interchangeable with type Z. Just for labeling purposes, type Z was perfectly all right.

The redundant expression theory Z was adopted not for analytical or descriptive purposes but for promotional purposes. Ouchi's theory Z captures the best in management methods from U.S. and Japanese approaches. There are four postulates of theory Z. These are: strong bond between organization and its employee's involvement, no formal organization structure, and role of leader lo bring coordination in human beings rather than in technical factors.

Strong Bond between Organization and Employees—Theory Z suggests strong bond between organization and its employees. Ouchi has suggested certain methods for this, including the lifetime employment in the organization as being followed by Japanese organizations. This stability must be achieved through the provisions of highly conducive work environment and challenges and participation in decisions. When there is a situation of layoff, it should not be resorted to and shareholders and owners can share the resultant loss by accepting less profits or even moderate losses for a short period of time.

Another factor necessary for stability of employment is the slowing down of evaluation and promotion which brings saturation in employees' prospects very soon. As against vertical movement of employees, more emphasis should be placed on horizontal movement which reduces stagnation. A career planning for employees should be prepared so that every employee is suitably placed. Slowing down of promotion and financial incentives can be made up by non-financial forms of evaluation such as frequent involvement with superiors or projects. They communicate the expectation of greater income in the future without creating short-term incentives.

1. Employee Involvement—Employee involvement is the important factor in theory Z. The involvement comes through meaningful participation. However, it does not mean that employees' participation is necessary in all decisions. In fact, there can be some decisions which are taken without consulting employees but they are informed later. There can be some decisions where employees' suggestions are taken but the final decisions are taken by management. In the case of remaining decisions, the process should be a joint one. However, any decision affecting employees in any way should be taken jointly and if there is any decision which the management wants to take individually, the employees should be informed about this so that they do not feel ignored. The idea is not to slow down the decision-making process but to involve employees for their commitment and giving due recognition to them.

2. No Formal Organization Structure—Theory Z supposes no formal structure for the organization. Instead, it must be a perfect teamwork with cooperation along with sharing of information, resources and plans. Ouchi has given the example of a basketball team which plays well

together and solves all problems with no formal reporting relationships and minimum of specialization of positions and of tasks. An organization does have any chart, division or any visible structure.

3. Coordination of Human Beings-To productivity a leader has to coordinate the people and not the technology. This involves developing people's skills and also the creation of new structures, incentives and a new philosophy of management. The purpose is to achieve commitment of employees lo the development of a more cooperative approach to work. The leader must develop trust which consists of the understanding of fundamentally compatible goals of the desire for the more effective working relationship together.

Thus, theory Z provides a complete transformation of motivational aspect of employees which other theories are not able to emphasize. However, following features may work against the precepts of theory Z.

(1) The provision of life time employment to develop strong bond between the organisation and its employees seems to be difficult because the employer will not retain an unproductive employee.

(2) Theory Z emphasizes on common culture and class feeling within the organisation. This is also very difficult because people come from a wide variety of environments. People differ in habits, eating pattern, dress and languages, caste system etc.

(3) The preposition that shareholders will accept less profit or accept losses to avoid lay off does not seem to be feasible.

(4) There are some operational problems in implementing Theory Z.

Leadership Meaning:

Leadership is a process by which an executive can direct, guide and influence the behavior and work of others towards accomplishment of specific goals in a given situation. Leadership is the ability of a manager to induce the subordinates to work with confidence and zeal.

Leadership is the potential to influence behavior of others. It is also defined as the capacity to influence a group towards the realization of a goal. Leaders are required to develop future visions, and to motivate the organizational members to want to achieve the visions.

According to Keith Davis, “Leadership is the ability to persuade others to seek defined objectives enthusiastically. It is the human factor which binds a group together and motivates it towards goals.”

Importance of Leadership

Leadership is an important function of management which helps to maximize efficiency and to achieve organizational goals. The following points justify the importance of leadership in a concern.

Initiates action- Leader is a person who starts the work by communicating the policies and plans to the subordinates from where the work actually starts.

Motivation- A leader proves to be playing an incentive role in the concern's working. He motivates the employees with economic and non-economic rewards and thereby gets the work from the subordinates.

Providing guidance- A leader has to not only supervise but also play a guiding role for the subordinates. Guidance here means instructing the subordinates the way they have to perform their work effectively and efficiently.

Creating confidence- Confidence is an important factor which can be achieved through expressing the work efforts to the subordinates, explaining them clearly their role and giving the guidelines to achieve the goals effectively. It is also important to hear the employees with regards to their complaints and problems.

Building morale- Morale denotes willing co-operation of the employees towards their work and getting them into confidence and winning their trust. A leader can be a morale booster by achieving full co-operation so that they perform with best of their abilities as they work to achieve goals.

Builds work environment- Management is getting things done from people. An efficient work environment helps in sound and stable growth. Therefore, human relations should be kept into mind by a leader. He should have personal contacts with employees and should listen to their problems and solve them. He should treat employees on humanitarian terms.

Co-ordination- Co-ordination can be achieved through reconciling personal interests with organizational goals. This synchronization can be achieved through proper and effective coordination which should be primary motive of a leader.

Traits of a Leader

A leader has got multidimensional traits in him who makes him appealing and effective in behavior. The following are the requisites to be present in a good leader:

Physical appearance- A leader must have a pleasing appearance. Physique and health are very important for a good leader.

Vision and foresight- A leader cannot maintain influence unless he exhibits that he is forward looking. He has to visualize situations and thereby has to frame logical programmes.

Intelligence- A leader should be intelligent enough to examine problems and difficult situations. He should be analytical who weighs pros and cons and then summarizes the situation. Therefore, a positive bent of mind and mature outlook is very important.

Communicative skills- A leader must be able to communicate the policies and procedures clearly,

precisely and effectively. This can be helpful in persuasion and stimulation.

Objective- A leader has to be having a fair outlook which is free from bias and which does not reflects his willingness towards a particular individual. He should develop his own opinion and should base on his judgments, facts and logic.

Knowledge of work- A leader should very precisely know the nature of work of his Subordinates because it is then he can win the trust and confidence of his subordinates.

Sense of responsibility- Responsibility and accountability towards an individual's work is very important to bring a sense of influence. A leader must have a sense of responsibility towards organizational goals because only then he can get maximum of capabilities exploited in a real sense. For this, he has to motivate himself and arouse and urge to give best of his abilities. Only then he can motivate the subordinates to the best.

Self-confidence and will-power- Confidence in himself is important to earn the confidence of the subordinates. He should be trustworthy and should handle the situations with full will power. (You can read more about Self-Confidence at : Self Confidence - Tips to be Confident and Eliminate Your Apprehensions).

Humanist-This trait to be present in a leader is essential because he deals with human beings and is in personal contact with them. He has to handle the personal problems of his subordinates with great care and attention. Therefore, treating the human beings on humanitarian grounds is essential for building a congenial environment.

Empathy- It is an old adage "Stepping into the shoes of others". This is very important because fair judgments and objectivity comes only then. A leader should understand the problems and complaints of employees and should also have a complete view of the needs and aspirations of the employees. This helps in improving human relations and personal contacts with the employees.

Likert's systems of management

Rensis Likert and his associates studied the patterns and styles of managers for three decades at the University of Michigan, USA, and identified a four-fold model of management systems. The model was developed on the basis of a questionnaire administered to managers in over 200 organizations and research into the performance characteristics of different types of organizations. The four systems of management system or the four leadership styles identified by Likert .These are :

System 1 - Exploitative Authoritative: Responsibility lies in the hands of the people at the upper echelons of the hierarchy. The superior has no trust and confidence in subordinates. The decisions are imposed on subordinates and they do not feel free at all to discuss things about the job with their superior. The teamwork or communication is very little and the motivation is based on threats.

System 2 - Benevolent Authoritative: The responsibility lies at the managerial levels but not at the lower levels of the organizational hierarchy. The superior has condescending confidence and trust in subordinates (master-servant relationship). Here again, the subordinates do not feel free to discuss things about the job with their superior. The teamwork or communication is very little and motivation is based on a system of rewards. **System 3 - Consultative:** Responsibility is spread widely through the organizational hierarchy. The superior has substantial but not complete confidence in subordinates.

Some amount of discussion about job related things takes place between the superior and subordinates. There is a fair amount of teamwork, and communication takes place vertically and horizontally. The motivation is based on rewards and involvement in the job.

System 4 - Participative: Responsibility for achieving the organizational goals is widespread throughout the organizational hierarchy. There is a high level of confidence that the superior has in his subordinates. There is a high level of teamwork, communication, and participation. **Tannenbaum & Schmidt model**

In 1938, Lewin and Lippitt proposed classifications of leaders based on how much involvement leaders placed into task and relationship needs. This range of leadership behaviors was expressed along a continuum by Tannenbaum & Schmidt in 1973, ranging from boss-centered (task) to subordinate-centered (relationship). To choose the most appropriate managerial style or use of authority, the leader must consider the following:

Forces in the manager: belief in team member participation and confidence in capabilities of members

Forces in the subordinate: subordinates who are independent, tolerant of ambiguity, competent, identify with organizational goals

Forces in the situation: team has requisite knowledge, team hold organizational values and traditions, teams work effectively

Managerial grid

The Managerial Grid is based on two behavioral dimensions:

Concern for People – This is the degree to which a leader considers the needs of team members, their interests, and areas of personal development when deciding how best to accomplish a task.

Concern for Production – This is the degree to which a leader emphasizes concrete objectives, organizational efficiency and high productivity when deciding how best to accomplish a task.

Using the axis to plot leadership 'concerns for production' versus 'concerns for people', Blake and Mouton defined the following five leadership styles:

Impoverished Leadership – Low Production/Low People

This leader is mostly ineffective. He/she has neither a high regard for creating systems for getting the job done, nor for creating a work environment that is satisfying and motivating. The result is disorganization, dissatisfaction and disharmony.

Country Club Leadership – High People/Low Production

This style of leader is most concerned about the needs and feelings of members of his/her team. These people operate under the assumption that as long as team members are happy and secure then they will work hard. What tends to result is a work environment that is very relaxed and fun but where production suffers due to lack of direction and control.

Produce or Perish Leadership – High Production/Low People

Also known as Authoritarian or Compliance Leaders, people in this category believe that employees are simply a means to an end. Employee needs are always secondary to the need for efficient and productive workplaces. This type of leader is very autocratic, has strict work rules, policies, and procedures, and views punishment as the most effective means to motivate employees. (See also our article on Theory X/Theory Y.)

Middle-of-the-Road Leadership – Medium Production/Medium People

This style seems to be a balance of the two competing concerns, and it may at first appear to be an ideal compromise. Therein lays the problem, though: When you compromise, you necessarily give away a bit of each concern, so that neither production nor people needs are fully met.

Leaders who use this style settle for average performance and often believe that this is the most anyone can expect.

Team Leadership – High Production/High People

According to the Blake Mouton model, this is the best managerial style. These leaders stress production needs and the needs of the people equally highly.

The premise here is that employees understand the organizations purpose and are involved in determining production needs. When employees are committed to, and have a stake in the organization's success, their needs and production needs coincide. This creates a team environment based on trust and respect, which leads to high satisfaction and motivation and, as a result, high production.

Concept, Types and Process of Business Communication:

Concept:

Communication requires a sender, a message, a medium and a recipient, although the receiver does not have to be present or aware of the sender's intent to communicate at the time of communication; thus communication can occur across vast distances in time and space. Communication requires that the communicating parties share an area of communicative commonality. The communication process is complete once the receiver understands the sender's message.

Communicating with others involves three primary steps:

- Thought: First, information exists in the mind of the sender. This can be a concept, idea, information, or feeling.
- Encoding: Next, a message is sent to a receiver in words or other symbols.
- Decoding: Lastly, the receiver translates the words or symbols into a concept or information that a person can understand.

There are a variety of verbal and non-verbal forms of communication. These include body language, eye contact, sign language, haptic communication, and chronemics. Other examples are media

content such as pictures, graphics, sound, and writing. The Convention on the Rights of Persons with Disabilities also defines the communication to include the display of text, Braille, tactile communication, large print, accessible multimedia, as well as written and plain language, human-reader, augmentative and alternative modes, means and formats of communication, including accessible information and communication technology. Feedback is a critical component of effective communication. A business can flourish only when all objectives to the organization are achieved effectively. For efficiency in an organization, all the people to the organization must be able to convey their message properly

Types:

Verbal communication

Human spoken and pictorial languages can be described as a system of symbols (sometimes known as lexemes) and the grammars (rules) by which the symbols are manipulated. The word "language" also refers to common properties of languages. Language learning normally occurs most intensively during human childhood. Most of the thousands of human languages use patterns of sound or gesture for symbols which enable communication with others around them. Languages seem to share certain properties although many of these include exceptions. There is no defined line between a language and a dialect. Constructed languages such as Esperanto, programming languages, and various mathematical formalisms are not necessarily restricted to the properties shared by human languages. Communication is the flow or exchange of information from one person to another or a group of people.

Non-verbal communication

Nonverbal communication describes the process of conveying meaning in the form of non-word messages. Some forms of non verbal communication include chronemics, haptics, gesture, body language or posture, facial expression and eye contact, object communication such as clothing, hairstyles, architecture, symbols, infographics, and tone of voice, as well as through an aggregate of the above. Speech also contains nonverbal elements known as paralanguage. This form of communication is the most known for interacting with people. These include voice lesson quality, emotion and speaking style as well as prosodic features such as rhythm, intonation and stress. Research has shown that up to 55% of human communication may occur through non verbal facial

expressions, and a further 38% through paralanguage

Likewise, written texts include nonverbal elements such as handwriting style, spatial arrangement of words and the use of emoticons to convey emotional expressions in pictorial form.

Oral communication

Oral communication, while primarily referring to spoken verbal communication, can also employ visual aids and non-verbal elements to support the conveyance of meaning. Oral communication includes speeches, presentations, discussions, and aspects of interpersonal communication. As a type of face-to-face communication, body language and choice tonality play a significant role, and may have a greater impact upon the listener than informational content. This type of communication also garners immediate feedback, and generally involves the cooperative principle

Process:

The first major model for communication was introduced by Claude Shannon and Warren Weaver for Bell Laboratories in 1949. The original model was designed to mirror the functioning of radio and telephone technologies. Their initial model consisted of three primary parts: sender, channel, and receiver. The sender was the part of a telephone a person spoke into, the channel was the telephone itself, and the receiver was the part of the phone where one could hear the other person. Shannon and Weaver also recognized that often there is static that interferes with one listening to a telephone conversation, which they deemed noise.

In a simple model, often referred to as the transmission model or standard view of communication, information or content (e.g. a message in natural language) is sent in some form (as spoken language) from an emisor/ sender/ encoder to a destination/ receiver/ decoder. This common conception of communication simply views communication as a means of sending and receiving information. The strengths of this model are simplicity, generality, and quantifiability. Social scientists Claude Shannon and Warren Weaver structured this model based on the following elements:

1. An information source, which produces a message.
2. A transmitter, which encodes the message into signals

3. A channel, to which signals are adapted for transmission
4. A receiver, which 'decodes' (reconstructs) the message from the signal.
5. A destination, where the message arrives.

Shannon and Weaver argued that there were three levels of problems for communication within this theory.

The technical problem: how accurately can the message be transmitted? The semantic problem: how precisely is the meaning 'conveyed'?

The effectiveness problem: how effectively does the received meaning affect behavior?

No allowance for differing purposes.

No allowance for differing interpretations. No allowance for unequal power relations. No allowance for situational contexts.

In 1960, David Berlo expanded on Shannon and Weaver's (1949) linear model of communication and created the SMCR Model of Communication.The Sender-Message-Channel-Receiver Model of communication separated the model into clear parts and has been expanded upon by other scholars. Communication is usually described along a few major dimensions: Message (what type of things are communicated), source / emisor / sender / encoder (by whom), form (in which form), channel (through which medium), destination / receiver / target / decoder (to whom), and Receiver. Wilbur Schram (1954) also indicated that we should also examine the impact that a message has (both desired and undesired) on the target of the message. Between parties, communication includes acts that confer knowledge and experiences, give advice and commands, and ask questions. These acts may take many forms, in one of the various manners of communication. The form depends on the abilities of the group communicating. Together, communication content and form make messages that are sent towards a destination. The target can be oneself, another person or being, another entity (such as a corporation or group of beings).

Communication can be seen as processes of information transmission governed by three levels of semiotic rules:

1. Pragmatic (concerned with the relations between signs/expressions and their users)
2. Semantic (study of relationships between signs and symbols and what they represent) and
3. Syntactic (formal properties of signs and symbols).

Therefore, communication is social interaction where at least two interacting agents share a common set of signs and a common set of semiotic rules.

Strategic communication:

Strategic communication can mean either communicating a concept, a process, or data that satisfies a long term strategic goal of an organization by allowing facilitation of advanced planning, or communicating over long distances usually using international telecommunications or dedicated global network assets to coordinate actions and activities of operationally significant commercial, non-commercial and military business or combat and logistic subunits. It can also mean the related function within an organization, which handles internal and external communication processes. Strategic communication can also be used for political warfare.
Strategic Communication refers to policy-making and guidance for consistent information activity within an organization and between organizations.

Equivalent business management terms are: integrated (marketing) communication, organizational communication, corporate communication, institutional communication, etc. (see paragraph on 'Commercial Application' below).

In the U.S., Strategic Communication is defined as: Focused United States Government efforts to understand and engage key audiences to create, strengthen, or preserve conditions favorable for the advancement of United States Government interests, policies, and objectives through the use of coordinated programs, plans, themes, messages, and products synchronized with the actions of all instruments of national power

Strategic communication management could be defined as the systematic planning and realization of information flow, communication, media development and image care in a long- term horizon. It conveys deliberate message(s) through the most suitable media to the designated audience(s) at the appropriate time to contribute to and achieve the desired long-term effect. Communication management is process creation. It has to bring three factors into balance: the message(s), the media channel(s) and the audience(s).

Application objectives

Strategic Communication (SC) provides a conceptual umbrella that enables organizations to integrate their disparate messaging efforts. It allows them to create and distribute communications that, while different in style and purpose, have an inner coherence. This consistency can, in some instances, foster an echo chamber that reinforces the organizational message and brand. At minimum, it prevents contradictory, confusing messaging to different groups across all media platforms.

Unit-IV

Controlling

Meaning:

Controlling is a systematic exercise which is called as a process of checking actual performance against the standards or plans with a view to ensure adequate progress and also recording such experience as is gained as a contribution to possible future needs.

Scope of controlling

Control Scope is the process of monitoring the status of the project and product scope and managing changes to the scope baseline. The key benefit of this process is that it allows the scope baseline to be maintained throughout the project. The inputs, tools and techniques, and outputs of the process

Nature of controlling

Controlling is an end function- A function which comes once the performances are made in conformities with plans.

Controlling is a pervasive function- which means it is performed by managers at all levels and in all type of concerns.

Controlling is forward looking- because effective control is not possible without past being controlled. Controlling always looks to future so that follow-up can be made whenever required.

Controlling is a dynamic process- since controlling requires taking reviewable methods; changes have to be made wherever possible.

Process of controlling

Controlling as a management function involves following steps:

- **Establishment of standards-** Standards are the plans or the targets which have to be achieved in the course of business function. They can also be called as the criterions for judging the performance. Standards generally are classified into two-

Measurable or tangible - Those standards which can be measured and expressed are called as measurable standards. They can be in form of cost, output, expenditure, time, profit, etc.

Non-measurable or intangible- There are standards which cannot be measured monetarily. For example-performance of a manager, deviation of workers, their attitudes towards a concern.

These are called as intangible standards.

Controlling becomes easy through establishment of these standards because controlling is exercised on the basis of these standards.

- **Measurement of performance-** The second major step in controlling is to measure the performance. Finding out deviations becomes easy through measuring the actual performance. Performance levels are sometimes easy to measure and sometimes difficult.

Measurement of tangible standards is easy as it can be expressed in units, cost, money terms, etc.

Quantitative measurement becomes difficult when performance of manager has to be measured.

Performance of a manager cannot be measured in quantities. It can be measured only by-

- Attitude of the workers,
- Their morale to work

The development in the attitudes regarding the physical environment, and their communication with the superior.

It is also sometimes done through various reports like weekly, monthly, quarterly, yearly reports.

- **Comparison of actual and standard performance-** Comparison of actual performance with the planned targets is very important. Deviation can be defined as the gap between actual performance and the planned targets. The manager has to find out two things here extent of deviation and cause of deviation. Extent of deviation means that the manager has to find out whether the deviation is positive or negative or whether the actual performance is in conformity with the planned performance. The managers have to exercise control by exception. He has to find out those deviations which are critical and important for business. Minor deviations have to be ignored. Major deviations like replacement of machinery, appointment of workers, quality of raw material, rate of profits, etc. should be looked upon consciously. Therefore it is said, " If a manager controls everything, he ends up controlling nothing." For example, if stationery charges increase by a minor 5 to 10%, it can be called as a minor deviation. On the other hand, if monthly production decreases continuously, it is called as major deviation.

Once the deviation is identified, a manager has to think about various cause which has led to

deviation. The causes can be-

Erroneous planning, Co-ordination loosens,

Implementation of plans is defective, and Supervision and communication is ineffective, etc.

- **Taking remedial actions-** Once the causes and extent of deviations are known, the manager has to detect those errors and take remedial measures for it. There are two alternatives here- Taking corrective measures for deviations which have occurred; and

After taking the corrective measures, if the actual performance is not in conformity with plans, the manager can revise the targets. It is here the controlling process comes to an end. Follow up is an important step because it is only through taking corrective measures, a manager can exercise controlling.

Types of control Feed forward control

Feed forward is a management and communication term that refers to giving a control impact to a subordinate, a person, or an organization from which you are expecting an output.

Feed forward is not just a pre-feedback, because feedback is always based on measuring an output and sending respective feedback. A pre-feedback given without measurement of output may be understood as a confirmation or just an acknowledgment of control command. Feed forward is generally imposed before any willful change in output may occur. All other changes of output determined with feedback may result from distortion, noise, or attenuation. Feed forward usually involves giving a document for review and giving an ex post information on that document that has not already been given. However, social feedback is the response of the supreme hierarch to the subordinate as an acknowledgement of a subordinate's report on output (hence, the subordinate's feedback to the supreme).

Concurrent Control

Concurrent control is control that happens at the same time as a project is occurring. This monitoring and controlling consists of the processes that observe project execution so that potential problems can be identified in a timely manner and corrective action can be taken, when necessary, to control the execution of the project. Controlling is one of the managerial functions, like planning, organizing, staffing, and directing. It is an important function because it helps to check for errors and to take

corrective action so that deviations from standards are minimized and the stated goals of the organization are achieved in the desired manner. Control in management means setting standards, measuring actual performance, and taking corrective action.

Concurrent control is control that happens at the same time as a project is occurring. This monitoring and controlling consists of the processes that observe project execution so that potential problems can be identified in a timely manner and corrective action can be taken, when necessary, to control the execution of the project.

Feedback

Feedback is a process in which information about the past or the present influences the same phenomenon in the present or future. As part of a chain of cause-and-effect that forms a circuit or loop, the event is said to "feedback" into itself.

As an organization seeks to improve its performance, feedback helps it make required adjustments. Feedback serves as motivation for many people in the workplace. When one receives either negative or positive feedback, one decides how to apply it to his or her job.

Joseph Folkman says that to find the greatest level of success in an organization, working with other people, a person should learn how to accept any kind of feedback, analyze it in the most positive manner possible, and use it to further impact future decision-making.

Techniques of Control

1. **Direct Supervision and Observation**

'Direct Supervision and Observation' is the oldest technique of controlling. The supervisor himself observes the employees and their work. This brings him in direct contact with the workers. So, many problems are solved during supervision. The supervisor gets first hand information, and he has better understanding with the workers. This technique is most suitable for a small-sized business

2. **Financial Statements**

All business organizations prepare Profit and Loss Account. It gives a summary of the income and expenses for a specified period. They also prepare Balance Sheet, which shows the financial position of the organization at the end of the specified period. Financial statements are used to control the organization. The figures of the current year can be compared with the previous year's figures. They

can also be compared with the figures of other similar organizations.

3. Budgetary Control

A budget is a planning and controlling device. Budgetary control is a technique of managerial control through budgets. It is the essence of financial control. Budgetary control is done for all aspects of a business such as income, expenditure, production, capital and revenue. Budgetary control is done by the budget committee.

4. Break Even Analysis

Break Even Analysis or Break Even Point is the point of no profit, no loss. It means that, any sale below this point will cause losses and any sale above this point will earn profits. The Breakeven analysis acts as a control device. It helps to find out the company's performance. So the company can take collective action to improve its performance in the future. Break-even analysis is a simple control tool.

5. Return on Investment (ROI)

Investment consists of fixed assets and working capital used in business. Profit on the investment is a reward for risk taking. If the ROI is high then the financial performance of a business is good and vice-versa.

ROI is a tool to improve financial performance. It helps the business to compare its present performance with that of previous years' performance. It helps to conduct inter-firm comparisons. It also shows the areas where corrective actions are needed.

6. Management by Objectives (MBO)

MBO facilitates planning and control. It must fulfill following requirements:-

□Objectives for individuals are jointly fixed by the superior and the subordinate.

□ Periodic evaluation and regular feedback to evaluate individual performance.

□ Achievement of objectives brings rewards to individuals.

7. Management Audit

Management Audit is an evaluation of the management as a whole. It critically examines the full management process, i.e. planning, organizing, directing, and controlling. It finds out the efficiency of the management. To check the efficiency of the management, the company's plans, objectives, policies, procedures, personnel relations and systems of control are examined very carefully. Management auditing is conducted by a team of experts. They collect data from past records,

members of management, clients and employees. The data is analyzed and conclusions are drawn about managerial performance and efficiency.

8. Management Information System (MIS)

In order to control the organization properly the management needs accurate information. They need information about the internal working of the organization and also about the external environment. Information is collected continuously to identify problems and find out solutions.

MIS collects data, processes it and provides it to the managers. MIS may be manual or computerized. With MIS, managers can delegate authority to subordinates without losing control.

9. PERT and CPM Techniques

Programme Evaluation and Review Technique (PERT) and Critical Path Method (CPM) techniques consists of various activities and sub-activities. Successful completion of any activity depends upon doing the work in a given sequence and in a given time.

CPM / PERT can be used to minimize the total time or the total cost required to perform the total operations.

Importance is given to identifying the critical activities. Critical activities are those which have to be completed on time otherwise the full project will be delayed.

So, in these techniques, the job is divided into various activities / sub-activities. From these activities, the critical activities are identified. So, by controlling the time of the critical activities, the total time and cost of the job are minimized.

10. Self-Control

Self-Control means self-directed control. A person is given freedom to set his own targets, evaluate his own performance and take corrective measures as and when required. Self-control is especially required for top level managers because they do not like external control.

The subordinates must be encouraged to use self-control because it is not good for the superior to control each and everything.

Effective Control System

Effective control systems share several common characteristics. These characteristics are as follows:

□ **Focus on critical points.** For example, controls are applied where failure cannot be tolerated or where costs cannot exceed a certain amount. The critical points include all the areas of an organization's operations that directly affect the success of its key operations.

□ **Integration into established processes.** Controls must function harmoniously within these processes and should not bottleneck operations.

□ **Acceptance by employees.** Employee involvement in the design of controls can increase acceptance.

□ **Availability of information when needed.** Deadlines, time needed to complete the project, costs associated with the project, and priority needs are apparent in these criteria.

Costs are frequently attributed to time shortcomings or failures.

□ **Accuracy.** Effective control systems provide factual information that's useful, reliable, valid, and consistent.

□ **Comprehensibility.** Controls must be simple and easy to understand.

Effective control system in management is:

□ **(1) Objectives:**

A system of control can work more effectively when it is based on the main objectives or goals of the organization. It should be related to the persons. It becomes essential that the standards, which are set by the management, should not be too high or too low. These should be told to the workers in time so that the standards can be judged with the actual performance.

(2) Suitability:

□A business organization should adopt such a system of control which suits its Requirement.-There is no hard and fast rule and readymade system of control which give the correct and most favorable, results in all type of organizations and in all Circumstances.

□Suitability of a system of control differs from organization to organization and to make it favorable, it is necessary to know the nature of the business, needs of the workers a Circumstances prevailing inside the organization.

(3) Forward looking:

□The system of control should be forward looking which enables the managers to keep a control on operations in advance. Each and every deviation from the standards should be noted in time to take corrective action before the task is completed. This will avoid or minimize the deviation in future.

(4) Feedback:

□The success of a business depends on a system of control and for a systematic control advance planning is needed. This advance planning should be based on actual accurate post information

collected through investigation.

□The control system should be such that it is based on past information and. which would also adjust if necessary to future actions.

(5) Quick action:

□Management gets the information from various line managers or supervisors about the deviation in standards and these should be suggested to the planner to take a correct and quick action to avoid future wastage. Actually speaking, the success of control depends entirely on quick action and its implementation.

(6) Directness:

□In order to make the system of control more effective, it is necessary that the relation between the workers and management should be direct. It is quite obvious that if the number of line supervisors is less in the organization then workers would work effectively and objectives may be achieved in time because they will not take much time in getting the correct information.

(7) Flexibility:

□The system of control should be such that it accommodates all changes or failures in plans. If plans are to be revised due to change in its objectives, the system of control should also be adjusted to suit the changed circumstances.

Managing Conflict & negotiation:

Conflict occurs whenever Disagreements exist in a social situation over issues of substance.

–Emotional antagonisms cause frictions between individuals or groups.

Negotiation

The process of making joint decisions when the parties involved have different preferences.

–Workplace disagreements arise over a variety of matters.

TOTAL QUALITY MANAGEMENT:

Total Quality Management /TQM is an integrative philosophy of management for continuously improving the quality of products and processes.

TQM is based on the premise that the quality of products and processes is the responsibility of everyone involved with the creation or consumption of the products or services offered by an organization, requiring the involvement of management, workforce, suppliers, and customers, to meet or exceed customer expectations.

Total quality management can be summarized as a management system for a customer-focused organization that involves all employees in continual improvement. It uses strategy, data, effective communications and involvment of all level employeess to integrate the quality discipline into the culture and activities of the organization.

• Customer-focused. The customer ultimately determines the level of quality. No matter what an organization does to foster quality improvement—training employees, integrating quality into the design process, upgrading computers or software, or buying new measuring tools—the customer determines whether the efforts were worthwhile.

• Total employee involvement. All employees participate in working toward common goals. Total employee commitment can only be obtained after fear has been driven from the workplace, when empowerment has occurred, and management has provided the proper environment. High performance work systems integrate continuous improvement efforts with normal business operations. Self-managed work teams are one form of empowerment.

• Process-centered. A fundamental part of TQM is a focus on process thinking. A process is a series of steps that take inputs from suppliers (internal or external) and transforms them into outputs that are delivered to customers (again, either internal or external). The steps required to carry out the process are defined, and performance measures are continuously monitored in order to detect unexpected variation.

• Integrated system. Although an organization may consist of many different functional specialties often organized into vertically structured departments, it is the horizontal processes interconnecting these functions that are the focus of TQM. _Micro-processes add up to larger processes, and all processes aggregate into the business processes required for defining and implementing strategy. Everyone must understand the vision, mission, and guiding principles as well as the quality policies, objectives, and critical processes of the organization. Business performance must be monitored and communicated continuously. _An integrated business system may be modeled after the Baldrige National Quality Program criteria and/or incorporate the ISO 9000 standards. Every organization has a unique work culture, and it is virtually impossible to achieve excellence in its products and services unless a good quality culture has been fostered. Thus, an integrated system connects business improvement elements in an attempt to continually improve and exceed the expectations of customers, employees, and other stakeholders.

• Strategic and systematic approach. A critical part of the management of quality is the strategic and systematic approach to achieving an organization's vision, mission, and goals. This process, called strategic planning or strategic management, includes the formulation of a strategic plan that integrates quality as a core component.

• Continual improvement. A major thrust of TQM is continual process improvement. Continual improvement drives an organization to be both analytical and creative in finding ways to become more competitive and more effective at meeting stakeholder expectations.

• Fact-based decision making. In order to know how well an organization is performing, data on performance measures are necessary. TQM requires that an organization continually collect and analyze data in order to improve decision making accuracy, achieve consensus, and allow prediction based on past history.

• Communications. During times of organizational change, as well as part of day-to-day operation, effective communications plays a large part in maintaining morale and in motivating employees at all levels. Communications involve strategies, method, and timeliness.

These elements are considered so essential to TQM that many organizations define them, in some format, as a set of core values and principles on which the organization is to operate.

Quality circle:

A **quality circle** is a volunteer group composed of workers (or even students), who do the same

or similar work, usually under the leadership of their own supervisor (or an elected team leader), who meet regularly in paid time who are trained to identify, analyze and solve work-related problems and present their solutions to management and where possible implement the solutions themselves in order to improve the performance of the organization, and motivate and enrich the work of employees. When matured, true quality circles become self-managing, having gained the confidence of management.

Quality circles are an alternative to the rigid concept of division of labor, where workers operate in a more narrow scope and compartmentalized functions. Typical topics are improving occupational safety and health, improving product design, and improvement in the workplace and manufacturing processes. The term *quality circle was* defined by Professor Kaoru Ishikawa in a journal entitled [title needed and circulated throughout Japanese industry by JUSE in 1960. The first company in Japan to introduce Quality Circles was the Nippon Wireless and Telegraph Company in 1962. By the end of that year there were 36 companies registered with JUSE by 1978 the movement had grown to an estimated 1 million Circles involving some 10 million Japanese workers. Contrary to some people's opinion this movement had nothing whatever to do with Dr. Edwards Deming or indeed Dr Juran and both were skeptical as to whether it could be made to work in the USA or the West generally.

Quality circles are typically more formal groups. They meet regularly on company time and are trained by competent persons (usually designated as facilitators) who may be personnel and industrial relations specialists trained in human factors and the basic skills of problem identification, information gathering and analysis, basic statistics, and solution generation. Quality circles are generally free to select any topic they wish (other than those related to salary and terms and conditions of work, as there are other channels through which these issues are usually considered).

Managing Diversity in Organizations:

Diversity in the workplace means bringing together people of different ethnic backgrounds, religions and age groups into a cohesive and productive unit. Advances in communication technology, such as the Internet and cellular phones, have made the marketplace a more global concept. In order to survive, a company needs to be able to manage and utilize its diverse workplace effectively. Managing diversity in the workplace should be a part of the culture of the entire organization

Step 1

Confirm that all of your personnel policies from hiring to promotions and raises are based on employee performance. Avoid allowing tenure, ethnic background or any other kind of category into your human resources policies. Managing a diverse workplace begins with strong policies of equality from the company. Once these policies are in place, the company can begin implementing diversity measures throughout the entire organization.

Step 2

Rate the qualifications of the candidate based on the quality of his experience, not age or any other category, when hiring. When you hire a diverse but qualified workforce, you are on the right track towards being able to manage the diversity in your company.

Step 3

Encourage diversity when creating teams and special work groups within the company. If a manager creates a work group that does not utilize the skills of the most qualified employees, then insists that the group be changed to include all qualified staff members.

Step 4

Treat complaints of favoritism or discrimination seriously. Encourage employees to report all instances of discriminatory behavior, and have a definitive process in place for investigating and dealing with these issues.

Step 5

Hold quarterly trainings for the entire staff on the benefits of diversity in the workplace. Encourage discussions at these meetings on how the company can better manage workplace diversity.

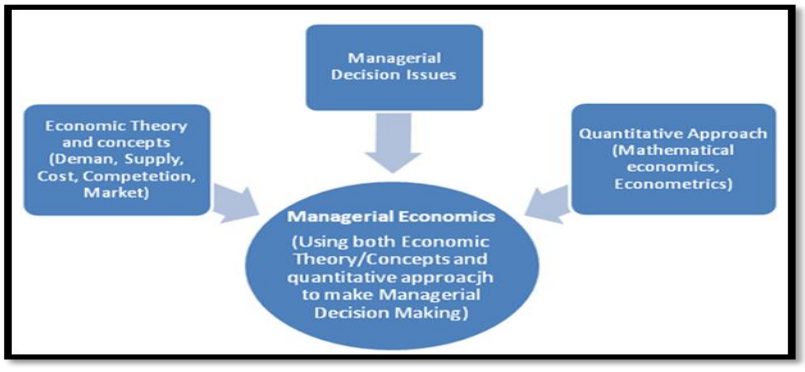
MANAGERIAL ECONOMICS (115)

BBA-LLB: 115-MANAGERIAL ECONOMICS

UNIT 1- INTRODUCTION TO MANAGERIAL ECONOMICS-

Managerial Economics is the integration of economic theory with business practices for the purpose of facilitating decision making and forward planning by management.

Managerial Economics is microeconomics applied to decisions made by business managers. It is concerned with application of economic concepts and analysis the problem of formulating rational managerial decision.



a) Circular flow of economic activity

There are two basic activities undertaken in any economy-Production and Consumption. In circular flow model, the producers are termed as "firms" and the consumers are termed as "households". Circular flow involves different sectors of the economy such as (1) The producing sector/firms, (2) The household sector, (3) The Government sector and (4) The rest of the world.

Real Flow: refers to the flow of goods and services across different sectors of the economy.

Money Flow: refers to the flow of money across different sectors of the economy.

Circular flow model in a –

1) Two sector economy(without savings)
2) Two sector economy(with savings)
3) Three sector economy
4) Four sector economy

Two sector economy (without savings)

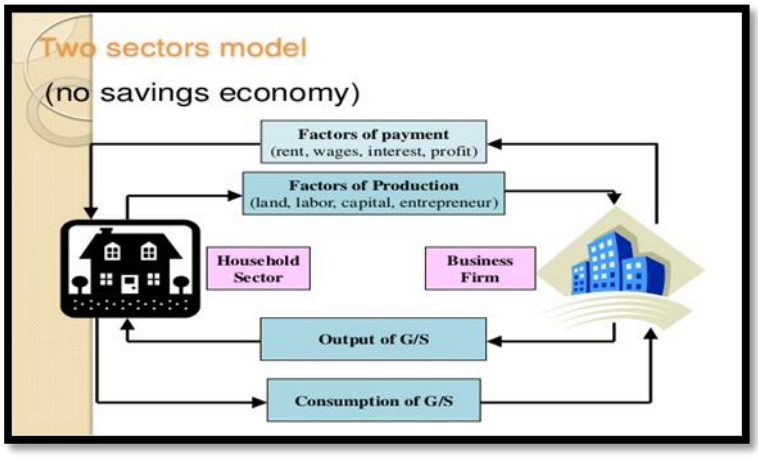
In a simple economy there are only two sectors-1) The producing sector 2) The households. The firms produce the goods and services and households spend their incomes on consumption of goods and services produced by the firms. The businesses employ the factor services of

households and pay them in the form of rent, wages, interest and profit which forms the income of the factors which is again spent.

Assumptions:

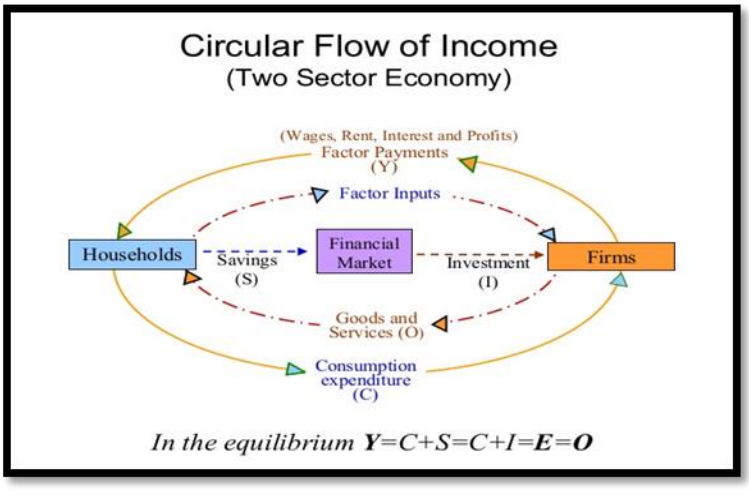
1) There are only two sectors in the economy

2) There are no savings.



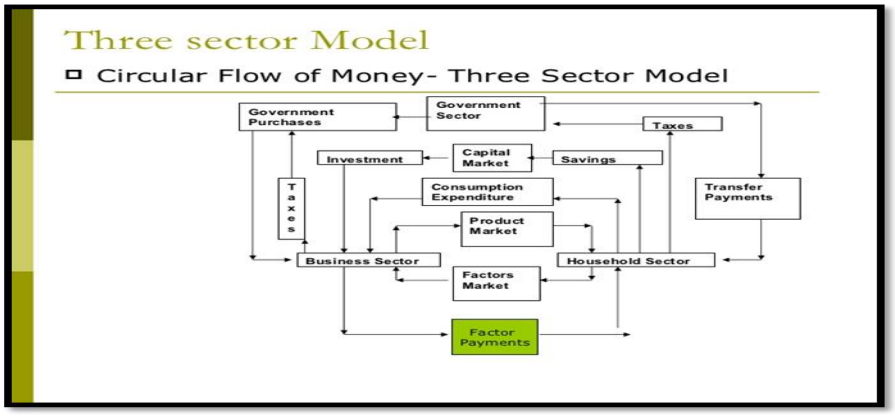
Two sector economy (with savings)

The households do not spend the entire income on consumption of goods and services and tend to save a part of their income. Hence emergence of savings implies emergence of financial system. The financial system refers to the existence of a money market/ capital market in an economy including a variety of financial intermediaries such as commercial banks, insurance companies etc. These financial intermediaries serve as a link between the savers and investors.

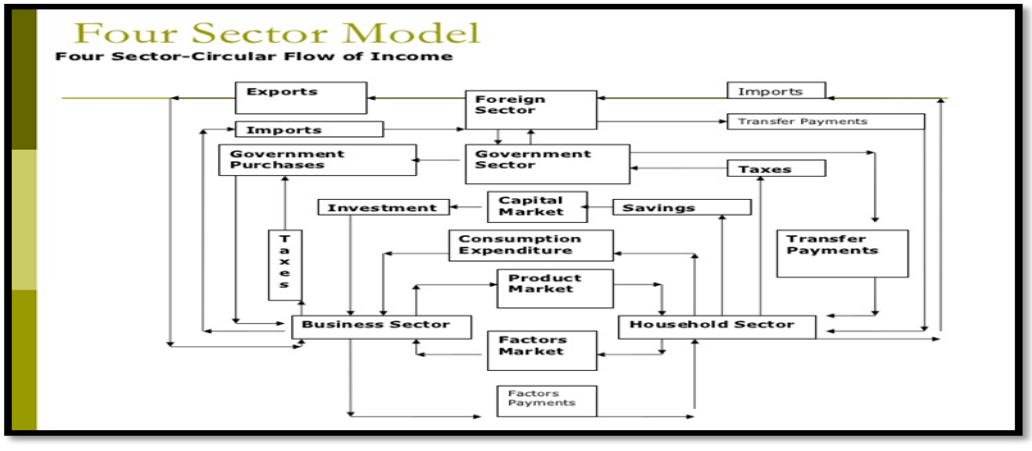


Three sector economy includes three sectors namely 1) The producing sector/firms, 2) The

households and 3) The government.



Four sector economy includes four sectors namely 1) The producing sector/firms, 2) The households, 3) The government and 4) The rest of the world.



b) The Nature of the firm: The Rationale for the Firm, the Objective of the Firm, Maximizing versus Satistisficing

- A firm is an association of individuals who have organized themselves for the purpose of converting input into output.
- The firm organizes the factors of production to produce goods and services in order to fulfill the needs of the households, government and rest of the world.
- Each firm lays down its own objectives which is fundamental to the existence of the firm
- Firms are established to earn profit.

- **High cost of negotiation and enforcement of contract**: firms exist because going to the market all the time can impose heavy transaction cost. Each time when the transaction is to be made, there will arise a need for hiring workers, negotiating prices and enforcing contracts which is cumbersome and time consuming process.
- **An instrument of long term contract:** a firm is a device for creating long term contracts when short term contracts are too bothersome.
- **Government interference pertaining to inter-firm transactions**: some degree of government interference in the marketplace applies to transactions among firms rather than within firms.eg. Sales tax usually applies only to transactions between one firm and another. By internalizing some transactions within the firm that would otherwise be subjected to those interferences, production costs are reduced.
- **Limits on the size of the firm**: limits are imposed on size of the firm because cost of organizing transactions rises as the firm becomes larger and also because managerial ability is limited.

The Objective of the firm

An objective is something that the firm wants to achieve over a specific period of time. Major objectives that a firm wants to achieve are as follows:

I. **Organic objectives:** Organic objectives can also be termed as threefold objective. In order to be successful, the business organization has to fulfill its primary objectives i.e. to survive, to maintain growth and make profit. The Organic objectives of the business are classified into:

a) Survival: Profit earning is regarded as a main objective of every business unit. But it is essential for the survival and growth of every business enterprise. 'To survive' means, "to live longer". Survival is the primary and fundamental objective of every business firm.The business cannot grow until and unless it survives in a competitive business world. Due to intense global competition, survival has become extremely difficult for the organization.

b)Growth: Growth comes after survival. It is the second major business objective after survival. Growth refers to an increase in the number of activities of an organization. It is an important organic objective of an organization. Business takes place through expansion and diversification. Business growth benefits promoters, shareholders, consumers and the national

economy.

c)Prestige/Recognition: Prestige means goodwill or reputation arising from success or achievement. This is the third organic objective after survival and growth. Business growth enables the firm to establish goodwill in the market.The business firm has to satisfy the human wants of the society. Along with profit it business wants to create a distinct image and goodwill in the market.

II. Economic objectives: Economic objectives stand at the top most in the hierarchy of business objectives. The following economic objectives are explained in detail:

a) Profit: The primary objective of every business is to earn profit. Profit is the lifeblood of business, without which no business can survive in a competitive-market. Profit is the financial gain or excess of return over investment. It is the reward for bearing risk and uncertainty in the business. It is a lubricant, which keeps the wheels of business moving. Profit is essential for the survival, growth and expansion of the business.

b) Creating and retaining customers: Consumer is a king of the market. All the business activities revolve around the consumers. The success of the business depends upon its customers. It is not only necessary to make customers but also to hold the customers. Competition is intensely rising. Hence to face this stiff competition, it is necessary for the businessman to come out with new concepts and products for attracting the new customers and retaining the old one.

c) Innovation: Innovation is the act of introducing something new. It means creativity i.e. to come up with new ideas, new concepts and new process changes, which bring about improvement in products, process of production and distribution of goods. Innovation helps in reducing the cost by adopting better methods of production. Reduction in the cost and quality products increase the sales thereby increasing the economic gain of the firm. Hence to survive in the competitive world, the business has to be innovative.

d) Optimum utilization of the scarce resources: Resources comprises of physical, human and capital that has to optimally utilize for making profit. The availability of these resources is usually limited. So the firm should make best possible use of these resources, wastage of the limited resource should be avoided.

III. Social Objectives: Social objective means objective relating to the society. This objective helps to shape the character of the company in the minds of the society. The obligation of any business to protect and serve public interest is known as social responsibility of business.Society comprises of the consumers, employees, shareholders, creditors, financial institutions,

government, etc. Business has some responsibility towards the society. Businessmen engage themselves in research for improving the quality of products; some provide housing, transport, education and health care to their employees and their families.

a) Towards the Employees: Employee of a business firm contributes to the success of the business firm. They are the most important resource of the business. Every business is responsible towards their employees in respect of wages, working conditions, etc. The interest of the employees should be taken care of. The authorities should not exploit the employees.

b) Towards the Consumers: Business has some obligation towards the consumers. No business can survive without the support of customers. Now-a-days consumers have become very conscious about their rights. They protest against the supply of inferior and harmful products. This has made it obligatory for the business to protect the interest of the consumers by providing quality products at the most competitive price. They should charge the price according to the quality of the goods and services provided to the consumers. There must be regularity in supply of goods and services

c) Towards Shareholders: Shareholders are the owners of the company. They provide finance by way of investment in debentures, bonds, deposits etc. They contribute capital and bear the business risks. It is the responsibility of the business to safeguard the capital of the shareholders and provide a reasonable dividend. Business and Society are interdependent. Society depends on business for meeting its needs and welfare, whereas, Business depends on society for its existence and growth.

d) Towards the Creditors/financial institutions

e) Towards the Suppliers: Suppliers supply raw material, spare parts and equipment's necessary for the business. It is the responsibility of the business to give regular orders for the purchase of goods, avail reasonable credit period and pay dues in time. The business should maintain good relations with the supplier for regular supply of quality raw material.

f) Towards the government: Government frame certain rules and regulations with in which the business has to act.

g) Towards the environment: The business is also responsible towards the environment. It is the responsibility of the business to keep the environment pollution free by producing pollution free products. Business is also responsible to conserve natural resources and wild life and hence promote the culture.

In the conventional theory of the firm, the principle objective of a business firm is to maximize profit. Under the assumptions of given taste and technology, price and output of a given product under competition are determined with the sole objective of maximization of profit. Profit maximization refers to the maximization of profit of the firm. Under profit maximization objective, business firms attempt to adopt that investment project, which yields larger profits, and drop all other unprofitable activities. In maximizing profits, input-output relationship is crucial, either input is minimized to achieve a given amount of profit or the output is maximized with a given amount of input. Thus, this objective of the firm enhances productivity and improves the efficiency of the firm.

The conventional theory of the firm defends profit maximization objective on the following grounds:

* In a competitive market only those firms survive which are able to make profit. Hence, they always try to make it as large as possible. All other objectives are subjected to this primary objective.
* Profit maximization objective is a time-honored objective of a firm and evidence against this objective is not conclusive or unambiguous.
* Though not perfect, profit is the most efficient and reliable measure of the efficiency of a firm.
* Under the condition of competitive market, profit can be used as a performance evaluation criterion, and profit maximization leads to efficient allocation of resources.
* Profit maximization objective has been found extremely accurate in predicting certain aspect of firm's behavior and trends; as such the behaviors of most firms are directed towards the objective of profit maximization.

Satisficing Objective:

Satisficing is a term first used by **Herbert Simon** in 1957, and means attempting to take into account a number of different and competing objectives, without attempting to ‘maximize’ any single one. For example, managers may first try to ensure that shareholder's get a reasonable rate of return first, and then seek to reward themselves. Satisficing can also be referred to as 'profit satisficing'. Nobel laureate, Herbert Simon was the first economist to propound the behavioral theory of the firm. According to him, the firm’s principal objective is not maximizing profits but satisficing or satisfactory profits.

In Simon's words: "We must expect the firm's goals to be not maximizing profits but attaining a certain level of profit holding or a certain share of the market or a certain level of sales." Under conditions of uncertainty, a firm cannot know whether profits are being maximized or not.

In analyzing the behavior of the firm, Simon compares the organizational behavior with individual behavior. According to him, a firm, like an individual, has its aspiration level in keeping with its needs, drives and achievement of goals.

The firm aspires to achieve a certain minimum or 'target' level of profits. Its aspiration level is based on its different goals such as production, price, sales, profits, etc., and on its past experience. This also takes into account uncertainties in the future. The aspiration level defines the boundary between satisfactory and unsatisfactory outcomes.

In this context, the firm may face three alternative situations:

(a) The actual achievement is less than the aspiration level;

(b) The actual achievement is greater than the aspiration level; and

(c) The actual achievement equals the aspiration level.

In the first situation, when the actual achievement lags behind the aspiration level, it may be due to wide fluctuations in economic activity or on account of qualitative deterioration in the performance level of the firm.

In the second situation, when the actual achievement is greater than the aspiration level, the firm is satisfied with its commendable performance. The firm is also satisfied in the third situation when its actual performance matches its aspiration level. But the firm does not feel satisfied in the first situation.

It may be that the firm has set its aspiration level very high. It will, therefore, revise it downward and start a search activity to fulfil its various goals in order to achieve the aspiration level in the future. Similarly, if the firm finds that the aspiration level can be achieved, it will be revised upward. It is through such search activity that the firm will be able to reach the aspiration level set by the decision-maker.

The search process may be done through sequence of possible alternatives using past experience and rules-of-thumb as guidelines. But the search activity is not a costless affair. "The advantage of search activity must be balanced against its cost, and once search has revealed that what

appears to be a satisfactory course of action, it will be abandoned for the time being. In this way, the firm's aspiration level is periodically adapted to circumstances and the firm's reaction to them. The firm is not maximizing, since, partly on account of the cost, it limits its searching activities. The firm, while behaving rationally, is 'satisficing' rather than maximizing."

Criticism:

This theory has certain weaknesses.

1. The main weakness of the satisficing theory of Simon is that he has not specified the 'target' level of profits which a firm aspires to reach. Unless that is known it is not possible to point out the precise areas of conflict between the objectives of profit maximizing and satisficing.
2. Baumol and Quant do not agree with Simon's notion of 'satisficing'. According to them, it is "constrained maximization with only constraints and no maximization."

c)The Principal-Agent Problem, Constrained Decision Making

The Principal- Agent Problem

The principal-agent problem occurs when a principal delegates an action to another individual (agent), but the principal does not have full information about how the agent will behave. Secondly, the interests of the principal diverge from that of the agent, meaning that the outcome is less desirable than the principal expects.

Shareholder and manager

For example, a shareholder (principal) wants to maximize profits for his firm. He hires a manager (agent) to run the business. However, due to agency costs the shareholder cannot fully know how hard the agent is working and to what extent the manager is fulfilling the contract. Also, in this situation, the manager does not share the same interest in maximizing profits as the owner.

Market failure

The principal-agent problem can lead to market failure because the agent pursues his own self-interest rather than that of the principal and the business may be run in an inefficient way. In extreme cases, the mutually beneficial action may not happen because the principal lacks information.

The Principal-agent problem can also cause adverse selection – poor choices based on asymmetric information. This is where the agent has private information before a contract is written. For example, a lazy worker gets a job because the employer doesn't know he is lazy.

Requirements of principal-agent problem

- Multiple actors who have a different set of objectives (e.g. shareholders vs workers.)
- Asymmetric information (the agent having more information than principle.) The shareholder can see some stats like profit, but only the manager knows exactly how hard he worked or didn't.

Examples of Principal-Agent Problem

Shareholders and managers of a company: Shareholders will wish to maximize a firm's profits to increase their dividends. However, the manager and workers, who are responsible for day to day running of the firm, may fail to pursue profit maximization. Instead, they concentrate on enjoying work and getting on with workers.

Landlord and tenant: The landlord owns house and rents out to tenants. He asks tenants to take care of the property and minimize electricity bills. But, tenants may not do so.

Constrained Decision making

Constraint refers to an element, factor or subsystem that works as a bottleneck. It restricts an entity, project or system from achieving its potential with reference to its goal.

Optimum solution to the business decision-making problem requires that resources should be so used as to achieve the objective efficiently.

- The limited amount of resources is one type of constraint faced by the manager of a firm.
- The other type of constraint faced by the manager of a firm is imposed by the economic environment which includes the state of the economy, the phase of business cycles, the competition from the rival firms, government's fiscal and monetary policies, export and import policies etc. Given these constraints the manager has to make business decisions. Therefore, the decision-making problem faced by a manager is one of constrained decision-making.
- Profit maximization is constrained by the limited information available to the manager.
- Constraints can be legal, moral, contractual, financial and technological.

d. The Concept of Economic Profit

Economic profit is the difference between the total revenue received by a business and the total implicit and explicit costs of a firm. It's often the extra profit left over after considering the next best alternative investment, and can be either positive or negative in value.

Economic profit differs from accounting profit because it also includes implicit costs, which are the opportunity costs equal to what a business or individual gave up in order to do something

else. These costs are deducted from revenues and are the alternative returns you decided not to pursue.

Accounting Profit = Total Revenues - Explicit Costs

Economic Profit = Accounting Profit - Implicit Costs

Another way people write this is:

Economic Profit = Total Revenues - (Explicit Costs + Implicit Costs)

A firm's "economic costs" include the firm's accounting costs as well as opportunity costs.

EXAMPLE: Ram knows that by running hispoultry farm business; he can bring in Rs.100,000 of revenue per year, with Rs. 60,000 of accounting costs. In other words, by running his poultry farm business, Ram can earn an accounting profit of Rs. 40,000 per year.

Given these facts, does it make sense for Ram to run his Poultry farm business? We have no way of knowing the answer unless we also know how much Ram could earn by doing something else.

If Ram could earn Rs. 50,000 per year accounting profit making frozen pizza, he would be losing (forgoing) Rs. 10,000 per year by doing poultry farm business. Ramis concerned with maximizing his economic profit, and due to the Rs. 50,000 opportunity cost of making frozen pizza, his poultry farm business would actually incur an economic loss of Rs. 10,000.

TR = P × Q.

TC = ATC × Q. (Remember, ATC is TC ÷ Q.)

Profit = (P × Q) – (ATC × Q), or

Profit = (P – ATC) × Q.

e. Profit in a Market System

Profit -The difference between the costs of production and revenue earned from sales

Profit has several meanings in economics. At its most basic level, profit is the reward gained by risk taking entrepreneurs when the revenue earned from selling a given amount of output exceeds the total costs of producing that output.

Total profits = total revenue (TR) – total costs (TC)

Profit = TR – TC where:

TR = Total Revenue (Price x Sales)

TC = FC – VC

FC = Fixed Costs (overheads)

VC = Variable Costs (direct costs or cost of sales)

Profit = Total Revenue – Total Cost

High profit Enables-

1. **Investment in Research & Development.**

   This leads to better technology and dynamic efficiency. This profit is particularly important for some industries such as oil exploration and car manufacture. Without this investment the economy will stagnate and lose international competitiveness, leading to job losses in some sectors.

   2. Reward for Shareholders

   Shareholders are given dividends. Higher profit leads to higher dividends and encourages people to buy shares. Shareholders are an important source of finance for firms. Profit is important to be able to remunerate shareholders.

   3. High Profit should attract new firms into the industry

   For example, the high price of oil and hence profits for oil companies should encourage firms to develop new oil fields. This assumes the market is contestable and new firms can actually enter.

   4. Risk Bearing Economies

   Profit can be saved and provide insurance for an unexpected downturn, such as recession or rapid appreciation in the exchange rate.

   5. Tax Revenues

   Governments charge corporation tax on company profits and this provides several billion pound of tax revenue per year.

   6. Acts as Incentive

   Higher profit acts as an incentive for entrepreneurs to set up a business. Without the reward of profit, there would be less investment and less people willing to take risks. For example, it is argued higher corporation tax, which reduces a firms post tax income may deter inward investment.

- Though profit plays an important role in an economy but Pursuit of short-term profit can encourage risk-taking and reckless behavior.

Normal Profit

Normal profit is defined as the minimum reward that is just sufficient to keep the entrepreneur supplying their enterprise. In other words, the reward is just covering opportunity cost - that is, just better than the next best alternative. To the economist, normal profit is a cost and is included in the total costs of production.

Supernormal Profit

If a firm makes more than normal profit it is called super-normal profit. Supernormal profit is also called economic profit, and abnormal profit, and is earned when total revenue is greater than the total costs. Total costs include a reward to all the factors, including normal profit. This means that, when total revenue equals total cost, the entrepreneur is earning normal profit, which is the minimum reward that keeps the entrepreneur providing their skill, and taking risks.

The level of super-normal profits available to a firm is largely determined by the level of competition in a market – the more competition the less chance there is to earn super-normal profits.

Marginal Profit

Marginal profit is the additional profit from selling one extra unit. A profit per unit will be achieved when marginal revenue (MR) is greater than marginal cost (MC). At profit maximization, marginal profit is zero because MC = MR.

f. Economics and Decision Making

Decision making is crucial for running a business enterprise which faces a large number of problems requiring decisions.

Which product to be produced, what price to be charged, what quantity of the product to be produced, what and how much advertisement expenditure to be made to promote the sales, how much investment expenditure to be incurred are some of the problems which require decisions to be made by managers.

The five steps involved in economic decision making process are explained below:

1. Establishing the Objective:

The first step in the decision making process is to establish the objective of the business enterprise. The important objective of a private business enterprise is to maximize profits. However, a business firm may have some other objectives such as maximization of sales or growth of the firm.

But the objective of a public enterprise is normally not of maximization of profits but to follow benefit-cost criterion. According to this criterion, a public enterprise should evaluate all social costs and benefits when making a decision whether to build an airport, a power plant, a steel plant, etc.

2. Defining the Problem:

The second step in decision making process is one of defining or identifying the problem. Defining the nature of the problem is important because decision making is after all meant for solution of the problem. For instance, a cotton textile firm may find that its profits are declining.

3. Identifying Possible Alternative Solutions (i.e. Alternative Courses of Action):

Once the problem has been identified, the next step is to find out alternative solutions to the problem. This will require considering the variables that have an impact on the problem. In this way, relationship among the variables and with the problems has to be established.

In regard to this, various hypotheses can be developed which will become alternative courses for the solution of the problem.

For example, in case of the problem mentioned above, if it is identified that the problem of declining profits is due to be use of technologically inefficient and outdated machinery in production.

The two possible solutions of the problem are:

(1) Updating and replacing only the old machinery.

(2) Building entirely a new plant equipped with latest machinery.

The choice between these alternative courses of action depends on which will bring about larger increase in profits.

4. Evaluating Alternative Courses of Action:

The next step in business decision making is to evaluate the alternative courses of action. This requires, the collection and analysis of the relevant data. Some data will be available within the various departments of the firm itself, the other may be obtained from the industry and government.

The data and information so obtained can be used to evaluate the outcome or results expected from each possible course of action. Methods such as regression analysis, differential calculus, linear programming, cost- benefit analysis are used to arrive at the optimal course. The optimum solution will be one that helps to achieve the established objective of the firm. The course of action which is optimum will be actually chosen. It may be further noted that for the choice of an optimal solution to the problem, a manager works under certain constraints.

5. Implementing the Decision:

After the alternative courses of action have been evaluated and optimal course of action selected, the final step is to implement the decision. The implementation of the decision requires constant monitoring so that expected results from the optimal course of action are obtained. Thus, if it is found that expected results are not forthcoming due to the wrong implementation of

the decision, then corrective measures should be taken.

However, it should be noted that once a course of action is implemented to achieve the established objective, changes in it may become necessary from time to time in response in changes in conditions or firm's operating environment on the basis of which decisions were taken.

Unit-II: Demand Theory and Analysis

Demand for a commodity refers to the quantity of the commodity which an individual consumer is willing to purchase at a particular time at a particular price.

A product or service is said to have demand when three conditions are satisfied.

(a) Desire to acquire - Desire of the consumer to buy the Product

(b) Willingness to pay - willingness to buy the product and

(c) Ability to pay - Ability to pay the specified price for it.

Demand Schedule: is that schedule which expresses the relation between different quantities of the commodity demanded at different prices.

Demand Curve: is a graphic representation of demand schedule expressing the relationship between different quantities demanded at different possible prices of a commodity.

Types of demand

1) Individual demand

2) Market demand

a) Individual Demand

Individual demand: refers to quantities of a given commodity that one particular buyer is ready to buy at different possible prices of the commodity at a point of time. Individual demand function shows the determinants of demand by individual consumers.

Dx= f(Px, Pr, Y, T, E)

Where

Dx= Quantity demanded of commodity-X

Px= Price of Commodity-X

Pr= Price of related goods

Y=Consumer's income

T=Consumer's tastes and preferences

E=Consumer's Expectations

(1) Price of the product (Px):

The most important factor which influences the demand is price. A decrease in the price of a normal good leads to rise in demand of a product. Similarly, an increase in the price will reduce the demand for a commodity. The relation between price and demand is inverse relationship.

(2) Price of the related goods (Pr):

A change in the price of one commodity influences the demand for other commodity. The related commodities are two types: (a) Substitute goods (b) Complementary goods

(a) Substitute Goods:

If the price of one commodity increases, then the demand for another product will increase.

For Ex: In case of Tea and Coffee, if the price of coffee increases then the demand for tea will increase. Likewise (i.e., both increase together or decrease together)

(b) Complementary goods:

When the price of one commodity, will increase, then the demand for another product will decrease.

For Eg: Bread and butter, Pen and ink, Petrol and automobiles

(3)Income of the consumer (Y):

When the income of the consumer is increased, the consumer purchases more quality of goods. When the income of consumer is decreased, the consumer purchases less quality of goods. The income of the consumer and demand of a product moves in the same direction.

(4) Tastes and preference of the consumer (T):

Changes in tastes and preferences of a consumer in favor of a commodity results in increasing demand for a commodity, while if this change is against the commodity it results in smaller demand for the commodity.

(5) Expectations about future price of the product (Ep):

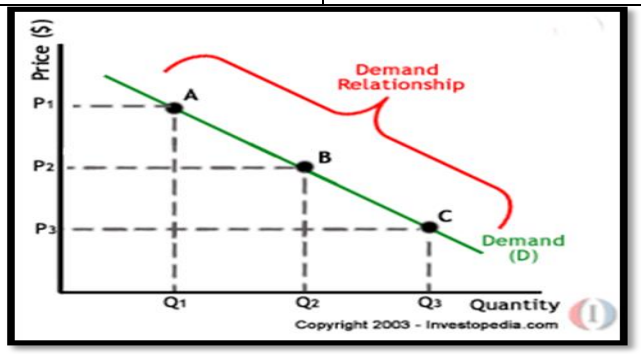
If the consumer expects future price of the product will increase, then the consumer purchase more quantity of goods at present. Similarly, if the price of the product in the future will decrease, then the demand at present will decrease.

LAW OF DEMAND

The law of demand states that, other things remaining constant, When the price of a product increases, then the demand for the product will falls. Similarly, when the price of the product decreases, the demand will increase

Law of Demand table

Price	Demand
2	10
4	8
6	6
8	4
10	2



Exceptions to the law of Demand:

There are certain exceptions to the law of demand. The law of demand is not applicable in the following cases.

(1) Giffen Goods:

People whose incomes are low purchase more of a commodity such as broken rice, bread, potato (which is their staple food) when its prices rises. Inversely when its price falls, instead of buying more, they buy less of this commodity and use the savings for the purchase of better goods such as meat. This phenomenon is called Giffen paradox and such goods are called giffen goods.

(2) Veblen Goods:

Products such as jewels, diamonds and so on confer distinction on the part of the user. In such case, the consumers tend to buy more goods when price increases and buy less when price decreases. Such goods are called Veblen Goods.

(3) Where there is expected shortage of necessities:

If the consumers fear that these could be shortage of necessities, then this law of demand does not applicable. They may tend to buy more than what they require immediately, even if the price of the product increases.

(4) In case of ignorance of price changes:

When the customer is not familiar with the changes in the price, he tends to buy even if there is increase in price.

b.Market Demand: Determinants of market demand, The market demand equation, Market Demand vs. Firm, Demand

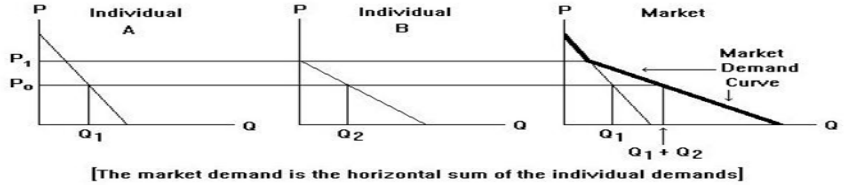
Market Demand

The Market Demand is defined as the sum of individual demands for a product per unit of time, at a given price. The total quantity of a commodity demanded by all the buyers at a given price other things remaining constant. The market demand curve for a commodity is obtained by adding up the individual demand curves for all economic actors in the market. Thus, each of the determinants of individual demand is also a determinant of market demand.

Table 2.1 Individual and market demand

Price	Quantity demanded by consumer A	Quantity demanded by consumer B	Quantity demanded by consumer C	Quantity demanded by consumer D	Market demand
2	40	4	45	18	107
4	30	2	35	16	83
6	24	5	30	13	72
8	18	7	20	12	57
10	14	10	15	11	50
12	10	7	13	8	38
14	8	5	10	6	29
16	6	3	8	4	21
18	4	2	0	0	6
20	3	0	0	0	3

Figure 1



[The market demand is the horizontal sum of the individual demands]

Determinants of market demand:

1) Effect of Advertisements:

Advertising refers to one of the important factor of determining the demand of a product. Effective advertisements is helpful in many ways, such as catching the attention of consumers, informing them about the availability of a product, demonstrating the features of the product to potential consumers, and persuading them to purchase the product. Consumers are highly sensitive about advertisements as sometimes they get attached to advertisements endorsed by their favorite celebrities. This results in the increase demand for a product.

2) Distribution of Income in the Society:

Income distribution influences the demand for a product in the market to a large extent. If income is equally distributed among people in the society, the demand for products would be

higher than in case of unequal distribution of income. However, the distribution of income in the society varies widely.

This leads to the high or low consumption of a product by different segments of the society. For example, the high income segment of the society would prefer luxury goods, while the low income segment would prefer necessary goods. In such a scenario, demand for luxury goods would increase in the high income segment, whereas demand for necessity goods would increase in the low income segment.

3) Growth of Population:

Population growth acts as a crucial factor that affect the market demand of a product. If the number of consumers increases in the market, the consumption capacity of consumers would also increase. Therefore, high growth of population would result in the increase in the demand for different products.

4) Government Policy:

Government policy refers to one of the major factors that affect the demand for a product. For example, if a product has high tax rate, this would increase the price of the product. This would result in the decrease in demand for a product. Similarly, the credit policies of a country also induce the demand for a product. For example, if sufficient amount of credit is available to consumers, this would increase the demand for products.

5) Climatic Conditions:

Climatic conditions also affect the demand of a product to a greater extent. For example, the demand of ice-creams and cold drinks increases in summer, while tea and coffee are preferred in winter. Some products have a stronger demand in hilly areas than in plains. Therefore, individuals demand different products in different climatic conditions.

Market Demand Equation:

Dx=f(Px, Pr,Y, T,E,N,G,Ad,C,Dy)

Where

Px= Price of good x

Pr= Price of related goods

Y=Consumer's income

T=Consumer's tastes and preferences

E=Consumer's Expectations

N= Population

G=Government Policy

Ad= Advertising effect

C=Climatic conditions

Dy=Distribution of income in the society.

Determinants of Price Elasticity:

a. Ease of Substitution: The greater the number of substitutes available for a product, the greater will be its elasticity of demand. For example, food as a whole has a very inelastic demand but when we consider any particular item of food we will find that the elasticity of demand is much greater. This is because, while we can find no substitute for food as a whole, we can, however, always find substitute for one type of food for another.

b. Number of Uses: The greater the number of uses to which a commodity can be put, the greater is its elasticity of demand. For example, electricity has many uses — heating, lighting, cooking, etc. A rise in the price of electricity might cause people not only to economize in all these areas but also to substitute other fuels in some cases.

c. Proportion of Income Spent on the Product: If the price of a packet of salt were to rise by 50%, for example from 20p to 30p, it would discourage very few people because it constitutes a very small proportion of their income. However, if the price of a car were to rise from Rs. 4,00,000 to Rs.6,00,000, it would have an enormous effect on sales, even though it would be the same percentage increase.

The greater the proportion of income which the price of the product represents the greater its elasticity of demand will tend to be.

d. Time: In general, elasticity of demand will tend to be greater in the long-run than in the short-run. The period of time we are considering plays an important role in shaping the demand curve. For example, if the price of meat rises disproportionately to other foods, eating habits cannot be changed immediately.

So, people will continue to demand the same amount of meat in the short-run. But, in the long-run, people will begin to seek substitutes. Whether or not this is a noticeable effect will depend upon whether or not consumers discover adequate substitutes. It may also be possible to obscure the opposite effect.

e. Durability: The greater the durability of a product, the greater its elasticity of demand will tend to be. For example, if the price of potatoes rises, it is not possible to eat the same potatoes twice. However, if the price of furniture rises, we can make our existing furniture last longer.

f. Addiction:

Where a product is habit-forming, for example, cigarettes, this will tend to reduce its elasticity of demand.

g. The Price of Other Products:

We know that a rise in the price of a product will cause the demand for its substitutes to rise and the demand for its complements to fall. Thus, an increase (or decrease) of demand by a constant percentage leaves elasticity unchanged, but a rightward shift of the curve by a fixed amount reduces elasticity.

Market Demand vs. Firm

Case of monopoly

When the firm is the only seller in the market, then the relevant demand curve is the market demand curve.

In case of a competitive firm, price is given and fixed. Demand or Average Revenue curve is perfectly flexible and is a horizontal straight line. A monopolist has the freedom to charge a higher or lower price. With a change in the price, the quantity demanded also alters. Again a monopolist is a single seller. He himself is a firm as well as an industry. Hence market demand curve is in itself the demand curve of the monopolist.

Case of Perfect Competition

The demand curve for the market, which includes all firms, is downward sloping, while the demand curve for the individual firm is flat or perfectly elastic, reflecting the fact that the individual takes the market price, P, as given. The difference in the slopes of the market demand curve and the individual firm's demand curve is due to the assumption that each firm is small in size. No matter how much output an individual firm provides, it will be unable to affect the market price. Note that the individual firm's equilibrium quantity of output will be completely determined by the amount of output the individual firm chooses to supply.

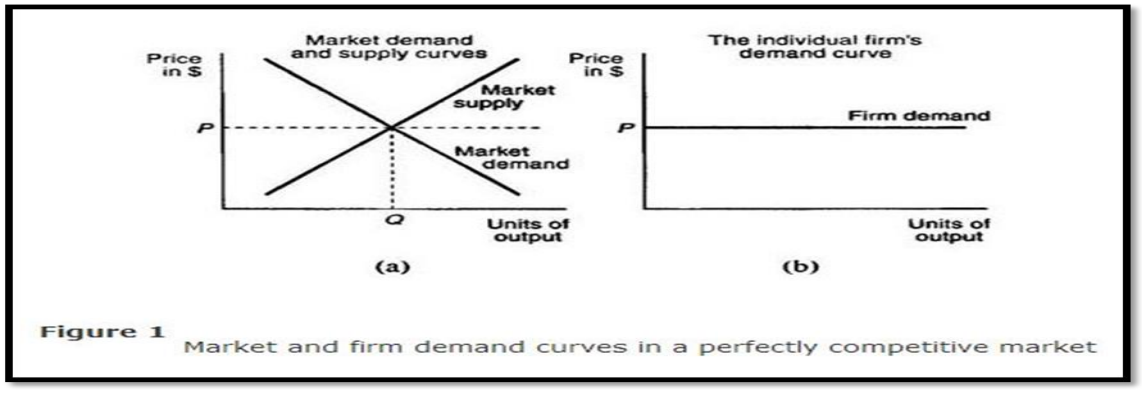


Figure 1 Market and firm demand curves in a perfectly competitive market

Case of monopolistic competition:

At a glance, the demand curves faced by a monopoly and by a monopolistic competitor look similar—that is, they both slope down. But the underlying economic meaning of these perceived demand curves is different, because a monopolist faces the market demand curve and a monopolistic competitor does not. In fact, the proportional demand curve facing an individual firm is a proportionate part of the total market demand curve.

c. Price Elasticity

The price elasticity of demand (PED) for a good is a measure of the degree of responsiveness of the quantity demanded to a change in the price, ceteris paribus.

The PED for a good is calculated by dividing the percentage change in the quantity demanded by the percentage change in the price.

$$ED = \frac{\text{Percentage Change in Quantity demanded}}{\text{Percentage Change in Price}}$$

$$\text{or } ED = \frac{\frac{\Delta Q}{Q} \times 100}{\frac{\Delta P}{P} \times 100} = \frac{\Delta Q}{\Delta P} \times \frac{P}{Q}$$

Where, ΔQ = Change in quantity demanded

ΔP = Change in Price

P = Initial or Base Price

Q = Initial or Base Quantity

Due to the law of demand, the PED for a good is always negative. However, the common practice among economists is to omit the negative sign.

If the PED for a good is greater than one, the demand is price elastic which means that a change in the price will lead to a larger percentage/proportionate change in the quantity demanded.

A good with a price elastic demand has a relatively flat demand curve. If the PED for a good is less than one, the demand is price inelastic which means that a change in the price will lead to a smaller percentage/proportionate change in the quantity demanded. A good with a price inelastic demand has a relatively steep demand curve. If the PED for a good is equal to one, the demand is unit price elastic which means that a change in the price will lead to the same percentage/proportionate change in the quantity demanded. The demand curve for a good with a unit price elastic demand is a rectangular hyperbola.

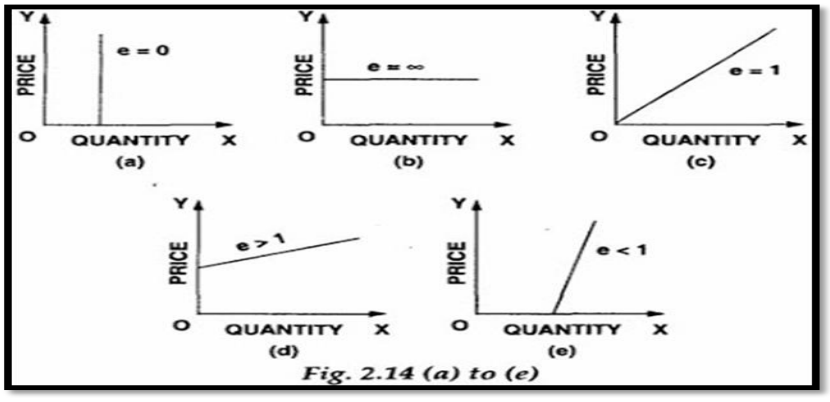


Fig. 2.14 (a) to (e)

There are four methods of measuring elasticity of demand. They are the percentage method, point method, arc method and expenditure method.

(1) The Percentage Method:

The price elasticity of demand is measured by its coefficient E_p. This coefficient E_p measures the percentage change in the quantity of a commodity demanded resulting from a given percentage change in its price: Thus

$$E_p = \frac{\% \text{ change in } q}{\% \text{ change in } p} = \frac{\Delta q/q}{\Delta p/p} = \frac{\Delta q}{\Delta p} \times \frac{p}{q}$$

Where q refers to quantity demanded p to price and Δ to change. If $E_p > 1$, demand is elastic. If $E_p < 1$, demand is inelastic, it $E_p = 1$ demand is unitary elastic.

With this formula, we can compute price elasticities of demand on the basis of a demand schedule.

Combination	**Price (Rs.) per Kg. of X**		**Quantity Kgs. of X**
A	6		0
B	5	——————-►	10
C	4		20
D	3	——————-►	30
E	2		40

F	1	——————►	50
G	0		60

Let us first take combinations B and D.

(i) Suppose the price of commodity X falls from Rs. 5 per kg. toRs. 3 per kg. and its quantity demanded increases from 10 kgs. to 30 kgs. Then

$$E_p = \frac{\Delta q}{\Delta p} \times \frac{p}{q} = \frac{(30-10)}{(3-5)} \times \frac{5}{10} = \frac{20}{-2} \times \frac{5}{10} = -5 \text{ or } > 1.$$

This shows elastic demand or elasticity of demand in this case is greater than unitary.

(2) The Point Method:

Prof. Marshall devised a geometrical method for measuring elasticity at a point on the demand curve.

Let RS be a straight line demand curve in Figure 11.2. If the price falls from PB(=OA) to MD(=OC). the quantity demanded increases from OB to OD. Elasticity at point P on the RS demand curve according to the formula is: $E_p = \Delta q/\Delta p \times p/q$

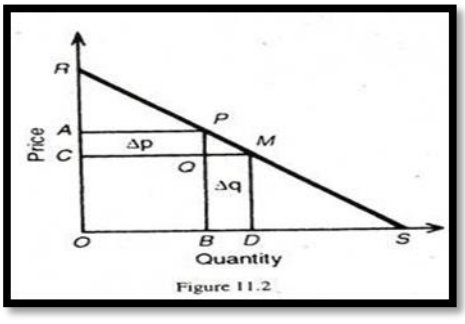


Figure 11.2

Where Δ q represents changes in quantity demanded

Δp changes in price level while p and q are initial price and quantity levels.

From Figure 11.2

Δ q = BD = QM

Δp = PQ

p = PB

q = OB

Substituting these values in the elasticity

$$E_p = \frac{QM}{PQ} \times \frac{PB}{OB}$$

Moreover,

$\frac{QM}{PQ} = \frac{BS}{PB}$ [$\angle PQM = \angle PBS$ being right angles and PQM and PBS are similar Δ s]

$\therefore \frac{BS}{PB} \times \frac{PB}{OB} = \frac{BS}{OB}$

Since Δ PBS and Δ ROS are similar.

E_p at point P =

$\frac{BS}{OB} = \frac{OA}{AR} = \frac{PS}{PR} = \frac{\text{Lower Segment}}{\text{Upper Segment}}$

formula:

With the help of the point method, it is easy to point out the elasticity at any point along a demand curve. Suppose that the straight line demand curve DC in Figure 11.3 is 6 centimeters. Five points L, M, N, P and Q are taken oh this demand curve. The elasticity of demand at each point can be known with the help of the above method. Let point N be in the middle of the demand curve. So elasticity of demand at

$$N = \frac{\text{CN (Lower Segment)}}{\text{ND (Upper Segment)}} = \frac{3}{3} = 1 \text{ (Unity)}$$

Elasticity of demand at point $M = \frac{CM}{MD} = \frac{5}{1} = 5 \text{ or } > 1$

Elasticity of demand at point $L = \frac{CL}{LD} = \frac{6}{0} = \infty$ (Infinity).

Elasticity of demand at point $P = \frac{CP}{PD} = \frac{1}{5} =$ (Less than Unity).

Elasticity of demand at point $Q = \frac{CQ}{QD} = \frac{0}{6} = 0$ (Zero)

We arrive at the conclusion that at the mid-point on the demand curve the elasticity of demand is unity. Moving up the demand curve from the mid-point, elasticity becomes greater. When the demand curve touches the Y-axis, elasticity is infinity. Ipso facto, any point below the mid-point towards the X-axis will show elastic demand.

Elasticity becomes zero when the demand curve touches the X-axis.

(3) The Arc Method:

We have studied the measurement of elasticity at a point on a demand curve. But when elasticity is measured between two points on the same demand curve, it is known as arc elasticity. In the words of Prof. Baumol, "Arc elasticity is a measure of the average responsiveness to price change exhibited by a demand curve over some finite stretch of the curve."

Any two points on a demand curve make an arc. The area between P and M on the DD curve in Figure 11.4 is an arc which measures elasticity over a certain range of price and quantities. On

any two points of a demand curve the elasticity coefficients are likely to be different depending upon the method of computation. Consider the price-quantity combinations P and M as given in Table 11.2.

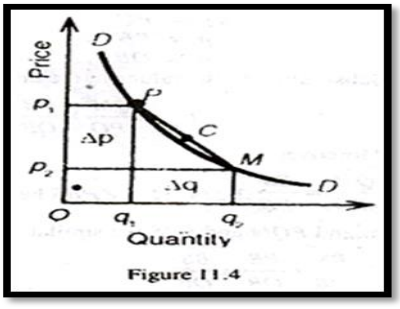


Figure 11.4

Table 11.2: Demand Schedule:

Point	Price (Rs.)	Quantity (Kg)
P	8	10
M	6	12

If we move from P to M, the elasticity of demand is:

$$E_p = \frac{\Delta q}{\Delta p} \times \frac{p}{q} = \frac{(12-10)}{(6-8)} \times \frac{8}{10} = \frac{2}{-2} \times \frac{8}{10} = \frac{4}{5}$$

If we move in the reverse direction from M to P, then

$$E_p = \frac{(10-12)}{(8-6)} \times \frac{6}{12} = \frac{2}{2} \times \frac{6}{12} = -\frac{1}{2}$$

Thus the point method of measuring elasticity at two points on a demand curve gives different elasticity coefficients because we used a different base in computing the percentage change in each case.

To avoid this discrepancy, elasticity for the arc (PM in Figure 11.4) is calculated by taking the average of the two prices [(p1, + p2) 1/2] and the average of the two quantities [(q1 + q2) 1/2]. The formula for price elasticity of demand at the mid-point (C in Figure 11.4) of the arc on the demand curve is

$$E_p = \frac{\frac{\Delta q}{(q_1+q_2)^{1/2}}}{\frac{\Delta p}{(p_1+p_2)^{1/2}}} = \frac{\Delta q}{(q_1-q_2)^{1/2}} \times \frac{(p_1+p_2)^{1/2}}{\Delta p} = \frac{\Delta q}{\Delta p} \times \frac{p_1+p_2}{q_1+q_2}$$

On the basis of this formula, we can measure arc elasticity of demand when there is a movement either from point P to M or from M to P.

From P to M at P, p1 = 8, q1, =10, and at M, P2 = 6, q2 = 12

Applying these values, we get

$$E_p = \frac{\Delta q}{\Delta p} \times \frac{p_1 + p_2}{q_1 + q_2} = \frac{(12-10)}{(6-8)} \times \frac{(8+6)}{(10+12)} = \frac{2}{-2} \times \frac{14}{22} = -\frac{7}{11}$$

From M to P at $M, p_1 = 6, q_1 = 12$ and at $P, p_2 = 8, q_2 = 10$. Now we have

$$E_p = \frac{(10-12)}{(8-6)} \times \frac{(6+8)}{(12+10)} = \frac{-2}{2} \times \frac{14}{22} = \frac{-7}{11}$$

Thus whether we move from M to P or P to M on the arc PM of the DD curve, the formula for arc elasticity of demand gives the same numerical value. The closer the two points P and M are, the more accurate is the measure of elasticity on the basis of this formula. If the two points which form the arc on the demand curve are so close that they almost merge into each other, the numerical value of arc elasticity equals the numerical value of point elasticity.

(4) The Total Outlay Method:

Marshall evolved the total outlay, total revenue or total expenditure method as a measure of elasticity. By comparing the total expenditure of a purchaser both before and after the change in price, it can be known whether his demand for a good is elastic, unity or less elastic. Total outlay is price multiplied by the quantity of a good purchased: Total Outlay = Price x Quantity Demanded. This is explained with the help of the demand schedule in Table 11.3.

(i) Elastic Demand:

Demand is elastic, when with the fall in price the total expenditure increases and with the rise in price the total expenditure decreases. Table 11.3 shows that when the price falls from Rs. 9 to Rs. 8, the total expenditure increases from Rs. 180 to Rs. 240 and when price rises from Rs. 7 to Rs. 8, the total expenditure falls from Rs. 280 to Rs. 240. Demand is elastic (Ep > 1) in this case.

TABLE 11.3 : TOTAL OUTLAY METHOD

Price Rs. per Kg.	*Quantity in Kgs.*	*TE in Rs.*	E_p
1	2	(1×2)=3	4
9	20	180	
8	30	240	>> 1
7	40	280	
6	50	300	
5	60	300	= 1
4	75	300	
3	80	240	
2	90	180	<< 1
1	100	100	

(ii) Unitary Elastic Demand:

When with the fall or rise in price, the total expenditure remains unchanged; the elasticity of demand is unity. This is shown in the Table when with the fall in price from Rs. 6 to Rs. 5 or

with the rise in price from Rs. 4 to Rs. 5, the total expenditure remains unchanged at Rs. 300, i.e., Ep = 1.

(iii) Less Elastic Demand:

Demand is less elastic if with the fall in price the total expenditure falls and with the rise in price the total expenditure rises. In the Table when the price falls from Rs. 3 to Rs. 2 total expenditure falls from Rs. 240 to Rs. 180, and when the price rises from Re. 1 to Rs. 2 the total expenditure also rises from Rs. 100 to Rs. 180. This is the case of inelastic or less elastic demand, Ep < 1.

Table 11.4 summarises these relationships:

Price	TE	Ep
Falls	Rises	>> 1
Rises	Falls	
Falls	Unchanged	= 1
Rises	Unchanged	
Falls	Falls	
Rises	Rises	<< 1

Figure 11.5 illustrates the relation between elasticity of demand and total expenditure. The rectangles show total expenditure: Price x quantity demanded. The figure shows that at the midpoint of the demand curve, total expenditure is maximum in the range of unitary elasticity, i.e. Rs. 6, Rs. 5 and Rs. 4 with quantities 50 kgs., 60 kgs. and 75 kgs.

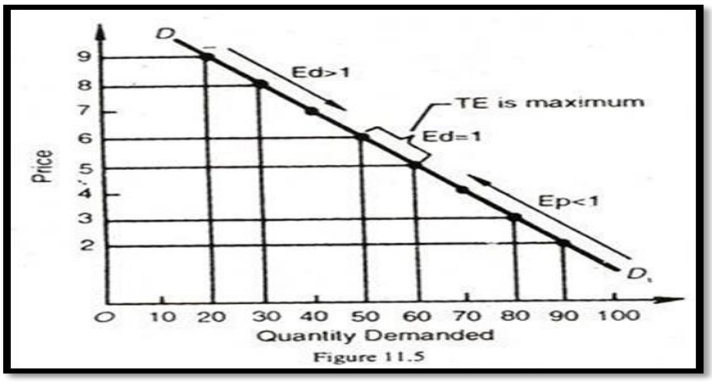


Figure 11.5

Total expenditure rises as price falls, in the elastic range of demand, i.e. Rs. 9, Rs. 8 and Rs. 7 with quantities 20 kgs., 30 kgs. and 40 kgs. Total expenditure falls as price falls in the elasticity range, i.e. Rs.3, Rs. 2 and Re. 1 with quantities 80 kgs., 90 kgs. and 100 kgs. Thus elasticity of demand is unitary in the AB range of DD, curve, elastic in the range AD above point A and less elastic in the BD1 range below point B. The conclusion is that price elasticity of demand refers

to a movement along a specific demand curve

d. Price Elasticity and Marginal Revenue

Price Elasticity: Price elasticity describes what happens to the demand for a product as its price changes. The relationship is "inverse," with demand rising as the price falls and falling as the price rises. For highly elastic goods and services, demand changes dramatically as the price changes. Luxury items such as big-screen TVs usually have high price elasticity. In contrast, inelastic goods and services tend to have a fairly consistent level of demand even if the price changes. Salt provides a good example. People have to buy it and cannot significantly cut back on their consumption.

Marginal Revenue: Marginal revenue is the additional revenue a company generates by selling more units of a product or service.Marginal revenue is the rate of change in total revenue as output (sale) changes by one unit. In perfect competition, marginal revenue is always equal to average revenue or price, because the firm can sell as much as it like at the going market Price.

Relationship Between Marginal Revenue and Elasticity of Demand

The relationship between MR and ED is that each measurement is important in managerial decisions on price and quantity. For example if a manager understands the elasticity of demand for its product, he or she will be able to make an informed decision on how consumers will react to a price increase or decrease. If the manager decides to raise the price of the product and demand for the product is elastic, consumers will likely purchase less of the product.

Formula

MR = Marginal Revenue

P = Price of the Good

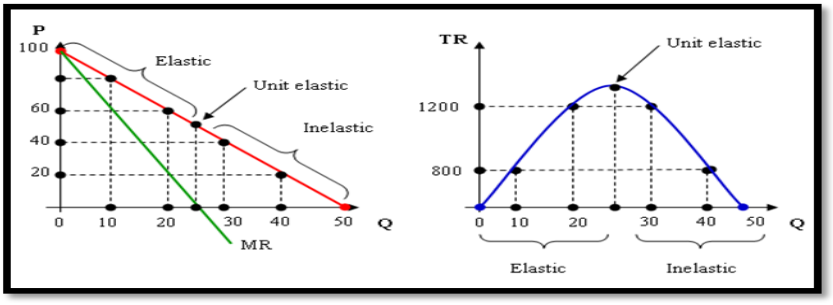
E = Own Price Elasticity of Demand

$$MR = P * [(1 + E) / (E)]$$

Formula Consequences

- When E is between negative infinity (exclusive) and -1 (exclusive), then demand is elastic, and the formula implies that MR is positive.

- When E = -1, demand is unitary elastic, and the formula implies that MR is positive.
- When E is between -1 (exclusive) and 0 (exclusive), demand is inelastic, and marginal revenue is negative.



Price elasticity of demand can be a useful tool for businessmen to make crucial decisions like deciding the price of goods and services. It plays vital role in other business procedures too. These uses are described below in brief.

a) Determination of price

The primary objective of any firm is to earn profit or increase revenue. Therefore, increasing price of its products to maximize profit is one of the primary concerns of producers.

However, during the course of increasing price, the producers must not forget that demand and price share inverse relationship. They must be aware that demand falls with rise in price. And thus, they must increase price of their commodity to that level where their desired or optimal profit is still achievable.

b) Price determination of joint products

Joint products are various products generated by a single production procedure at a single time. Cotton and cotton seeds, wheat and hay, etc. are some examples of joint products. We cannot separate the cost of producing wheat and hay, as producing wheat will automatically produce the hay as well. However, since they are two different products, we cannot sell them at the same price in the market. Price elasticity of demand plays important role in determining the prices of these joint products.

Let us suppose, there has been bumper production of cotton this season. As a result, huge amount of cotton as well as cotton seeds have been produced.

Cotton has wide scope in the market as it can be used for different purposes. The producers of cotton can gain maximum profit by setting high price of cotton, as demand of cotton in market

is not easily altered. But cotton seeds have limited scope, so it is an elastic product. If the business does not decrease the price, then demand will be less. By setting a high price for cotton (inelastic product) and low price for cotton seeds (elastic product), the business can maximize its revenue.

c) Wage determination

Labor is one of the major factors of production, and wage is the fixed regular payment made to the labor in return of their input. Degree of elasticity of commodity has potential to affect the wage to be paid to the labor.

If a commodity is of inelastic nature, the labor can force the employer to increase their wage through extreme ways like strike. As a result, the company will have to consider the demands of labor in order to meet the demand of consumers for the inelastic goods.

However, if the commodity is of elastic nature, labor unions and other associations cannot force the employers to raise wage as the producers can alter the demand of their products.

d) International trade

Change in price cannot bring drastic change in demand of the product in case of inelastic commodity. But even a slight change in price can cause huge effect on demand of elastic commodity.

Higher price can be charged for inelastic goods and lowest possible price must be set for elastic goods.

Taking into account the above information, a country may fix higher prices for goods of inelastic nature. However, if the country wants to export its products, the nature (elasticity/inelasticity) of the commodity in the importing country should also be considered.

For example: Rice maybe an inelastic product for China and thus exports around the world at the price "x". But, if rice is price elastic in the US, China will be forced to decrease the price from the initial value of "x" to be able to sell the product in American market.

e) Importance to finance minister

Price elasticity of demand can also be used in the taxation policy in order to gain high tax revenue from the citizens. One of the ways would be for the government to raise tax revenue in commodities which are price inelastic.

For example: Government could increase the tax amount in goods like cigarettes and alcohol. Given how these are the commodities people choose to purchase regardless of the price tag, the

tax revenue would -significantly rise.

a. The Production Function:

Production is the conversion of input into output. The factors of production and all other things which the producer buys to carry out production are called input. The goods and services produced are known as output. Thus production is the activity that creates or adds utility and value. In the words of Fraser, "If consuming means extracting utility from matter, producing means creating utility into matter". According to Edwood Buffa, “Production is a process by which goods and services are created"

Production refers to the transformation of inputs or resources into outputs of goods and services. For example: IBM hires workers to use machinery, parts and raw materials in factories to produce personal computers. The output of a firm can either be a final commodity (such as personal computer) or an intermediate product such as semiconductors (which are used in the production of computers and other goods). The output can also be a service rather than a good. To be noted is, that production refers to all of the activities involved in the production of goods and services, from borrowing to set up or expand production facilities, to hiring workers, purchasing raw materials, running quality control, cost accounting and so on, rather than referring merely to the physical transformation of inputs into outputs of goods and services

Basic Concepts in Production Theory

Inputs are the resources used in the production of goods and services. As a convenient way to organize the discussion, inputs are classified into labor. (Including entrepreneurial talent), capital and land or natural resources. Each of these broad categories however includes a great variety of the basic input. For example, labor includes bus drivers, assembly line workers, accountants, lawyers, doctors, scientists and many others.

Inputs are also classified as **fixed or variable.*Fixed input***s are those that cannot be readily changed during the time period under consideration, except at very great expense. Examples of fixed inputs are the firm's plant and specialized equipment. On the other land, ***variable inputs*** are those that can be varied easily and on the very short notice.

Examples of variable inputs are most raw materials and unskilled labor.

Production Function

Production is the process by which inputs are transformed in to outputs. Thus there is relation

between input and output. The functional relationship between input and output is known as production function. The production function states the maximum quantity of output which can be produced from any selected combination of inputs.

The production function is largely determined by the level of technology. The production function varies with the changes in technology. Whenever technology improves, a new production function comes into existence. Therefore, in the modern times the output depends not only on traditional factors of production but also on the level of technology.

The production function can be expressed in an equation in which the output is the dependent variable and inputs are the independent variables.

There are two types of production function - short run production function and long run production function. In the short run production function the quantity of only one input varies while all other inputs remain constant. In the long run production function all inputs are variable.

Managerial Use of Production Function

The production function is of great help to a manager or business economist. The managerial uses of production function are outlined as below:

1. It helps to determine least cost factor combination: The production function is a guide to the entrepreneur to determine the least cost factor combination. Profit can be maximized only by minimizing the cost of production. In order to minimize the cost of production, inputs are to be substituted. The production function helps in substituting the inputs.

2. It helps to determine optimum level of output: The production function helps to determine the optimum level of output from a given quantity of input. In other words, it helps to arrive at the producer's equilibrium.

3. It enables to plan the production: The production function helps the entrepreneur (or management) to plan the production.

4. It helps in decision-making: Production function is very useful to the management to take decisions regarding cost and output. It also helps in cost control and cost reduction. In short, production function helps both in the short run and long run decision-making process.

SHORT RUN & LONG RUN

The time period during which at least one input is fixed is called the short run, while the time period when all inputs are variable is called the long run. The length of the long run depends on the industry. For some, such as the setting up or expansion of a dry cleaning business, the long run may be only few months or weeks. For others, much as the construction of new electricity, generating plant, it may be many years.

The short run is defined as that time period when some of the resources used in production are fixed in supply. Thus output is increased by employing, say, more labour while keeping the same number of machines or by bringing in more machines while keeping the same level of employment of labour.

The long run is defined as that time period when all factors are variable. Thus the firm increases output by bringing in more labour, more machines and more land.

The laws of production consists of - (1) Law of Diminishing Returns (to analyze production in the short period), and (2) Laws of Returns to Scale (to analyze production in the long period).

Concept of TP, AP and MP

Total Product (TP): It is the total output resulting from the combined efforts of all the factors of production together.

Average Product (AP): It is the total product per unit of the variable factor.

i.e $AP = \frac{TP}{\text{No. Of units}}$

Marginal Product (MP): It is the change in the total product, because of per unit change in the quantity of variable factor, i.e it is the addition to the total product made by an additional unit of the variable factor.

$MP = TP_n - TP_{n-1}$

Relationship between AP and MP

- When MP increases, AP also increases but at a lesser rate, i.e MP curve is above AP curve.
- MP cuts AP at its maximum and at this point AP = MP.
- When MP falls, AP also falls but AP curve is below MP

Law of Diminishing Returns or Law of Variable Proportion

The law of variable proportion shows the production function with one input factor variable while keeping the other input factors constant.

The law of variable proportion states that, if one factor is used more and more (variable), keeping the other factors constant, the total output will increase at an increasing rate in the beginning and then at a diminishing rate and eventually decreases absolutely.

According to K. E. Boulding, "As we increase the quantity of any one input which is combined with a fixed quantity of the other inputs, the marginal physical productivity of the variable input must eventually decline".

In this law we study the effect of variations in factor proportion on output. When one factor varies, the others fixed, the proportion between the fixed factor and the variable factor will vary, (e.g., land and capital will be fixed in the short run, while labour will be variable).That is why the law is called the law of variable proportion. **The law of variable proportion is also known as the law of proportionality, the law of diminishing returns, law of non-proportional outputs etc.**

Assumptions of the Law

The law of variable proportion is valid when the following conditions are fulfilled:

1. The technology remains constant. If there is an improvement in the technology, due to inventions, the average and marginal product will increase instead of decreasing.
2. Only one input factor is variable and other factor are kept constant.
3. All the units of the variable factors are identical. They are of the same size and quality.
4. A particular product can be produced under varying proportions of the input combinations.
5. The law operates in the short run.

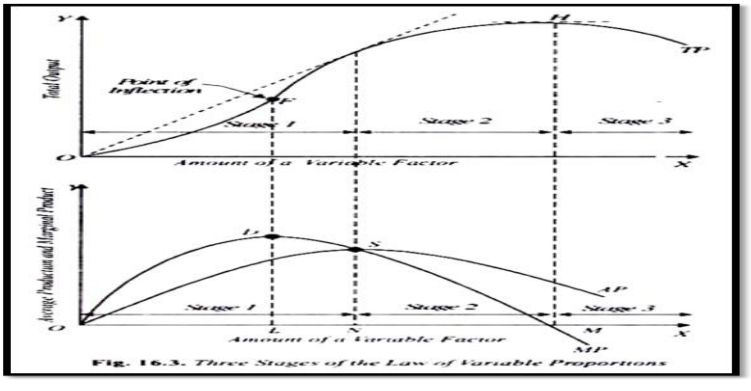


Fig. 16.3. Three Stages of the Law of Variable Proportions

When one input is variable and others are held constant, the relations between the input and the

output are divided into three stages. The law of variable proportion may be explained under the following three stages (refer to graph)

Stage 1: Total product increases at an increasing rate and this continues till the end of this stage. Average product also increases and reaches its highest point at the end of this stage.

Marginal product increases at an increasing rate. Thus TP, AP and MP - all are increasing.

Hence this stage is known as stage of increasing return.

Stage II: Total product continues to increase at a diminishing rate until it reaches its maximum point at the end of this stage. Both AP and MP diminish, but are positive. At the end of the second stage, MP becomes zero. MP is zero when the TP is at the maximum. AP shows a steady decline throughout this stage. As both AP and MP decline, this stage is known as stage of diminishing return.

Stage III: In this stage the TP declines. AP shows a steady decline, but never becomes zero. MP becomes negative. It goes below the X axis. Hence the 3rd stage is known as stage of negative return.

The behaviour of these total, average and marginal products of the variable factor as a result of the increase in its amount is generally divided into three stages which are explained below:

Stage 1:

In this stage, total product curve TP increases at an increasing rate up to a point. In Fig. 16.3. from the origin to the point F, slope of the total product curve TP is increasing, that is, up to the point F, the total product increases at an increasing rate (the total product curve TP is concave upward upto the point F), which means that the marginal product MP of the variable factor is rising.

From the point F onwards during the stage 1, the total product curve goes on rising but its slope is declining which means that from point F onwards the total product increases at a dimin-ishing rate (total product curve TP is concave down-ward), i.e., marginal product falls but is positive.

The point F where the total product stops increasing at an increasing rate and starts increasing at the diminishing rate is called the point of inflection. Vertically corres-ponding to this point of inflection marginal product is maximum, after which it starts diminishing.

Thus, marginal product of the variable factor starts diminishing beyond OL amount of the variable factor. That is, law of diminishing returns starts operating in stage 1 from point D on the MP curve or from OL amount of the variable factor used.

This first stage ends where the average product curve AP reaches its highest point, that is, point

S on AP curve or CW amount of the variable factor used. During stage 1, when marginal product of the variable factor is falling it still exceeds its average product and so continues to cause the average product curve to rise.

Thus, during stage 1, whereas marginal product curve of a variable factor rises in a part and then falls, the average product curve rises throughout. In the first stage, the quantity of the fixed factor is too much relative to the quantity of the variable factor so that if some of the fixed factor is withdrawn, the total product will increase. Thus, in the first stage marginal product of the fixed factor is negative.

Stage 2:

In stage 2, the total product continues to increase at a diminishing rate until it reaches its maximum point H where the second stage ends. In this stage both the marginal product and the average product of the variable factor are diminishing but remain positive.

At the end of the second stage, that is, at point M marginal product of the variable factor is zero (corresponding to the highest point H of the total product curve TP). Stage 2 is very crucial and important because as will be explained below the firm will seek to produce in its range.

Stage 3:

In stage 3 with the increase in the variable factor the total product declines and therefore the total product curve TP slopes downward. As a result, marginal product of the variable factor is negative and the marginal product curve MP goes below the X-axis. In this stage the variable factor is too much relative to the fixed factor. This stage is called the stage of negative returns, since the marginal product of the variable factor is negative during this stage.

It may be noted that stage 1 and stage 3 are completely symmetrical. In stage 1 the fixed factor is too much relative to the variable factor. Therefore, in stage 1, marginal product of the fixed factor is negative. On the other hand, in stage 3 the variable factor is too much relative to the fixed factor. Therefore, in stage 3, the marginal product of the variable factor is negative.

The Stage of Operation:

Now, an important question is in which stage a rational producer will seek to produce. A rational producer will never choose to produce in stage 3 where marginal product of the variable factor is negative. Marginal product of the variable factor being negative in stage 3, a producer can always increase his output by reducing the amount of the variable factor.

It is thus clear that a rational producer will never be producing in stage 3. Even if the variable

factor is free, the rational producer will stop at the end of the second stage where the marginal product of the variable factor is zero.

At the end point M of the second stage where the marginal product of the variable factor is zero, the producer will be maximizing the total product and will thus be making maximum use of the variable factor. A rational producer will also not choose to produce in stage 1 where the marginal product of the fixed factor is negative.

A producer producing in stage 1 means that he will not be making the best use of the fixed factor and further that he will not be utilizing fully the opportunities of increasing production by increasing quantity of the variable factor whose average product continues to rise throughout the stage 1. Thus, a rational entrepreneur will not stop in stage 1 but will expand further.

Even if the fixed factor is free (i.e., costs nothing), the rational entrepreneur will stop only at the end of stage 1 (i.e., at point N) where the average product of the variable factor is maximum. At the end point N of stage 1, the producer they will be making maximum use of the fixed factor.

It is thus clear from above that the rational producer will never be found producing in stage 1 and stage 3. Stage 1 and 3 may, therefore, be called stages of economic absurdity or economic non-sense. The stages 1 and 3 represent non-economic regions in production function.

A rational producer will always seek to produce in stage 2 where both the marginal product and average product of the variable factor are diminishing. At which particular point in this stage, the producer will decide to produce depends upon the prices of factors. The stage 2 represents the range of rational production decisions.

We have seen above how output varies as the factor proportions are altered at any given moment. We have also noticed that this input-output relation can be divided into three stages. Now, the question arises as to what causes increasing marginal returns to the variable factor in the beginning, diminishing marginal returns later and negative marginal returns to the variable factor ultimately.

Causes of Initial Increasing marginal Returns to a Factor:

In the beginning, the quantity of the fixed factor is abundant relative to the quantity of the variable factor. Therefore, when more and more units of a variable factor are added to the constant quantity of the fixed factor, the fixed factor is more intensively and effectively utilized. This causes the production to increase at a rapid rate. When, in the beginning the variable factor is relatively smaller in quantity, some amount of the fixed factor may remain unutilized and therefore when the variable factor is increased fuller utilization of the fixed factor becomes

possible with the result that increasing returns are obtained.

The question arises as to why the fixed factor is not initially taken in an appropriate quantity which suits the available quantity of the variable factor. Answer to this question is provided by the fact that generally those factors are taken as fixed which are indivisible. Indivisibility of a factor means that due to technological requirements a minimum amount of that factor must be employed whatever the level of output.

Thus, as more units of variable factor are employed to work with an indivisible fixed factor, output greatly increases in the beginning due to fuller and more effective utilization of the latter. Thus, we see that it is the indivisibility of some factors which causes increasing returns to the variable factor in the beginning.

The second reason why we get increasing returns to the variable factor in the initial stage is that as more units of the variable factor are employed the efficiency of the variable factor itself increases. This is because when there is a sufficient quantity of the variable factor, it becomes possible to introduce specialization or division of labour which results in higher productivity. The greater the quantity of the variable factor, the greater the scope of specialization and hence the greater will be the level of its productivity or efficiency.

Causes of Diminishing marginal Returns to a Factor:

The stage of diminishing marginal returns in the production function with one factor variable is the most important. The question arises as to why we get diminishing marginal returns after a certain amount of the variable factor has been added to a fixed quantity of the other factor.

As explained above, increasing returns to a variable factor occur initially primarily because of the more effective and fuller use of the fixed factor becomes possible as more units of the variable factor are employed to work with it.

Once the point is reached at which the amount of the variable factor is sufficient to ensure the efficient utilization of the fixed factor, then further increases in the variable factor will cause marginal and average products of a variable factor to decline because the fixed factor then becomes inadequate relative to the quantity of the variable factor.

In other words, the contributions to the production made by the variable factor after a point become less and less because the additional units of the variable factor have less and less of the fixed factor to work with. The production is the result of the co-operation of various factors

aiding each other. Now, how much aid one factor provides to the others depends upon how much there is of it.

Eventually, the fixed factor is abundant relative to the number of the variable factor and the former provides much aid to the later. Eventually, the fixed factor becomes more and more scarce in relation to the variable factor so that as the units of the variable factor are increased they receive less and less aid from the fixed factor. As a result, the marginal and average products of the variable factor decline ultimately.

The phenomenon of diminishing marginal returns, like that of increasing marginal returns, rests upon the indivisibility of the fixed factor. As explained above, the important reason for increasing returns to a factor in the beginning is the fact that the fixed factor is indivisible which has to be employed whether the output to be produced is small or large.

When the indivisible fixed factor is not being fully used, successive increases in a variable factor add more to output since fuller and more efficient use is made of the indivisible fixed factor. But there is generally a limit to the range of employment of the variable factor over which its marginal and average products will increase.

There will usually be a level of employment of the Variable factor at which indivisible fixed factor is being as fully and efficiently used as possible. It will happen when the variable factor has increased to such an amount that the fixed indivisible factor is being used in the "best or optimum proportion" with the variable factor.

Once the optimum proportion is disturbed by further increases in the variable factor, returns to a variable factor (i.e., marginal product and average product) will diminish primarily because the indivisible factor is being used too intensively, or in other words, the fixed factor is being used in non-optimal proportion with the variable factor.

Just as the marginal product of the variable factor increases in the first stage when better and full use of the fixed indivisible factor is being made, the marginal product of the variable factor diminishes when the fixed indivisible factor is being worked too hard.

If the fixed factor was perfectly divisible, neither the increasing nor the diminishing returns to a variable factor would have occurred. If the factors were perfectly divisible, then there would not have been the necessity of taking a large quantity of the fixed factor in the beginning to combine with the varying quantities of the other factor.

In the presence of perfect divisibility, the optimum proportion between the factors could have always been achieved. Perfect divisibility of the factors implies that a small firm with a small

machine and one worker would be as efficient as a large firm with a large machine and many workers.

The productivity of the factors would be the same in the two cases. Thus, we see that if the factors were perfectly divisible, then the question of varying factor proportions would not have arisen and hence the phenomena of increasing and diminishing marginal returns to a variable factor would not have occurred.

The diminishing marginal returns occur because the factors of production are imperfect substitutes for one another. As seen above, diminishing returns occur during the second stage since the fixed factor is now inadequate relatively to the variable factor. Now, a factor which is scarce in supply is taken as fixed.

When there is a scarce factor, quantity of that factor cannot be increased in accordance with the varying quantities of the other factors, which, after the optimum proportion of factors is achieved, results in diminishing returns.

If now some factors were available which perfect substitute of the scarce fixed factor was, then the paucity of the scarce fixed factor during the second stage would have been made up by the increase in supply of its perfect substitute with the result that output could be expanded without diminishing returns.

Thus, even if one of the variable factors which we add to the fixed factor were perfect substitute of the fixed factor, then when, in the second stage, the fixed factor becomes relatively deficient, its deficiency would have been made up the increase in the variable factor which is its perfect substitute.

If this were not true, it would be possible, when one factor of production is fixed in amount and the rest are in perfectly elastic supply, to produce part of the output with the aid of the fixed factor, and then, when the optimum proportion between this and other factors was attained, to substitute some other factor for it and to increase output at constant cost." We, therefore, see that diminishing returns operate because the elasticity of substitution between factors is not infinite.

Explanation of Negative Marginal Returns to a Factor:

As the amount of a variable factor continues to be increased to a fixed quantity of the other factor, a stage is reached when the total product declines and the marginal product of the variable factor becomes negative.

This phenomenon of negative marginal returns to the variable factor in stage 3 is due to the fact that the number of the variable factor becomes too excessive relative to the fixed factor so that

they obstruct each other with the result that the total output falls instead of rising.

Besides, too large a number of the variable factor also impairs the efficiency of the fixed factor. The proverb "too many cooks spoil the broth" aptly applies to this situation. In such a situation, a reduction in the units of the variable factor will increase the total output.

c. The Production Isoquant

The law of variable proportion analyses the behavior of output when one input factor is variable and the other factors are held constant. Thus it is a short run analysis. But in the long run all factors are variable. When all factors are changed in same proportion, the behavior of output is analyzed with laws of returns to scale. Thus law of returns to scale is a long run analysis. In the long period, output can be increased by varying all the input Factors this law is concerned, not with the proportions between the factors of production, but with the scale of production. The scale of production of the firm is determined by those input factors which cannot be changed in the short period. The term return to scale means the changes in output as all factors change in the same proportion. The law of returns to scale seeks to analyze the effects of scale on the level of output. If the firm increases the units of both factors labour and capital, its scale of production increases.

The return to scale may be increasing, constant or diminishing. We shall now examine these three kinds of returns to scale.

Increasing Returns to Scale

When inputs are increased in a given proportion and output increases in a greater proportion, the returns to scale are said to be increasing. In other words, proportionate increase in all factors of production results in a more than proportionate increase in output; it is a case of increasing returns to scale. For example, if the inputs are increased by 40% and output increased by 50%, return to scale are increasing. It is the first stage of production.

If the industry is enjoying increasing returns, then its marginal product increases. As the output expands, marginal costs come down. The price of the product also comes down.

Constant Return to Scale

When inputs are increased in a given proportion and output increases in the same proportion, constant return to scale is said to prevail. For example, if inputs are increased by 40% and output also increases by 40%, the return to scale are said to be constant .This may be called

homogeneous production function of the first degree. In case of constant returns to scale the average output remains constant. Constant returns to scale operate when the economies of the large scale production balance with the diseconomies.

Decreasing Returns to Scale

Decreasing returns to scale is otherwise known as the law of diminishing returns. This is an important law of production. If the firm continues to expand beyond the stage of constant returns, the stage of diminishing returns to scale will start to operate. A proportionate increase in all inputs results in less than proportionate increase in output, the returns to scale is said to be decreasing. For example, if inputs are increased by 40%, but output increases by only 30%, it is a case of decreasing return to scale. Decreasing return to scale implies increasing costs to scale.

Isoquants:

The term Iso-quant or Iso-product is composed of two words, Iso = equal, quant = quantity or product = output.

Thus it means equal quantity or equal product. Different factors are needed to produce a good. These factors may be substituted for one another.

A given quantity of output may be produced with different combinations of factors. Iso-quant curves are also known as Equal-product or Iso-product or Production Indifference curves.

Thus, an Iso-product or Iso-quant curve is that curve which shows the different combinations of two factors yielding the same total product. Like, indifference curves, Iso- quant curves also slope downward from left to right. The slope of an Iso-quant curve expresses the marginal rate of technical substitution (MRTS).

Assumptions:

The main assumptions of Iso-quant curves are as follows:

1. Two Factors of Production:Only two factors are used to produce a commodity.
2. Divisible Factor: Factors of production can be divided into small parts.
3. Constant Technique: Technique of production is constant
4. Possibility of Technical Substitution:The substitution between the two factors is technically possible. That is, production function is of ‘variable proportion’ type rather than fixed proportion.
5. Efficient Combinations: Under the given technique, factors of production can be used with

maximum efficiency.

Iso-Product Schedule:

Table 1. Iso-Product Schedule.

Combination	Units of labour	Units of capital	Output of cloth (metres)
A	1	15	200
B	2	11	200
C	3	8	200
D	4	6	200
E	5	5	200

Let us suppose that there are two factor inputs—labour and capital. An Iso-product schedule shows the different combination of these two inputs that yield the same level of output as shown in table 1.

Iso-Product Schedule

The table 1 shows that the five combinations of labour units and units of capital yield the same level of output, i.e., 200 metres of cloth. Thus, 200 metre cloth can be produced by combining.

(a) 1 unit of labour and 15 units of capital

(b) 2 units of labour and 11 units of capital

(c) 3 units of labour and 8 units of capital

(d) 4 units of labour and 6 units of capital

(e) 5 units of labour and 5 units of capital

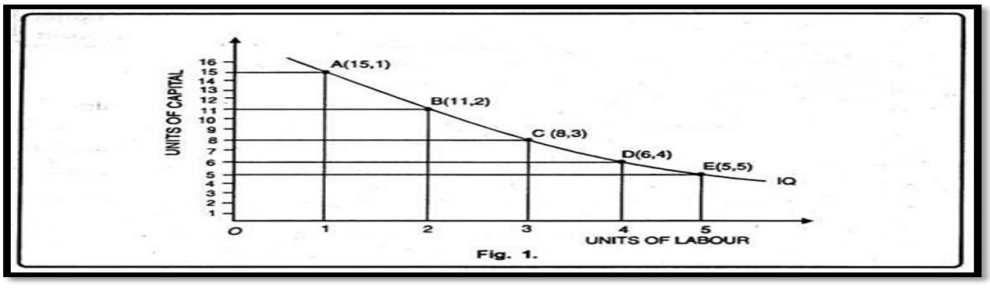


Fig. 1.

Iso-Product Curve:

From the above schedule iso-product curve can be drawn with the help of a diagram. An. equal product curve represents all those combinations of two inputs which are capable of producing the same level of output. The Fig. 1 shows the various combinations of labour and capital which give the same amount of output. A, B, C, D and E.

Iso-Product Map or Equal Product Map:

An Iso-product map shows a set of iso-product curves. They are just like contour lines which show the different levels of output. A higher iso-product curve represents a higher level of output. In Fig. 2 we have family iso-product curves, each representing a particular level of output.

The iso-product map looks like the indifference map of consumer behaviour analysis. Each indifference curve represents particular level of satisfaction which cannot be quantified. A higher indifference curve represents a higher level of satisfaction but we cannot say by how much the satisfaction is more or less. Satisfaction or utility cannot be measured.

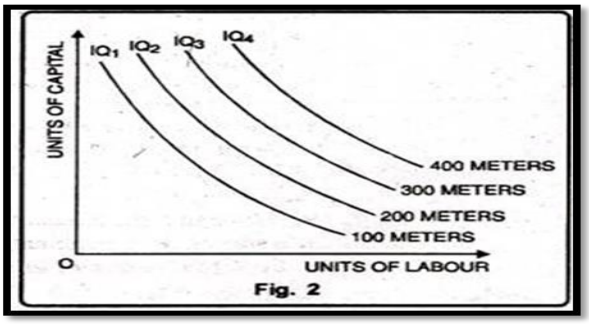


Fig. 2

Iso-Product Map or Equal Product Map

An iso-product curve, on the other hand, represents a particular level of output. The level of output being a physical magnitude is measurable. We can therefore know the distance between two equal product curves. While indifference curves are labeled as IC1, IC2, IC3, etc., the iso-product curves are labelled by the units of output they represent -100 metres, 200 metres, 300 metres of cloth and so on.

Properties of Iso-Product Curves:

The properties of Iso-product curves are summarized below:

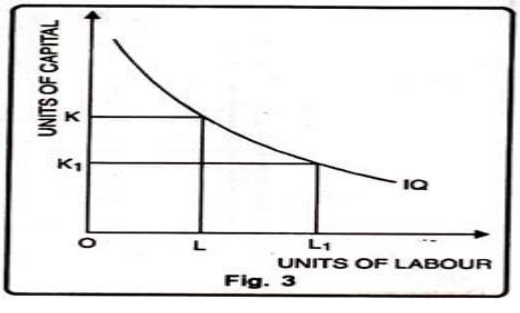


Fig. 3

1. Iso-Product Curves Slope Downward from Left to Right:

They slope downward because MTRS of labour for capital diminishes. When we increase labour, we have to decrease capital to produce a given level of output.

The Fig. 3 shows that when the amount of labour is increased from OL to OL1, the amount of

capital has to be decreased from OK to OK1, The iso-product curve (IQ) is falling as shown in the figure.

2. Isoquants are Convex to the Origin:

Like indifference curves, isoquants are convex to the origin. In order to understand this fact, we have to understand the concept of diminishing marginal rate of technical substitution (MRTS), because convexity of an isoquant implies that the MRTS diminishes along the isoquant. The marginal rate of technical substitution between L and K is defined as the quantity of K which can be given up in exchange for an additional unit of L. It can also be defined as the slope of an isoquant.

It can be expressed as:

$MRTS(LK) = -\Delta K/\Delta L = dK/dL$

Where ΔK is the change in capital and AL is the change in labour.

Equation (1) states that for an increase in the use of labour, fewer units of capital will be used. In other words, a declining MRTS refers to the falling marginal product of labour in relation to capital. To put it differently, as more units of labour are used, and as certain units of capital are given up, the marginal productivity of labour in relation to capital will decline.

3. Two Iso-Product Curves Never Cut Each Other:

As two indifference curves cannot cut each other, two iso-product curves cannot cut each other. Suppose two Iso-product curves intersect each other. Both curves IQ1 and IQ2 represent two levels of output. But they intersect each other at point A. Then combination A = B and combination A= C. Therefore B must be equal to C. This is absurd. B and C lie on two different iso-product curves. Therefore two curves which represent two levels of output cannot intersect each other.

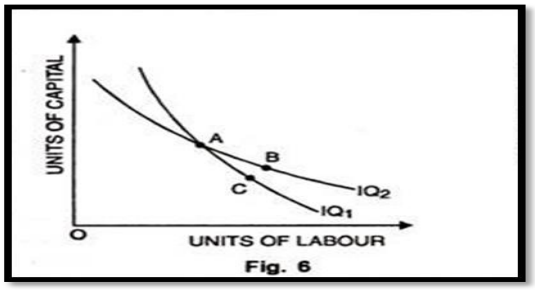


Fig. 6

4. Higher Iso-Product Curves Represent Higher Level of Output:

A higher iso-product curve represents a higher level of output

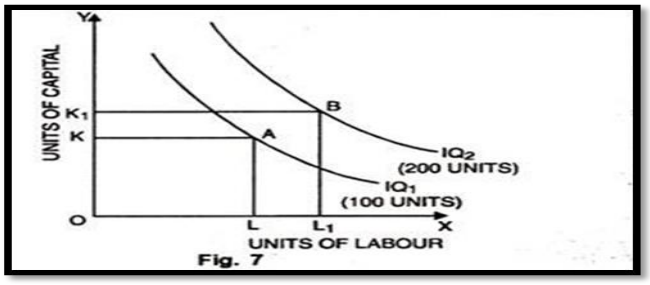


Fig. 7

In the Fig, units of labour have been taken on OX axis while on OY, units of capital. IQ1 represents an output level of 100 units whereas IQ2 represents 200 units of output.

5. Isoquants Need Not be Parallel to Each Other:

It so happens because the rate of substitution in different isoquant schedules need not be necessarily equal. Usually they are found different and, therefore, isoquants may not be parallel as shown in Fig. 8. We may note that the isoquants Iq1 and Iq2 are parallel but the isoquants Iq3 and Iq4 are not parallel to each other.

Isoquants Need Not be Parallel to Each Other

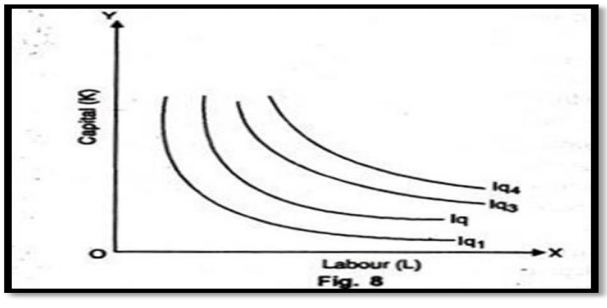


Fig. 8

6. No Isoquant can Touch Either Axis:

If an isoquant touches X-axis, it would mean that the product is being produced with the help of labour alone without using capital at all. These logical absurdities for OL units of labour alone are unable to produce anything. Similarly, OC units of capital alone cannot produce anything without the use of labour. Therefore as seen in figure 9, IQ and IQ1 cannot be isoquants.

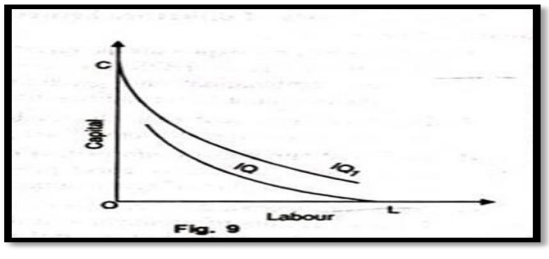


Fig. 9

<u>Returns to scale</u>

The laws of returns to scale can also be explained in terms of the isoquant approach. The laws of

returns to scale refer to the effects of a change in the scale of factors (inputs) upon output in the long-run when the combinations of factors are changed in some proportion. If by increasing two factors, say labour and capital, in the same proportion, output increases in exactly the same proportion, there are constant returns to scale.

If in order to secure equal increases in output, both factors are increased in larger proportionate units, there are decreasing returns to scale. If in order to get equal increases in output, both factors are increased in smaller proportionate units, there are increasing returns to scale. The returns to scale can be shown diagrammatically on an expansion path "by the distance between successive 'multiple-level-of-output' isoquants, that is, isoquants that show levels of output which are multiples of some base level of output, e.g., 100, 200, 300, etc."

Increasing Returns to Scale:

Figure 11 shows the case of increasing returns to scale where to get equal increases in output, lesser proportionate increases in both factors, labour and capital, are required. It follows that in the figure

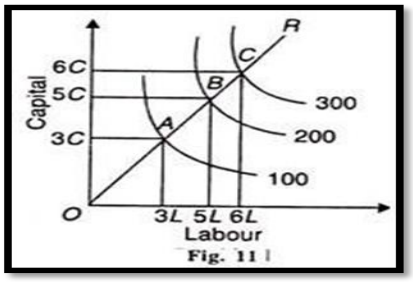


Fig. 11

100 units of output require 3C + 3L

200 units of output require 5C + 5L

300 units of output require 6C + 6L

So that along the expansion path OR, OA > AB > BC. In this case, the production function is homogeneous of degree greater than one.

The increasing returns to scale are attributed to the following factors:

1. There may be indivisibilities in machines, management, labour, finance, etc. Some items of equipment or some activities have a minimum size and cannot be divided into smaller units. When a business unit expands, the returns to scale increases because the indivisible factors are employed to their full capacity.

2. Increasing returns to scale also result from specialization and division of labour. When the scale of the firm expands, there is wide scope for specialization and division of labour. Work

can be divided into small tasks and workers can be concentrated to narrower range of processes. For this, specialized equipment can be installed. Thus with specialization, efficiency increases and increasing returns to scale follow.

3. As the firm expands, it enjoys internal economies of production. It may be able to install better machines, sell its products more easily, borrow money cheaply, procure the services of more efficient manager and workers, etc. All these economies help in increasing the returns to scale more than proportionately.

4. A firm also enjoys increasing returns to scale due to external economies. When the industry itself expands to meet the increased long-run demand for its product, external economies appear which are shared by all the firms in the industry.

When a large number of firms are concentrated at one place, skilled labour, credit and transport facilities are easily available. Subsidiary industries crop up to help the main industry. Trade journals, research and training centres appear which help in increasing the productive efficiency of the firms. Thus these external economies are also the cause of increasing returns to scale.

Decreasing Returns to Scale:

Figure 12 shows the case of decreasing returns where to get equal increases in output, larger proportionate increases in both labour and capital are required. It follows that

100 units of output require 2C + 2L

200 units of output require 5C + 5L

300 units of output require 9C + 9L

so that along the expansion path OR, OG < GH < HK.

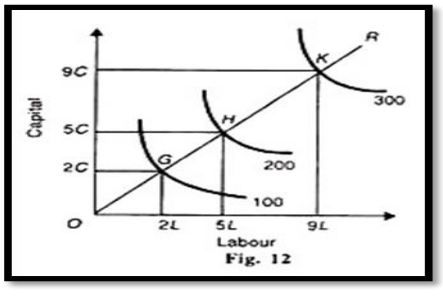


Fig. 12

Returns to scale may start diminishing due to the following factors:

1. Indivisible factors may become inefficient and less productive.

2. The firm experiences internal diseconomies. Business may become unwieldy and produce problems of supervision and coordination. Large management creates difficulties of control and rigidities.

3. To these internal diseconomies are added external diseconomies of scale. These arise from

higher factor prices or from diminishing productivities of the factors. As the industry continues to expand the demand for skilled labour, land, capital, etc. rises.

There being perfect competition, intensive bidding raises wages, rent and interest. Prices of raw materials also go up. Transport and marketing difficulties emerge. All these factors tend to raise costs and the expansion of the firms leads to diminishing returns to scale so that doubling the scale would not lead to doubling the output.

Constant Returns to Scale:

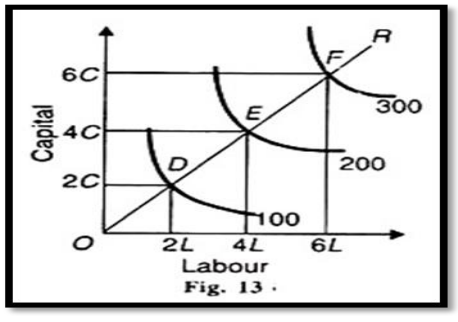


Fig. 13 .

Figure 13 shows the case of constant returns to scale. Where the distance between the isoquants 100, 200 and 300 along the expansion path OR is the same, i.e., OD = DE = EE It means that if units of both factors, labour and capital, are doubled, the output is doubled. To treble output, units of both factors are trebled. It follows that

100 units of output require 1 (2C + 2L) = 2C + 2L

200 units of output require 2(2C + 2L) = 4C + 4L

300 units of output require 3(2C + 2L) = 6C + 6L

Returns to scale are constant due to the following factors:

1. The returns to scale are constant when internal economies enjoyed by a firm are neutralized by internal diseconomies so that output increases in the same proportion.

2. Another reason is the balancing of external economies and external diseconomies.

3. Constant returns to scale also result when factors of production are perfectly divisible, substitutable, and homogeneous and their supplies are perfectly elastic at given prices.

That is why, in the case of constant returns to scale, the production function is homogeneous of degree one.

d. Profit Maximization

Profit Maximization - Overview

We assume that firms are in business to make as much money as possible, i.e. they striveto maximize their profits. This assumption has its rationale in the idea of ”natural selection” or ”survival of the fittest” - if a firm is not maximizing profits its competitors who do would eventually drive it out of business by employing more efficient (and more profitable) methods of

production. Even if the firm is monopoly, however it would most probably want to maximize profits - after all firms are owned by people form whom we assume more is always better. Thus more firms' profit would mean more income (or wealth) for its owners. Thus profit maximization seems a reasonable assumption about firms' behavior. The firm maximizes profits (revenues minus costs) by choosing the most efficient way to produce, i.e. by choosing the optimal amounts of the factors of production to employ. The firm chooses these optimal amounts taking into account the available technology embodied in the production function which gives the relationship between the amounts of inputs put into production and the maximum possible amount of output that can be produced.

There are two approaches to explain the equilibrium or profit maximization by the firm;

(a) Total-revenue and total cost approach, and

(a) Total-revenue and total cost approach

Since under perfect competition marginal revenue is constant, total revenue curve is an upward-sloping straight line. On the other hand, due to varying returns to the factors used, total cost (TC) curve first increases at a decreasing rate and then after a point it increases at an increasing.

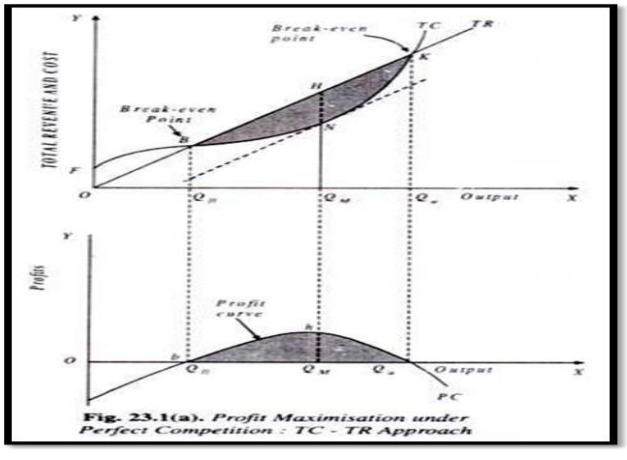


Fig. 23.1(a). *Profit Maximisation under Perfect Competition : TC - TR Approach*

Equilibrium of a firm working under perfect competition which aims at profit maximization is graphically illustrated in Figure 23.1 (a) where TR represents total revenue curve and TC represents total cost curve. Total revenue curve starts from the origin which means that when no output is produced, total revenue is zero.

As output is increased total revenue goes on increasing at a constant rate. This is because price for a firm working under perfect competition remains constant whatever its level of output. Consequently, total revenue curve TR is a straight line from the origin.

However, it will be noticed that the total cost curve TC starts from a point F which lies above

the origin. It means that OF is the fixed cost which the firm has to incur even if it stops production in the short run. It will be seen that the short-run total cost curve TC initially increases at a decreasing rate and then after a point it increases at an increasing rate.

This implies that average total cost curve is roughly of U-shape. Total profits can be measured as the vertical distance between the TR and TC curves. It will be observed from Fig. 23.1 (a) that upto the level of output OQB, TC curve lies above TR curve showing that as the firm raises its output in the initial stages total cost is greater than total revenue and the firm is incurring losses.

When the firm produces OQB level of output, total revenue just equals total cost and the firm is therefore neither making profits, nor losses. That is, the firm is only breaking even at output level OQB. Thus the point B or output level OQB is called Break-Even Point.

When the firm increases its output beyond OQB total revenue becomes larger than total cost and therefore profits be-gin to accrue to the firm. It will be noticed from the Fig. 23.1 (a) that profits are increasing as the firm increases pro-duction to output OQM, since the distance between the total revenue curve (TR) and total cost curve (TC) is widening. At OQM level of output, the distance between the TR curve and TC curve is the greatest and therefore profits will be maximum.

If the firm expands output beyond QM, the gap between TR and TC curves goes on narrowing down and therefore the total profits will be declining. It is there-fore clear that the firm will be in equilibrium at QM level of output where total revenue exceeds total cost by the largest amount and hence its profits are maximum.

It will be observed from Figure 23.1 (a) that at output level QU, total revenue is again equal to total cost (TR curve cuts TC curve at point K corresponding to output QU). Thus, point K is again a break-even point, usually called upper break-even point.

It may however be noted that this upper break-even point K or output level QU is not of much relevance as it lies beyond firm's profit maximizing level and may actually lie beyond firm's capacity to produce. It is the first break-even point B or output level QB which is highly significant as a firm will not plan to produce if it cannot sell output equal to at least QB at which total revenue just covers total cost of production so that its economic profits are zero.

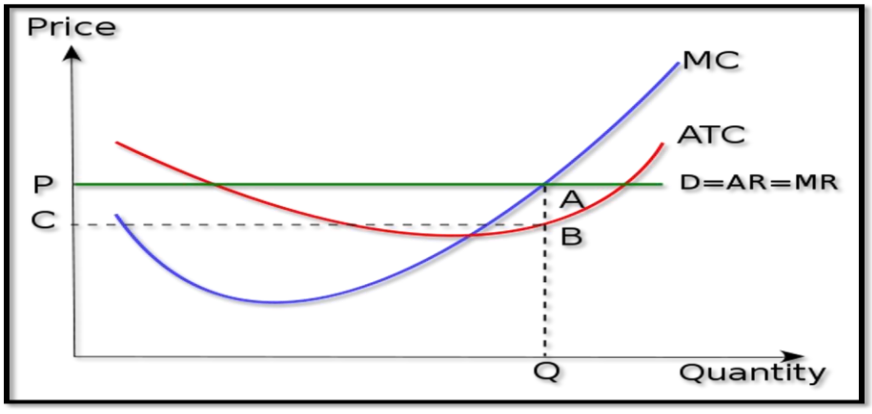
For a more clear representation of profit-maximizing level of output we have drawn in the lower panel of Figure 23.1 (a) the profit curve PC which measures the distance between TR and TC curves. It will be seen from this lower panel of Fig. 23.1 (a) that up to output level QB profit

curve lies below the X-axis showing that the firm is making losses if it produces less than QB.
At output level QB the firm's economic profits are zero because at this output level total revenue just covers total cost of production. Therefore, output QB is break-even level of output. As the firm expands its level of output beyond QB, profit curve is rising until it reaches its maximum point corresponding to level of output QM.

Beyond level of output QM, profit curve slopes downward indicating that profits decline beyond output QM. Thus, at output level QM, the firm maximizes economic profits. At a higher output level profits are gain zero indicating the upper break-even point.
There is a major shortcoming of the TC and TR approach of analyzing firm's equilibrium. It is that in this approach what price will be charged by the firm in its equilibrium position is not directly mown.

(b) MR and MC approach.

Marginal cost is the change in total cost divided by the change in output. Marginal cost is the change in the total cost that occurs when the quantity produced is increased by one unit . It is the cost of producing one more unit of a good. Marginal revenue is the additional revenue that will be generated by increasing product sales by one unit. In a perfectly competitive market, the price of the product stays the same when another unit is produced. Marginal revenue is calculated by dividing the change in total revenue by the change in output quantity.An equivalent perspective relies on the relationship that, for each unit sold, marginal profit ($M\pi$) equals marginal revenue (MR) minus marginal cost (MC). Then, if marginal revenue is greater than marginal cost at some level of output, marginal profit is positive and thus a greater quantity should be produced, and if marginal revenue is less than marginal cost, marginal profit is negative and a lesser quantity should be produced. At the output level at which marginal revenue equals marginal cost, marginal profit is zero and this quantity is the one that maximizes profit. Since total profit increases when marginal profit is positive and total profit decreases when marginal profit is negative, it must reach a maximum where marginal profit is zero—or where marginal cost equals marginal revenue—and where lower or higher output levels give lower profit levels.



The intersection of MR and MC is shown in the next diagram as point A. If the industry is perfectly competitive (as is assumed in the diagram), the firm faces a demand curve (D) that is identical to its marginal revenue curve (MR), and this is a horizontal line at a price determined by industry supply and demand. Average total costs are represented by curve ATC. Total economic profit is represented by the area of the rectangle PABC. The optimum quantity (Q) is the same as the optimum quantity in the first diagram.

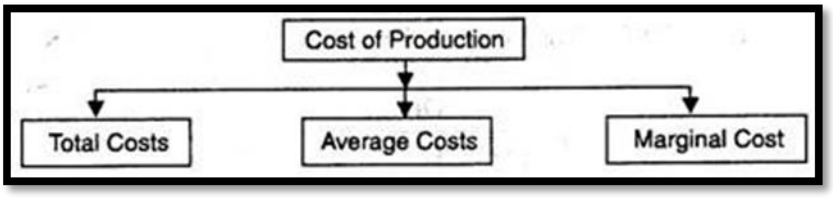
e. The Economic Concept of Costs: Opportunity Cost, Explicit and Implicit Costs,Marginal, Incremental and Sunk Costs

Generally theories of costs can be divided into two parts:

Traditional Theory of Costs/Short Run Cost Curves:

In traditional theory, costs are generalized in two parts on the basis of time period i.e. costs in short run and costs in long run period.

Costs are mainly of the following types:



1. Total cost
2. Average cost
3. Marginal cost.

I. Total Cost:

Total cost of production is the sum of all expenditure incurred in producing a given volume of output. In other words, the amount of money spent on the production of different levels of a

good is called total cost. For instance, if a total sum of Rs. 2500 is spent on the production of 100 bicycles, then the total cost of producing 100 bicycles will be Rs. 2500. Since, there are two types of factors of production in the short run, so there are two types of costs.

Thus

$$TC = FC + VC$$

TC → Total cost
FC → Fixed cost
VC → Variable cost

Fixed Costs or Supplementary Costs:

The cost that remains fixed at any level of output is known as the fixed cost. These costs must be paid whether there is production or not. These costs include, depreciation allowance, interest on fixed capital, license fee, salaries to permanent staff etc.Fixed costs are costs which do not change with change in the quantity of output. These costs are also known as the overhead costs or indirect costs because a firm has to incur these costs even if it shuts down temporarily. Thus, fixed costs are unavoidable which occur even at the zero level of output.

Fixed cost can be shown with the help of a table 1 and diagram 2:

Table 1.

Units of output	Fixed cost	Units of output	Fixed cost
1	40	5	40
1	40	6	40
2	40	7	40
3	40	8	40
4	40		

Total fixed cost can be explained as under :

$$TFC = \text{Explicit Fixed Cost} + \text{Implicit cost}$$

Or

$$TFC = \text{Total Costs} - \text{Total variable costs}$$

Or

$$TFC = TC - TVC$$

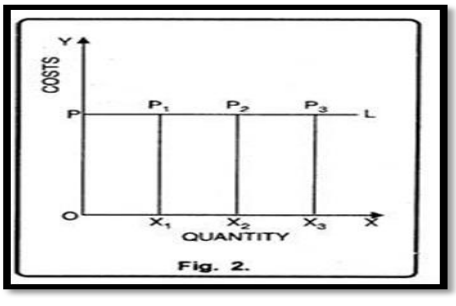


Fig. 2.

In Figure 2 quantity has been measured on horizontal axis while costs on vertical axis. As is clear from the fig. 2 that even at zero level of output a firm has to incur fixed costs equal to OP. In the figure, output increases from OX1 to OX2 to OX3 but the fixed costs remain the same.

Variable Costs or Prime Costs:

Variable costs refer to those costs which change with the change in the volume of output. These costs are unavoidable or contractual costs. Marshall called these costs as "Prime Costs", "Direct Costs" or "Special Costs". Variable costs include expenditure on transport, wages of labour, electricity charges, price of raw material etc. Thus, according to Dooley, "Variable costs are one which varies as the level of output varies."

Table 2.

Unit or Output	Total Variable Cost	Unit or Output	Total Variable Cost
0	0	5	36
1	20	6	38
2	30	7	40
3	32	8	46
4	34		

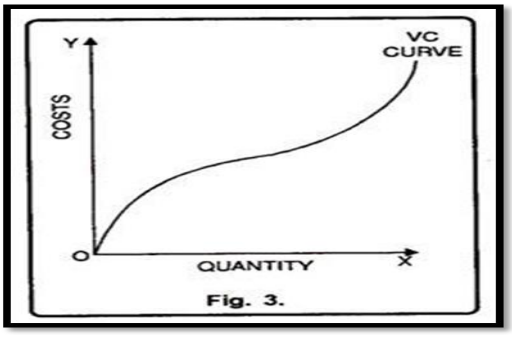


Fig. 3.

Variable cost curve starts from zero. It means when output is zero, variable costs are also zero. But as the output increases variable costs also increase. As is evident from the figure that when output is 1 unit thenvariable cost isRs. 20. But, as the output increases to 3 units, variable costs also increase to the tune of Rs. 30.

Relation between Total, Fixed and Variable Costs:

In order to determine the total costs of a firm, we aggregate fixed as well as variable costs at different levels of output i.e.

TC = TFC + TVC

TFC = TC – TVC

TVC = TC – TFC

TC = FC + VC

Table 3.

Output 1	Fixed Cost 2	Variable Cost 3	Total Cost (2 + 3)
0	40	0	40
1	40	20	60
2	40	30	70
3	40	32	72
4	40	34	74
5	40	36	76
6	40	38	78
7	40	40	80
8	40	46	86

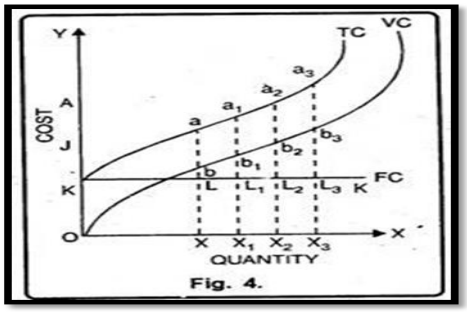


Fig. 4.

In Figure 4 quantity is measured on horizontal axis while costs on vertical axis. KK is fixed cost curve which is parallel to horizontal axis which signifies the fact that at all levels of output, fixed costs remain the same. VC is the variable cost curve.

It is of the shape of reverse S. It means as the output is zero variable costs are also zero. But as the output increases, variable costs also start increasing, initially at diminishing rate, constant rate and then at an increasing rate.

II. Average Cost: The average cost of production is the total cost per unit of output." In other words average cost of production is the total cost of production divided by the total number of units produced.

Suppose, the total cost of producing 500 units is Rs. 1000, the average cost will be:

$$AC = \frac{TC}{Q}$$

$$AC = \frac{1000}{500} = 2$$

AC = Average Cost

TC = Total Cost

Q = Output

Average cost, average fixed cost can be shown with the help of a table 5.

Table 5.

Units	TFC	TVC	TC	AC $\left(\frac{TC}{q}\right)$	AFC $\left(\frac{TFC}{q}\right)$	AVC $\left(\frac{TVC}{q}\right)$
0	40	0	40	0	0	0
1	40	20	60	60	40	20
2	40	30	70	35	20	15
3	40	32	72	24	13.3	10.7
4	40	34	74	18.5	10.0	8.5
5	40	36	76	15.2	8	7.2
6	40	38	78	13.0	6.6	6.3
7	40	40	80	11.4	5.7	5.7
8	40	46	86	10.7	5.0	5.7
9	40	48	88	9.8	4.4	5.4

$$AC = \frac{TC}{q} \text{ Or } AFC + AVC$$

$$AFC = \frac{TFC}{q}$$

$$AVC = \frac{TVC}{q}$$

$$TC = TFC + TVC$$

Average Fixed Cost:

Average fixed cost is the total fixed cost divided by the number of units of output produced.

Thus:

$$AFC = \frac{TFC}{Q}$$

Q = Quantity of output

TFC = Total Fixed cost

AFC = Average Fixed Cost

For instance, when output is 200 units the total fixed costs for a firm are Rs. 2000 as

$$AC = \frac{2000}{200}$$

$$AC = 10$$

Since, total fixed cost is a constant quantity, average fixed cost will steadily fall as output increases, thus, the average fixed cost curve slopes downward throughout the length. It can be shown with the help of a figure 5.

In Figure 5 the average fixed cost curve slopes downward with a view to touch the horizontal axis. But it will not be so because AFC can never be zero. Thus, it is clear that as output increases, average fixed costs go on diminishing

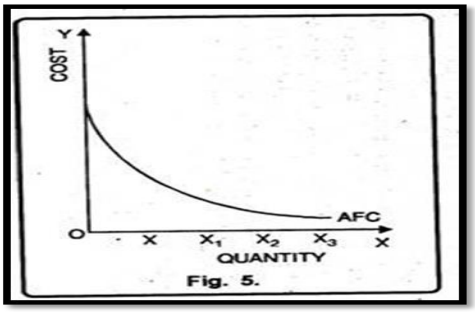


Fig. 5.

Average Variable Costs:

Average variable cost is the total variable cost divided by the number of units of output

produced.

AVC = TVC / Q

AVC = Average variable costs.

TVC = Total variable costs Q = Output

Generally, the AVC falls as output increases from zero to the normal capacity output due to the law of increasing returns. But beyond the normal capacity output, the AVC will rise steeply because of the operation of the law of diminishing returns as has been shown in figure 6.

In Figure 6 the average variable cost curve assumes the U- shape. Initially, the AVC curve falls, after having the minimum point the curve starts rising.

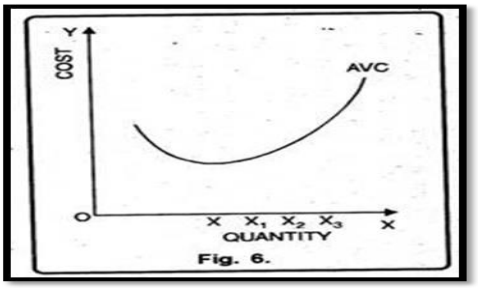


Fig. 6.

Relation between Average Cost, Average Fixed Cost and Average Variable Cost:

Average cost is the lateral summation of average fixed and average variable cost.

The following table & fig. expresses their relationship:

Table 6.

Units	TC	AC	AFC	AVC
1	80	80	50	30
2	100	50	25	25
3	115	38.3	16.6	21.7
4	145	36.2	12.5	23.7
5	185	37.0	10.0	27
6	235	39.1	8.3	30.8
7	295	42.1	7.1	35
8	390	48.7	6.2	42.5

Average cost can be calculated by dividing total cost with units of output (q). In the above table AFC diminishes with the increase in production whereas AVC diminishes up to third unit. Total average cost is minimum at fourth unit after that it starts increasing because AVC is also increasing. Fig. 7 shows that average cost curve is of U-shape.

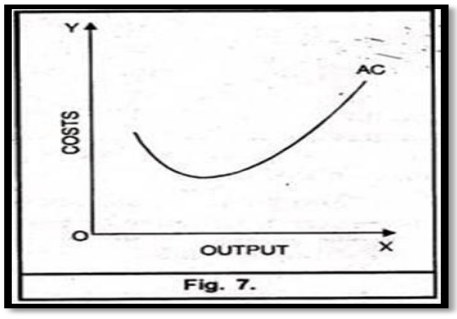


Fig. 7.

Why the short-run AC is curve U-shaped?

In the short-run average cost curves are of U-shape. It means, initially it falls and after reaching the minimum point it starts rising upwards. It can be on account of the following reasons.

1. Basis of Average Fixed Cost and Average Variable Cost:

It is well known, that average cost is the aggregate of average fixed cost and average variable cost (AC = AFC + AVC). To begin with, as production increases, initially the average fixed cost and average variable cost falls. But after a minimum point, average variable cost stops falling but not the average cost. It is due to this reason that average variable cost reaches the minimum before AC.

The point, where AC is minimum is called the optimum point. After this point, AC begins to rise upward. The net result is the increase in AC. Therefore, it is only due to the nature of AFC and AVC that AC first falls, reaches minimum and afterwards starts rising upward and hence assume the U-shape.

2. Basis of the Law of Variable Proportion:

The law of variable proportion also results in U-shape of short run average cost curve. If in the short period variable factors are combined with a fixed factor, output increases in accordance with the law of variable proportions. In other words, the law of 'Increasing Returns' applies.

Similarly, if we employ more and more variable factors with fixed factors the law of Diminishing Returns is said to apply. Thus, it is due to the law of variable proportions that the average cost curve assumes the shape of U.

3. Indivisibilities of the Factors:

Another reason due to which the average cost curve forms U-shape is the indivisibilities of factors. When in the short-run a firm increases its production due to indivisibilities of fixed factors, it gets various internal economies. It is these economies which cause the average cost curve to fall in the initial stage. Generally, there are three types of internal economies which help to bring down the cost viz., technical economies, marketing economies and managerial economies.

Long Run Average Cost

LRAC, curve of a firm shows the minimum or lowest average total cost at which a firm can produce any given level of output in the long run (when all inputs are variable).

In the long run, a firm will use the level of capital (or other inputs that are fixed in the short run) that can produce a given level of output at the lowest possible average cost. Consequently, the LRAC curve is the envelope of the short run average total cost (SR ATC) curves, where each SR ATC curve is defined by a specific quantity of capital (or other fixed input).

long-run average cost curve is normally U shaped, that is, the long-run average cost curve first declines as output is increased and then beyond a certain point it rises.

The shape of the long-run average cost curve depends upon the returns to scale. Since in the long run all inputs including the capital equipment can be altered, the relevant concept governing the shape of this long-run average cost curve is that of returns to scale.

Returns to scale increase with the initial increases in output and after remaining constant for a while, the returns to scale decrease. It is because of the increasing returns to scale in the beginning that the long-run average cost of production falls as output is increased and, likewise, it is because of the decreasing returns to scale that the long-run average cost of production rises beyond a certain point.

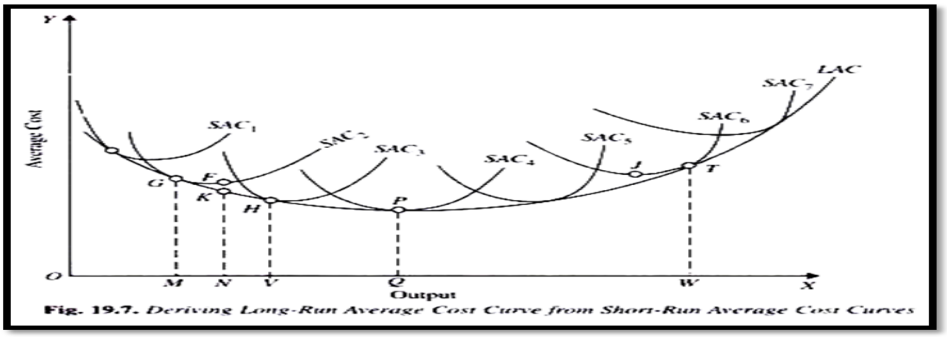


Fig. 19.7. *Deriving Long-Run Average Cost Curve from Short-Run Average Cost Curves*

III. Marginal Cost:

The concept of marginal cost of production is recently developed by Austrian School of Economics. Marginal cost is an addition to the total cost caused by producing one more unit of output. For instance, the total cost for the production of 100 units is Rs. 5000. Suppose the production of one more unit costs Rs. 5000. It will be called the marginal cost.

where MC = Marginal cost
TC_n = total cost of 'n' units
TC_{n-1} = Total cost of $n-1$ units
ΔTC = Change in total cost
ΔQ = Change in output.

"Marginal cost is the addition to total cost due to the addition of one unit of output." –Ferguson

"Marginal cost at any level of output is the extra cost for producing one extra unit more or less." –Samuelson

The derivation of MC can be studied with the help of a table 6.

Table 7.

Units of Output	TC = TFC + TVC	MC = $(TC_n - TC_{n-1})$
1	60	–
2	70	10
3	76	6
4	78	2
5	84	6
6	90	6
7	108	18
8	130	22

From this table, we can draw the following conclusions :

(*i*) TC increases at diminishing rate upto 4 units.

(*ii*) TC increases at constant rate *i.e.* 4th to 5th unit.

(*iii*) TC increases at an increasing rate *i.e.* from 6th unit onwards.

In Figure 8 output has been measured on X-axis and costs on Y-axis. MC is marginal cost curve. It is also of U-shape which signifies the fact that as output is increased initially MC curve falls. The MC curve reaches the minimum point after that it starts rising in upward direction. It is only on account of this reason that MC curve is also of U-shape.

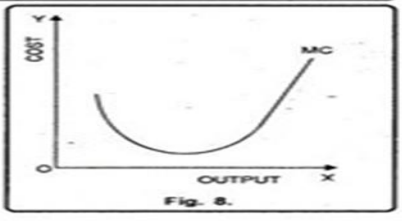


Fig. 8.

Why is the MC Curve of U-shape?

Marginal cost means the addition made to total cost on account of producing one more unit of output. In the beginning, when a firm increases its output, total costs as well as variable costs start increasing at a diminishing rate.

It is only due to the reason that in the initial stage of production law of increasing returns applies. Moreover, in the initial stage of production, the firm enjoys many economies which cause the MC to fall. As the output continues, marginal cost becomes minimum, thus, ultimately starts rising.

The reason being the operation of the Law of Diminishing Returns. In short, initially marginal cost falls and after having the minimum point it begins to rise. Thus, it is how the MC is also of U-shape.

Relation between Average and Marginal Cost:

The relation between average and marginal cost can be explained with the help of following table:

Output	Total cost	Average cost	Marginal cost
1	15	15	15
2	28	14	13
3	34	11.3	6
4	39	9.7	5
5	42	8.4	3
6	48	8.0	6

Main points of the relation are as under:

(1) Average Cost and Marginal Cost can be calculated from Total Cost:

Average cost and marginal cost can be calculated from total cost. As is known, average cost is the ratio of total cost to total output. In other words, AC is calculated by dividing the total cost by the quantity of output. It means.

$AC = TC / Q$

In the same way, marginal cost can also be calculated from total cost. It refers to an addition made to total output by producing one more unit of output. Thus,

$MC = TCn – TC\ n\text{-}1$

$MC = \Delta TC / \Delta Q$

(2) When average cost falls, MC also falls:

In this situation, rate of fall in marginal cost is more than fall in average cost. In other words, when AC curve is falling, MC curve will be below it. The reason behind this is that whereas average cost is the aggregate of average fixed cost and average variable cost, marginal cost refers only to change in average variable cost.

(3) When AC rises, MC also rises:

When average cost curve rises, marginal cost too rises, but rate of increase in marginal cost is more than that of average cost.

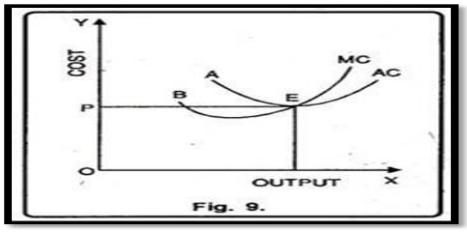


Fig. 9.

(4) MC cuts AC at its Lowest Point:

Marginal cost is equal to average cost when the latter is at its minimum. The minimum point of marginal cost occurs earlier than the average cost.

(5) When AC is constant MC becomes equal to AC:

When AC is constant, marginal cost first increases and then becomes equal to it. Figure 9 shows the picture more vividly.

(6) Use of MC and AC in Price Determination:

The concept of marginal cost is of great significance in finding out equilibrium output and that of average cost in finding out profit and loss. Equilibrium output is one at which marginal cost is equal to marginal revenue.

A firm earns normal profit when its average cost is equal to average revenue. It earns supernormal profit when average revenue is more than average cost. Moreover, a firm earns losses when average cost is more than average revenue.

(7) Mutual Interaction between MC and AC:

In Fig. 10 when marginal cost is more than average cost, average cost has a tendency to rise. It seems as if marginal cost curve is pulling the AC curve upward. On the other hand, when MC is less than AC, it pulls the AC curve downward. When MC is equal to AC then the latter is constant.

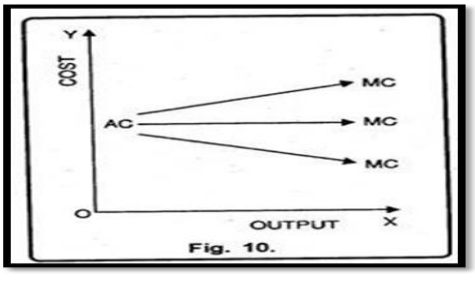


Fig. 10.

Opportunity cost

Opportunity cost is the value of next best alternative foregone.

The fundamental problem of economics is the issue of scarcity. Therefore we are concerned with the optimal use and distribution of these scarce resources. Wherever there is scarcity we are forced to make choices. If we have Rs.200 we can spend it on an economic textbook or we can enjoy a meal in a restaurant.

If we spend that Rs. 20 on a textbook, the opportunity cost is the restaurant meal we cannot afford to pay.

Opportunity cost is a cost associated with a decision that includes both the explicit and implicit costs. The unique aspect of opportunity cost is that it also includes costs associated with making an alternate decision. The costs associated with an alternative are called implicit costs. The accounting cost of making a decision is called the explicit cost.

While explicit, or accounting, costs are fairly easy to calculate, implicit costs are not as easy.

Measuring the cost of the best foregone alternative can be not as easy as anticipated. By buying 1 kg of apple, you are paying an implicit cost of your next best alternative which can be eating ice- cream.

IMPLICIT COST

A cost that is represented by lost opportunity in the use of a company's own resources, excluding cash. These are intangible costs that are not easily accounted for. For example, the time and effort that an owner puts into the maintenance of the company rather than working on expansion, rent on self-owned property.

EXPLICIT COST

A business expense that is easily identified and accounted for. Explicit costs represent clear, outflows from a business that reduce its bottom-line profitability. Good examples of explicit costs would be items such as wage expense, rent or lease costs, and the cost of materials that go into the production of goods. With these expenses, it is easy to see the source of the cash outflow and the business activities to which the expense is attributed

Examples and Applications

Example 1: An example of an opportunity cost would be the choice of whether to choose leisure for an entire day or to work for an entire day. In this example the explicit cost would be any money that was spent on leisure, tickets to a baseball game for example, and the implicit cost is the money that you could have made while working. These quantities added together equals the true opportunity cost.

Example 2: For a "real world" application of this topic let's consider the choice between working for someone else and opening your own business. The investment, cash, and other receipts are easily calculated by an accountant as the explicit cost of opening a business. To find opportunity cost you need to calculate the implicit cost of this decision. The implicit cost of not working for company may include salary, retirement plans, healthcare, bonuses, and stock options. These implicit costs are often times not easily calculated, but often it is better to consider an estimate so that one can calculate opportunity costs of a decision. By going through the rigor of calculating the implicit and explicit costs you will be able to make an informed decision on whether to work for a company or open your own business.

Sunk Cost:

A cost that has been incurred by an entity, and which it can no longer recover by any means, is the sunk cost". Example is the Development cost incurred for introducing new cost services,

while customer acceptance for this service was failure informed by the marketing department. It is, therefore, suck cost is irrelevant cost for decision making purposes.Sunk cost is irrelevant cost. It is the cost that has been already incurred and is therefore irrelevant in decision making since they can't be reversed.Another example could be the amortization of past expenses e.g., depreciation.

Incremental Cost:

Is the additional cost due to change in the level or nature of business activity.

The change may take several forms e.g.,:

(i) Addition of new product line,

(ii) Changing the channel of distribution,

(iii) Adding a new machine,

(iv) Replacing a machine by a better one, and

(v) The expansion into additional markets etc.

The question of this type of cost, would not arise when a business has to be set up a fresh. It arises only when a change is contemplated in the existing business.

What is the distinction between marginal cost and incremental cost?

Incremental costs are closely related to the concept of marginal cost but with a relatively wider connotation. While marginal cost refers to the change in total cost resulting from producing an additional unit of output, incremental cost refers to total additional cost associated with the decision to expand output or to add a new variety of product etc. It represents the difference between two alternatives. So both are concerned with the change in the total cost where marginal costs refers to the increase or decrease in that results from producing or distributing an additional unit of output and, incremental cost refers to the change in the total output as a result of change in the methods of production or distribution such as addition of a product or territory, use of improved technology or selection of an additional sales channel.

Marginal cost is also known as "Incremental Cost" and "Variable Cost". It is defined as "the change in total cost that comes from making an additional unit. It is relevant cost for the decision making.

f. The Cost of Long-Lived Assets

Long-lived assets - resources that are held for an extended time, such as land, buildings, equipment, natural resources, and patents These assets help produce revenues over many periods by facilitating theproduction and sale of goods or services to customers Long lived assets are usually classified into two subcategories, which are:

Tangible long lived assets. Included in this category are such assets as furniture and fixtures, manufacturing equipment, buildings, vehicles, and computer equipment.

Intangible long lived assets. Included in this category are such assets as copyrights, patents, and licenses.

Once acquired, the cost of a long lived asset is usually depreciated (for tangible assets) or amortized (for intangible assets) over the expected useful life of the asset. This is done in order to match the ongoing use of the asset with the economic benefits derived from it.

Costs associated with long lived assets:

1) Acquisition cost
2) Maintenance cost
3) Depreciation, Depletion and Amortization cost

Acquisition cost:

The acquisition cost of long-lived assets is the purchase price, including incidental costs required to complete the purchase, to transport the asset, and to prepare it for use.

The acquisition cost of land includes costs of land surveys, legal fees, title fees, realtor commissions, transfer taxes, and the demolition costs of Buildings and Equipment

Costs should include all costs of acquisition and preparation for use, such as sales taxes, transportation costs, installation costs, and repairs to the asset prior to use.

Maintenance Costis the cost associated with keeping the asset in working condition.

Cost associated with Depreciation, Depletion and Amortization:

Depreciation - allocation of the cost of tangible assets to the periods in which the assets are used

Depletion - allocation of the cost of natural resources to the periods in which the resources are used

Amortization - allocation of the cost of intangible assets to the periods that benefit from these assets

Land is not depreciated because it does not wear out or become obsolete

Unit IV: Market Structure

Meaning of Market

The term market refers not only necessarily to a place but always to a commodity and the buyers and sellers who are in direct competition with one another."

Economists understand by the term 'market' not any particular place in which things are bought and sold but the whole of any region in which buyers and sellers are in such free interaction with one another

Characteristic of Market

- An Area – In economics a market does not mean a particular place but the entire area where sellers and buyers of a product are spread. Modern modes of communication and transport have made the market area for a product very wide.
- One Product – In economics, a market is not associated to a place but to a specific commodity. Hence there are separate markets for diverse products. For instance, there are separate markets for clothes, grains, jewellery etc.
- Buyers and Sellers – The presence of buyers and sellers is essential for the sale and purchase of a product in the market. In the topical times, the presence of buyers and sellers is not essential in the market for the reason that they can do trading of commodities merely by communication over phone or emails.
- Free Competition – There must be free rivalry among buyers and sellers in the market. This competition is in relation to the price determination of a product among buyers and sellers.
- One Price – The price of a product is the same in the market for the reasons that free rivalry amidst traders.

Market Structure

Market structure denotes the nature and scale of competition in the market for commodities and services. The structures of market both for commodities and factor market are ascertained by various factors such as number of buyers & sellers, nature of the commodity, knowledge of consumers, possibilities for entry & exit of firms, the nature of rivalry existing in the market etc.

Determinants

There are a number of determinants of market structure for a specific commodity. They are:

i. **The number and nature of Sellers**

The market structures are influenced by the number and nature of sellers in the market. They range from large number of sellers in perfect rivalry to a single seller in monopoly to two sellers in duopoly, to a few sellers in oligopoly and to many sellers of discriminated merchandise.

ii. **The number and nature of buyers**

The market structures are also subjective by the number and nature in the market. If there is a

single buyer in the market, this is buyer's monopoly and is called monopsony market. There may be two buyers who act mutually in the market. This is called duopsony market. They may also be a few structured buyers of a produce. This is called oligopsony.

iii. **The nature of product**

It is the nature of merchandise that decides on the market structure. If there is product demarcation, commodities are close substitutes and the market is characterised by monopolistic competition. On the other hand, in case of no product demarcation the market is characterised by perfect competition. And if a product is entirely diverse from other commodities, it has no close substitutes then there is monopoly in the market.

iv. **The conditions of entry into and exit from the market**

The stipulations for entry and exit of firms in a market depend upon profitability or loss in a specific market. Profits in a market will attract the entry of new firms and losses lead to the exit of non-performing firms from the market. In a competitive market, there is liberty of entry or exit of firms. But in monopoly and oligopoly markets, there are barriers to entry of new firms.

v. **Economies of Scale**

Firms that achieve large economies of scale in production grow large in competition to others in an industry. They tend to tidy out the other firms with the consequence that a few firms are left to compete with each other. This leads to the emergence of oligopoly. If only one firm attains economies of scale to such a large extent that it is able to meet the market demand as a whole, there is monopoly.

Equilibrium of the Firm and Industry

Meaning of Firm and Industry

According to Miller, "Firm is an organisation that buys and hires resources and sells goods and services".

Lipsey has defined as "firm is the unit that employs factors of production to produce commodities that it sells to other firms, to households, or to the government."

Industry is a group of firms that sells a well defined product or closely related set of products."

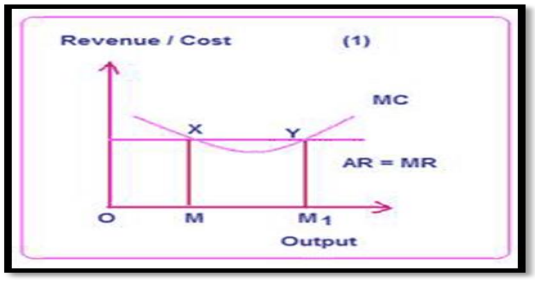
Conditions of Equilibrium of the Firm and Industry

Firm's Equilibrium

A firm is in equilibrium when it has no propensity to modify its level of productivity. It requires neither extension nor retrenchment. It wants to earn maximum profits in by equating its marginal cost with its marginal revenue, i.e. MC = MR. Diagrammatically, the conditions of equilibrium of the firm are (1) the MC curve must equal the MR curve.

This is the **first order and essential condition**. But this is not a sufficient condition which may be fulfilled yet the firm may not be in equilibrium. (2) The MC curve must cut the MR curve from below and after the point of equilibrium it must be above the MR.

This is the **second order condition**. Under conditions of perfect competition, the MR curve of a firm overlaps with the AR curve. The MR curve is parallel to the X axis. Hence the firm is in equilibrium when **MC = MR = AR**.



The first order **figure (1),** the MC curve cuts the MR curve first at point X. It contends the condition of MC = MR, but it is not a point of maximum profits for the reason that after point X, the MC curve is beneath the MR curve. It does not pay the firm to produce the minimum output OM when it can earn huge profits by producing beyond OM. Point Y is of maximum profits where both the situations are fulfilled.

Amidst points X and Y it pays the firm to enlarges its productivity for the reason that it's MR > MC. It will nevertheless stop additional production when it reaches the OM1 level of productivity where the firm fulfills both the circumstances of equilibrium. If it has any plans to produce more than OM1 it will be incurring losses, for its marginal cost exceeds its marginal revenue beyond the equilibrium point Y.

Assumptions

1. All firms use standardized factors of production
2. Firms are of diverse competence
3. Cost curves of firms are dissimilar from each other
4. All firms sell their produces at the equal price ascertained by demand and supply of the industry so that the price of each firm, P (Price) = AR = MR

Industry Equilibrium

An industry is in equilibrium, first when there is no propensity for the firms either to leave or enter the industry and next, when each firm is also in equilibrium. The first clause entails that the average cost curves overlap with the average revenue curves of all the firms in the industry.

They are earning only normal profits, which are believed to be incorporated in the average cost

curves of the firms. The second condition entails the equality of MC and MR. Under a perfectly competitive industry these two circumstances must be fulfilled at the point of equilibrium i.e. MC = MR…. (1), AC = AR…. (2), AR = MR. Hence MC = AC = AR. Such a position represents full equilibrium of the industry.

An industry is in equilibrium in the short run when its total output remains steady there being no propensity to increase or decrease its productivity. If all firms are in equilibrium the industry is also in equilibrium. For full equilibrium of the industry in the short run all firms must be earning normal profits.

Forms of Market Structure

There are five forms of market structure and they are as follows.

1. Perfect Competition
2. Monopoly
3. Monopolistic Competition

Perfect Competition:

A perfectly competitive market is one in which the number of buyers and sellers is very large, all engorged in buying and selling a standardized product without any unnatural precincts and possessing perfect knowledge of market at a time.Perfect competition is a market structure characterized by a complete absence of rivalry among the individual are price takers and in which there is freedom of entry into and exit from industry."

Characteristics of Perfect Competition

1. Large Number of Buyers and Sellers – The first stipulation is that the number of buyers and sellers must be so large that none of them individually is in a position to influence the price and output of the industry as a whole. The demand of individual buyer relative to the total demand is so small that he cannot influence the price of the product by his individual action.

2. Freedom of Entry or Exit of Firms – The next situation is that the firms must be at liberty to enter or leave the industry. It entails that whenever the industry is earning huge profits, fascinated by these profits some new firms enter the industry. In case of loss being sustained by the industry, some firms leave it.

3. Homogeneous Products – Each firm producers and sells a standardized commodity so that no buyer has any preference for the product of any individual seller over others. This is feasible if units of the same commodity manufactured by diverse sellers and ideal surrogates.

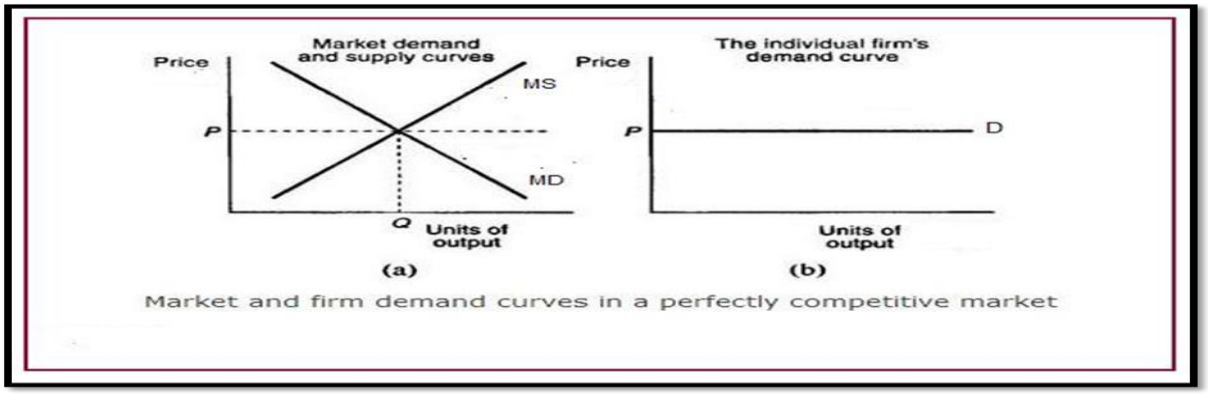
4. Absence of Artificial Restrictions – The consequent stipulation is that there is entire directness in buying and selling of commodities. Sellers and buyers are at liberty to buy and sell.

5. Perfect Mobility of Commodities – Another requirement of perfect rivalry is the perfect mobility of commodities and factors amidst industries. Commodities are at liberty to shift to those areas where they can bring the highest price.

6. Perfect knowledge of Market Conditions – This condition implies a close contact amidst buyers and sellers. Traders possess absolute knowledge about the prices at which commodities are being purchased and sold and the prices at which others are prepared to purchase and sell.

Equilibrium Price and output:

The price at which demand and supply are equal is known as equilibrium price and the quantity bought and sold at the equilibrium price is known as equilibrium output.



Market and firm demand curves in a perfectly competitive market

In the diagram, equilibrium price is determined at the point P where both demand and supply are equal. The upper limit of the price of a product is determined by the demand. The lower limit of the price is determined by the production cost. The point P can be regarded as the position of stable equilibrium.

Under perfect competition,a firm will not have any independence to fix the price of its own product. The industry is the price –maker and the firm is the price-taker.

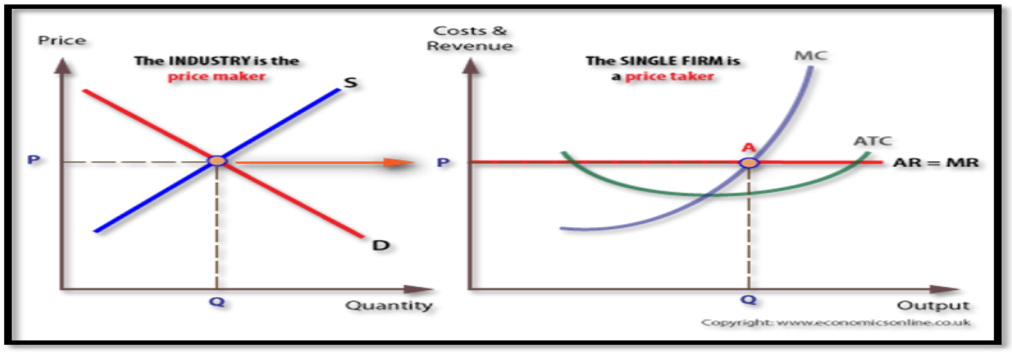
In case of a firm, the price line which is equal to AR and MR, will be horizontal and parallel to OX axis. It shows that the same price has to be charged by the firm for all units supplied, irrespective of changes in demand.

Equilibrium or market price = AR =MR

At the equilibrium point, an economic unit is maximising its benefits or advantages.

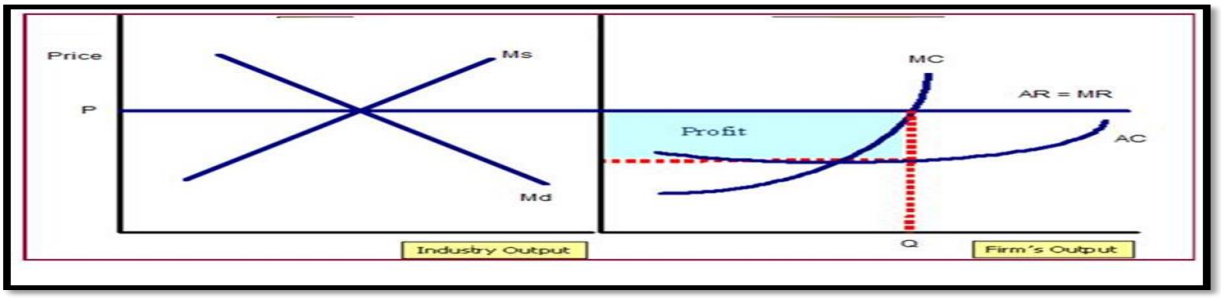
The firm as price taker

The single firm takes its price from the industry, and is, consequently, referred to as a price taker. The industry is composed of all firms in the industry and the market price is where market demand is equal to market supply. Each single firm must charge this price and cannot diverge from it.

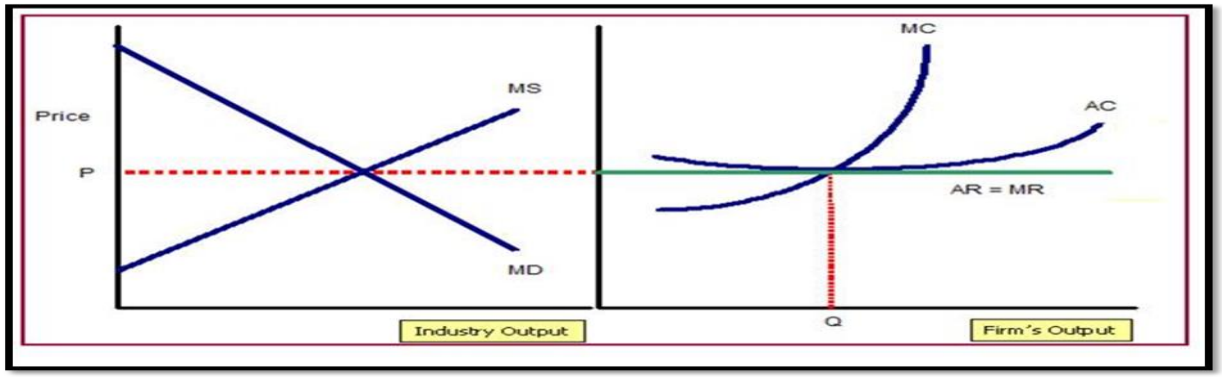


In the short run, a perfectly competitive firm can make: supernormal profit (positive economic profit), normal profit (zero economic profit) and subnormal profit (negative economic profit or economic loss).

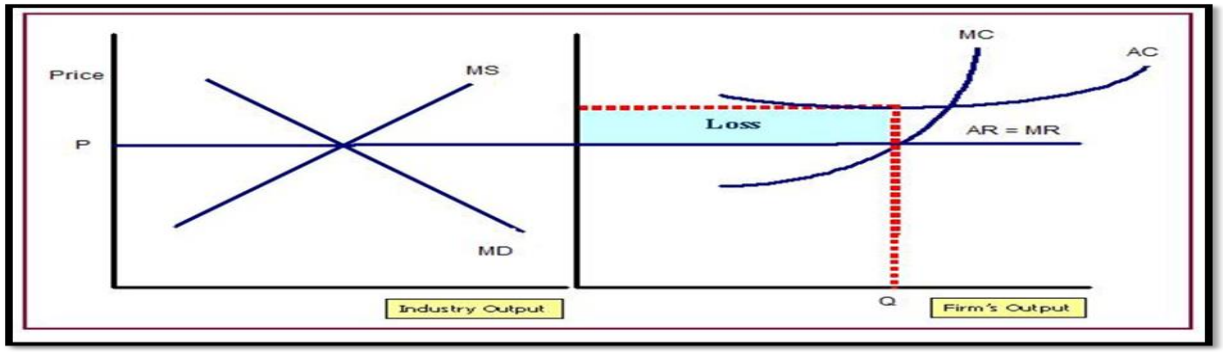
Super-Normal Profit: Firm is a price-taker. If the price is more than AC, then the firm will attain supernormal profit. In this situation, MC=MR but AC<AR



Normal Profit: If AC is equal to price, then firm will attain normal profit. In this condition AC=MC=AR=MR=P



Economic Loss: If AC is greater than price, there will be losses. In this situation, MC=MR but AC>AR

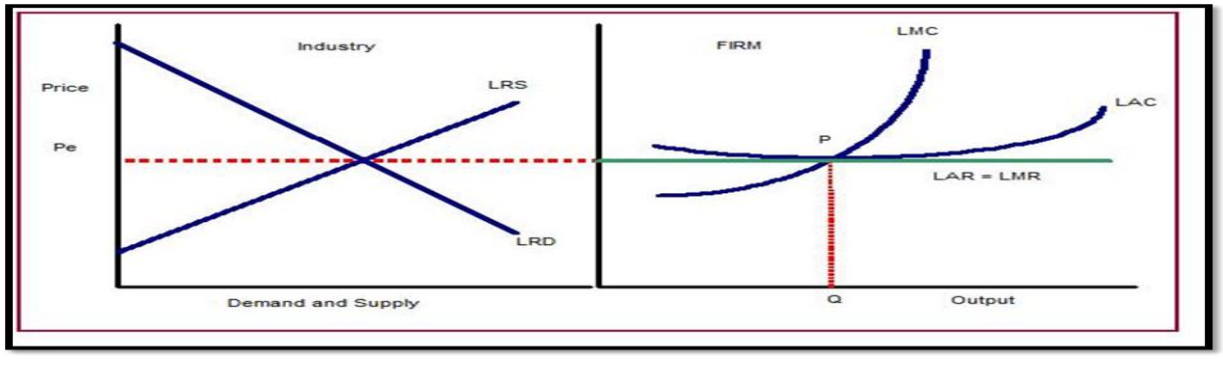


Thus, in short run, a firm can either incur losses or earn supernormal profit or normal profit.

In long run, a firm will attain only normal profit where P=AR=AC=MR=MC.

If AR is greater than AC, then the firm will earn supernatural profit and it will lead to the entry of new firms, as a result, increase in the total number of the firms and finally increase in supply and fall in price and ratio of profits. This process will continue till supernatural profits are reduced to zero. On the other hand, if AR is less than AC, loss will occur and this will lead to the exit of old firms, decrease in the number of the firms, decrease in supply and rise in price and finally the rise in the ratio of profits. Such process will continue until the firm reaches to the equilibrium position where AC =AR.

Long run equilibrium will be where LMC=LMR=LAC=LAR=P



1. Monopoly Market

Monopoly is the form of market organization in which there is a single firm selling a commodity for which there are no close substitutes."

There are some characteristics of monopoly such as

1. There is only one seller
2. Entire control on the supply of the product is in the hands of monopolist
3. Under monopoly, a firm itself is an industry; it can be a sole proprietorship, partnership, JSCs etc.

4. There is no close surrogate of a monopolist's product. The event of cross elasticity of demand is least possible.

5. There are restrictions on the entry of the other firms in the area of monopoly product.

FEATURES OF MONOPOLY

From above it follows that for the monopoly to exist, following things are essential:

• There is absence of competition.

• There are no close substitutes for a monopoly product.

• Cross-elasticity of demand for a monopoly product is zero in the case of pure monopoly and very low in the case of simple or impure monopoly.

• The monopolistic firm has control over supply of its commodity.

• There is no distinction between firm and industry under monopoly.

• Cases of pure monopolies are not found in developed countries. However, such cases of pure monopolies are found in developing countries in various public utility services.

• A monopolist will prevent entry of new firms in the long run or there are barriers to entry in a monopoly market.

TYPES OF MONOPOLY

Natural Monopoly: Natural monopoly is due to natural factors. For example, a particular raw material is concentrated at a particular place and this gives rise to monopoly exploitation of such material, e.g. monopoly of diamond mines in South Africa.

Public Utility Monopoly: Governmental authorities seize complete control and management of some utilities to protect social interests. For example, posts and telegraph, telephones, electric power, railway transport, provision of water, are monopolies of the government and local authorities.

Fiscal Monopoly: To prevent exploitation of employees and consumers, government nationalizes certain industries and acquires fiscal monopoly power over them. E.g. Life insurance and general insurance monopoly in India

Legal Monopoly: Some monopolies are engendered and protected under certain laws. Inventors of new processes, articles or devices obtain monopoly powers for such inventions under patent, trade mark and copyright laws. There are many examples of legal monopoly of medicines.

Voluntary Monopoly through Business Combinations: To eliminate competition and thereby

secure higher prices, firms producing a particular product may come together and makemonopoly agreements. These are known as industrial combinations. When all the firms merge into one organisation, such a monopoly takes the form of a trust. The associated Cement Companies (A.C.C.) in India is an example of this kind of trust. Where the firms maintain their individual identity and yet enter into monopoly agreements such combinations are known as trade associations, pools, cartels and holding companies.

SOURCES OF MONOPOLY

Legal Sanction: A monopoly as stated above may be the result of a government sanction.

The government of a country may legally permit a private monopoly or monopoly in the public sector for myriad reasons. National security (e.g. manufacture of defense equipments), social equity (post office, water supply, electricity supply, telephones) or economic considerations (public utility services or essential goods to be produced on a

large scale by a single firm for reducing the cost and price e.g. monopoly of transport services) are paradigms of such monopolies. Monopolies may be created to avoid wastes due to duplication of services e.g. public utilities.

Control over Supply of Inputs: Secondly, a monopoly situation may arise due to control over the supply of an essential input - raw materials, skilled labour, technology used denying access to these inputs to any potential firm e.g. government monopoly of Railways in India.

Merger for Large-scale Production: Thirdly, monopoly undertaking may be a consequence of the necessity to produce on a large scale to reduce costs. Existing small firms may merge into a big firm or may not survive in the long period. It is only when there is single firm in such a situation that costs are greatly reduced due to the economies of large-scale production.

Rival Firms Eliminated: Fourthly, pressure tactics and unfair means by a giant firm may lead to elimination of rival firms from the industry to secure sole position of a giant firm.

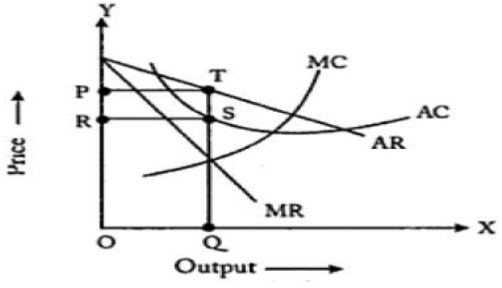
PRICING UNDER MONOPOLY

The aim of the monopolist is to maximise profit therefore; he will produce that level of output and charge that price that gives him maximum profits. He will be in equilibrium at that price and output at which his profits are the maximum. In other words, he will be in equilibrium position at that level of output at which marginal revenue equals marginal cost.

In order to achieve equilibrium, the monopolist should satisfy two conditions:

• Marginal cost should be equal to marginal revenue.

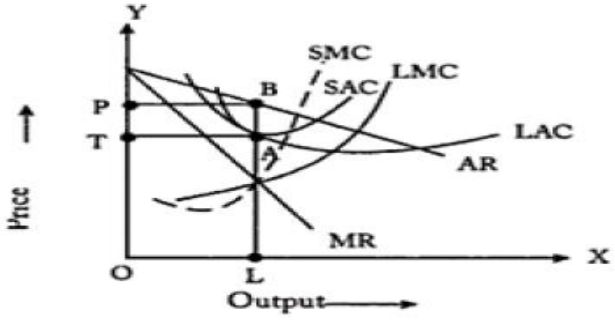
The marginal cost curve should cut marginal revenue curve from below.



Abnormal Profit under Monopoly

AR is the average revenue curve, MR is the marginal revenue curve, AC is the average cost curve and MC is the marginal cost curve. Up to OQ, level of output marginal revenue is greater than marginal cost but beyond OQ the marginal revenue is less than marginal cost. Therefore, the monopolist will be in equilibrium where MC=MR. Thus, a monopolist is in equilibrium at OQ level of output and at OP price. He earns abnormal profit equal to PRST.

However, it is not always possible for a monopolist to earn super normal profits. If the demand and cost situations are not favourable, the monopolist may incur short run losses.

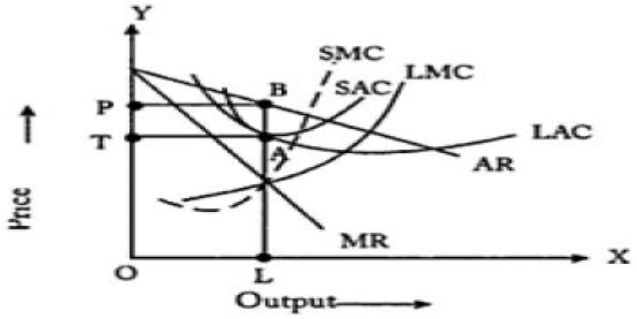


Losses under Monopoly

Though the monopolist is a price maker, due to weak demand and high costs, he suffers a loss equal to PABC as shown above in figure.

Long run Equilibrium of a Firm under Monopoly

In the long run, the firm has the time to adjust his plant size or to use the existingplant so as to maximise profit. The long run equilibrium of the monopolist is shown in figure below.



Long run equilibrium of a firm under monopoly

The monopolist is in equilibrium at OL output where LMC cuts MR curve. He will charge OP price and earn an abnormal profit equal to TPQH.

1. Meaning of Price Discrimination:

Price discrimination means charging different prices from different customers or for different units of the same product. In the words of Joan Robinson: "The act of selling the same article, produced under single control at different prices to different buyers is known as price discrimination." Price discrimination is possible when the monopolist sells in different markets in such a way that it is not possible to transfer any unit of the commodity from the cheap market to the dearer market.

Price discrimination is, however, not possible under perfect competition, even if the two markets could be kept separate. Since the market demand in each market is perfectly elastic, every seller would try to sell in that market in which he could get the highest price. Competition would make the price equal in both the markets. Thus price discrimination is possible only when markets are imperfect.

2. Types of Price Discrimination:

Price discrimination is of many types:

Firstly, it may be personal based on the income of the customer. For example, doctors and lawyers charge different fees from different customers on the basis of their incomes. Higher fees are charged to rich persons and lower to the poor.

Secondly, price discrimination may be based on the nature of the product. Paperback is cheaper than the deluxe edition of the same book, for the former is bought by the majority of readers, and the latter by libraries. Unbranded products, like open tea, are sold at lower prices than branded products like Brooke Bond or Lipton tea.

Economy size tooth pastes are relatively cheaper than ordinary-sized tooth pastes. In the case of services too, such price discrimination is practised when off-season rates of hotels at hill stations are very low as compared to the peak season. Dry cleaning firms charge for two while they clean three clothes during off-season; whereas they charge more for quick service in peak reason.

Thirdly, price discrimination is also related to the age, sex and status of the customers. Barbers charge less for children's hair-cuts. Certain cinema halls admit ladies only at lower rates. Military personnel in uniform are admitted at concessional rates in all cinema houses.

Fourthly, discrimination is also based on the time of service. Cinema houses at certain places, like New Delhi, charge half the rates in the morning show than in the afternoon shows.

Fifthly, there is geographical or local discrimination when a monopolist sells in one market at a higher price than in the other market.

Lastly, discrimination may be based on the use of the product. Railways charge different rates for different compartments or for different services. Less is charged for the transportation of coal than for bales of cloth on the same route. State power boards charge low rates for industrial use than for domestic consumption of electricity.

3. Conditions for Price Discrimination:

For price discrimination to exist the following conditions must be satisfied:

(1) Market Imperfections:

Price discrimination is possible when there is some degree of market imperfection. The individual seller is able to divide and keep his market into separate parts only if it is imperfect. Customers do not move readily from one market to the other because of ignorance or inertia.

(2) Agreement among Rival Sellers:

Price discrimination also takes place when the seller of a commodity is a monopolist or when rivals enter into an agreement for the sale of the product at different prices to different customers. This is usually possible in the sale of direct services. A single surgeon may charge a high fee for an operation from a rich patient and relatively low fee from a poor patient.

In place where a number of surgeons and physicians practice, they charge their fees according to the income of the patients. The rate of fee is fixed for each category of patient. Lawyers charge

from their clients in proportion to the degree of risk or amount of money involved in a law suit. Price discrimination is possible in the case of services because there is no possibility of resale.

(3) Geographical or Tariff Barriers:

Discrimination may occur on geographical grounds. The monopolist may discriminate between home and foreign buyers by selling at a lower price in the foreign market than in the domestic market. This type of discrimination is known as "dumping". It can only be successful if the commodities sold abroad can be prevented from being returned to the home country by tariff restrictions. Sometimes transport costs are so high that they act as a safeguard against the return of dumped goods. Geographical discrimination satisfies Pigou's first condition for discrimination 'when no unit of the commodity sold in one market can be transferred to another.'

(4) Differentiated Products:

Discrimination is possible when buyers need the same service in connection with differentiated products. Railways charge different rates for the transport of coal and copper. For they know that it is physically impossible for a copper merchant to convert copper into coal for the purpose of transporting it cheaper.

This satisfies Pigou's second condition that 'no unit of demand proper to one market can be transferred to another.' It also applies to discrimination based on age, sex, status and income of buyers of services. For instance, a rich man cannot become poor for the sake of getting cheap medical facilities.

(5) Ignorance of Buyers:

Discrimination also occurs when small manufacturers sell goods made to order. They charge different rates to different buyers depending upon the intensity of their demand for the product. Shoe makers charge a high price for the same variety from those customers who want them earlier than others. For the same variety of shoes, different buyers are also charged different prices because individual buyers are not in a position to know the price being charged to others.

(6) Artificial Differences between Goods:

A monopolist may create artificial differences by presenting the same commodity in different quantities. He may present it under different names and labels, one for the rich and snobbish buyers and the other for the ordinary. Thus he may charge different prices for substantially the same product. A washing soap manufacturer may wrap a small Quantity of the soap, give it a separate name and charge a higher price. He may sell it at Rs 17 per kg. As against Rs 16 for the unwrapped soap.

(7) Differences in Demand:

For price discrimination, the demand in the separate markets must be considerably different. Different prices can be charged in separate markets based on differences of elasticity of demand. Low price is charged where demand is more elastic and high price in the market with the less elastic demand.

4. Price Discrimination: The General Case:

Price discrimination occurs when the monopolist divides the buyers of his commodity or service into two or more groups and charges a different price to each group. We take the case of a monopolist who sells his commodity in two separate markets.

This analysis is based on the following conditions:

(1) The aim of the monopolist is to maximise his profits. He, therefore, produces that output at which his marginal revenue equals marginal cost. Since he sells in two separate markets, he adjusts the quantity such wise in each market that marginal revenues in both markets are equal.

Given the marginal cost of producing the commodity, the most profitable monopoly output will be determined at a point where the combined marginal revenue of both the markets equals the marginal cost. Or, monopoly profit = $MR_1 = MR_2 = MC$. If the marginal revenue is greater in market one than in market two, the monopolist will sell less to market two and shift this quantity to market one. This will tend to raise the price in market two and lower in one, up to a point where marginal revenues in the two markets are equal.

(ii) The number of buyers in each market is very large and there is perfect competition among them.

(iii) There is no possibility of resale from one market to the other.

(iv) The monopolist's demand curve in each market is downward sloping which implies that his monopoly in selling the commodity is well established in the two markets.

(v) Lastly, the most important condition for price discrimination is that the elasticity's of demand in the two markets must be different. If the elasticity's of demand are the same, marginal revenues will E-1 also be the same. This follows from the formula MR = AR E-1/E. If AR is the same in each market, elasticity of demand will also be the same and so will be the marginal revenues in the two markets.

In this situation, total revenue will remain the same whatever shifting of output may be done from one market to the other by the monopolist. Thus there is no need for discrimination. Therefore, for price discrimination to be profitable the elasticity's of demand for the monopoly product must be different in the two markets. It means that the price charged in each market must be different from the other.

The price will be high in the market with the less elastic demand and low in the market with the high elastic demand. In the words of Joan Robinson: "The sub-markets will be arranged in ascending order of their elasticity's, the highest price being charged in the least elastic market and the lowest price in the most elastic market."

Figure 1 illustrates price and output determination under price discrimination. The monopolist sells his product in two markets, 1 and 2. Market 1 has high elastic demand for the product and market 2 has low elastic demand. Accordingly, the demand curve in market 1 is D_1 and its corresponding marginal revenue curve is MR_1 and in market 2 the corresponding curves are D_2 and MR_2 Panel C in Figure 1 shows MR_T, the total marginal revenue curve drawn by the lateral summation of the MR_1 and MR_2 curves, and MC is the marginal cost curve. The point of intersection between the MR_T and MC curves at E determines the equilibrium level of output OQ_1. The monopolist divides this output between the two markets by equating the marginal cost Q_1E with the marginal revenue of each market.

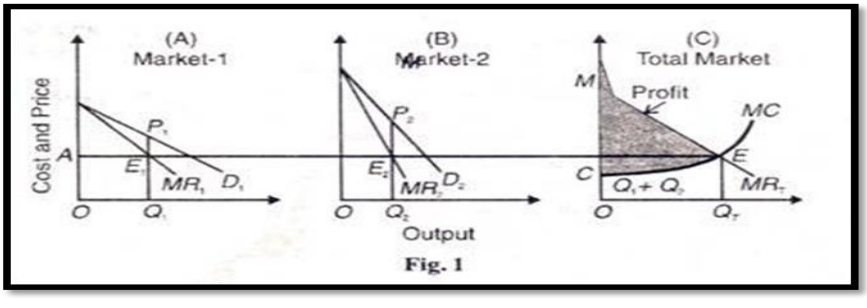


Fig. 1

To equal the marginal cost Q_T E with MR_1 and MR_2 draw a line EA parallel to the horizontal axis. It cuts MR_1 at E_1 and MR_2 at E_1which become equilibrium points for the sale of output in

each market. Thus, the quantity sold in market 1 is $OQ_1$and in market 2 it is OQ_1 so that OQ_1 + OQ_1 equal the total output OQ_1 The price in the highly elastic (foreign) market is Q_1P_1 and in the less elastic (domestic) market $Q_1P_2Q_2P_2 > Q_1P_1$. Total profits earned by the discriminating monopolist are MEC.

We may conclude that under price discrimination the monopolist sells his product in two separate markets with different elasticity's of demand so that he maximises his profits when he sells more at a lower price in the foreign market with elastic demand and sells less at a higher price in domestic market with less elastic demand. It follows that when marginal revenues equal and prices differ in the two markets, price discrimination is possible and profitable.

5. Degrees of Price Discrimination:

Prof. Pigou in his Economics of Welfare describes three degrees of discriminating power which a monopolist may wield. The type of discrimination discussed above is called discrimination of the third degree. We explain below discrimination of the first degree and the second degree.

Discrimination of the First Degree or Perfect Discrimination:

Discrimination of the first degree occurs when a monopolist charges "a different price against all the different units of commodity in. such wise that the price exacted for each was equal to the demand price for it and no consumer's surplus was left to the buyers."

Joan Robinson calls it perfect discrimination when the monopolist sells each unit of the product at a separate price. Such discrimination is possible only when consumers are sold the units for which they are prepared to pay the highest price and thus they are not left with any consumer's surplus.

For perfect price discrimination, two conditions are required:

(1) To keep the buyers separate from each other, and

(2) to deal with each buyer on a take-it-or-leave-it basis. When the discriminator of first degree is able to deal with his customers on the above basis, he can transfer the whole of consumers' surplus to himself. Consider Figure 2. Where DD_1 is the demand curve faced by the monopolist. Each buyer is assumed as a price-taker. Suppose the discriminating monopolist sells four units of his product at four different prices:

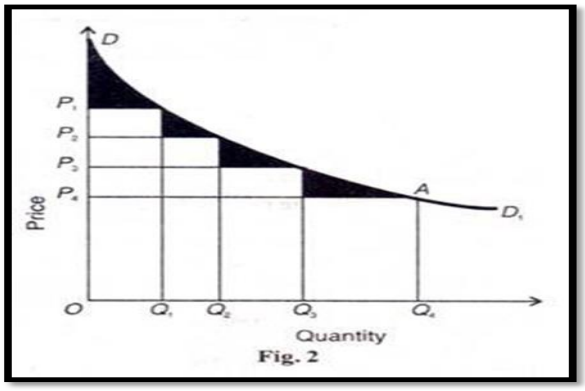


Fig. 2

OQ_1 unit at OP_1price, Q_1Q_2 unit at OP_2 price, Q_2Q_3 unit at OP_3 price and Q_3Q_4 unit at OP_4 price. The total revenue (or price) obtained by him would be OQ_4 AD. This area is the maximum expenditure that the consumers are willing to incur to buy all four units of the product under the first-degree discriminator's all-or-nothing offer. But with no price discrimination under simple monopoly, the monopolist would sell all four units at the uniform price OP_4 and thus obtain the total revenue of OQ_4AP_4.

This area represents the total expenditure that consumers would actually pay for the four units. Thus the difference between what Quantity the consumers were willing to pay (OQ_4 AD) under Fig. 2 the take-it-or-leave-it offer of the first degree discriminator and what they actually pay (OQ_4AP_4) to the simple monopolist, is consumers' surplus. This is equal to the area of the triangle DAP_4.

Thus under the first-degree price discrimination, the entire consumers' surplus is pocketed by the monopolist when he charges a separate price for each unit of the product. Price discrimination of the first degree is rare and is to be found in such rare products as diamonds, jewels, precious stones, etc. But a monopolist must have full knowledge of the demand curve faced by him and he should know the maximum price that the consumers are willing to pay for each unit of the product he wants to sell.

Discrimination of the Second Degree or Multi-part Pricing:

In discrimination of the second degree, the monopolist divides the consumers in different slabs or groups or blocks and charges different prices for different slabs of the same product. Since the earlier units of the product have more utility for the consumers than the later ones, the monopolist charges a higher price for the former units and reduces the price for the later units in the respective slabs.

Such discrimination is only possible if the demand of each consumer below a certain maximum price is perfectly inelastic. Electric supply companies in developed countries practice

discrimination of the second degree when they charge a high rate for the first slab of kilowatts of electricity consumed. As more electricity is used, the rate falls with subsequent slabs.

Figure 3 illustrates the second degree discrimination, where $DD_1$is the demand curve for electricity on the part of domestic consumers in a town. CP_3 represents the cost of generating electricity, so that the electricity company charges M_1P_1 rate per kw. up to OM_1 units. For consuming the next M_1 to M_2 units, the rate is lowered to M_2P_2. The lowest rate charged is M_3P_3 for M_2 to M_3 units. M_3P_3 is, however, the lowest rate which will be charged even if a consumer consumes more than M_3 units of electricity.

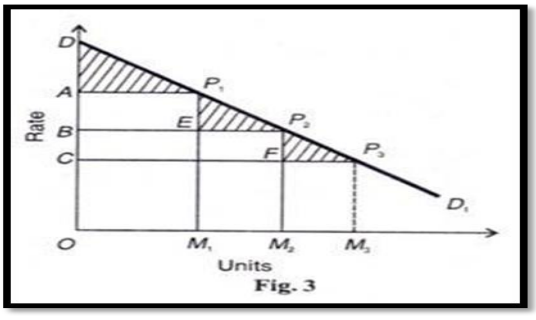


Fig. 3

If the electricity company were to charge only one rate throughout, say $M_3P_3$the total revenue would not be maximised. It would be OCP_3 M_3But by charging different rates for different unit slabs, it gets the total revenue equal to OM_3 x P_1M_1 + OM_2 x P_2M_2 + OM_3x P_3M_3 Thus the second degree discriminator would take away a part of consumers' surplus covered by the rectangles $ABEP_1$and $BCFP_2$ .The shaded area in three triangles DAP_1 P_1EP_2, and P_2FP_3 still remains with consumers as their surplus.

The second degree price discrimination is practised by telephone companies, railways, companies supplying water, electricity and gas in developed countries where these services are available in plenty. But it is not found in developing countries like India where such services are scarce.

The differences between the first and second degree price discrimination may be noted. In the first degree discrimination, the monopolist charges a different price for each different unit of the product. But in second degree discrimination, a number of units in one slab (or group or block) are sold at the lowest price and as the slabs increase; the prices charged by the monopolist are lowered. In the case of the former the monopolist takes away the whole of consumers' surplus. But in the latter case, the monopolist takes away only a portion of the consumers' surplus and the other portion is left with the buyer.

MONOPOLISTIC COMPETITION

In the real world, market is neither perfectly competitive nor a monopoly. The greatmajority of

imperfectly competitive producers in the real world produce goods, which areneither completely different nor completely same. They produce goods, which are quite similar to those produced by their rivals. This means that the goods produced in themarket are close substitutes. This kind of market is knownas 'monopolistic competition' or group equilibrium. Here there is competition, which iskeen, though not perfect, between firms manufacturing very similar products, for examplemarket for toothpaste, cosmetics, watches, etc.

FEATURES OF MONOPOLISTIC COMPETITION

Following are the features of a monopolistic competitive market:

Large number of firm: Monopolistic competition is characterized by large number of firms producing close substitutes but not identical product. Each firm must control small yet significant portion of the market share such that by substantially extending or restricting its own sales, it is not able to affect the sales of any other individual seller. This condition is the same as in perfect market.

Product differentiation: No seller has full control over the market supply. Each seller produces very close substitute products. The product is neither identical nor completely different. Since every seller produces slightly differentiated product, each seller has minor control over the price. Unlike perfect market conditions, the firm is a price – maker to some extent. That is, a firm can change the price slightly, though not much. The control over price will depend on the degree of product differentiation.

Absence of Inter-dependence: Because of the existence of a large number of firms, the individual firm's supply is small constituent of total supply. Therefore, individual firm has limited control over price level. Similarly, each firm can decide, its price or output policies independently through price discrimination, any action by one firm may not invite reaction from rival firms.

Selling cost: Competitive advertisement is an essential feature of monopolistic competition. Selling cost becomes an integral part of the marketing of firms when product is differentiated. It is necessary to tell the buyers about the superiority of the product and induce the customer to buy the products.

Free entry and exit: Under monopolistic competition, new firm can enter and existing firms can exit. There are no restrictions on entry or exit of thefirms.Moreover entry is easy because of small size of firms. Existence of supernormal profit attracts entry and existence of loss, business firms to quit the market.

PRICE DETERMINATION UNDER MONOPOLISTIC COMPETITION

A) SHORT-TERM EQUILIBRIUM

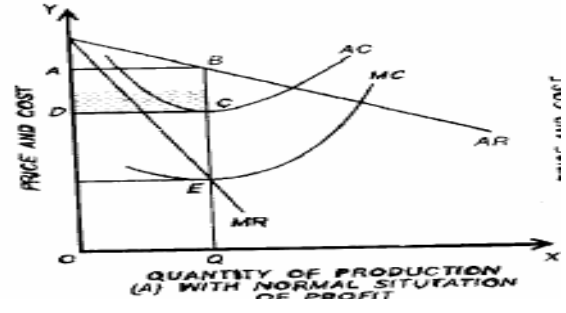
In the short-run, there may be three conditions under monopolistic Competition

(i) Abnormal profit, (ii) Normal or Zero profit, (iii) Loss.

1. Abnormal Profit: In short run a monopolistic firm can earn supernormal profits by creating high demand for its product and can also charge a higher price as there are no close substitutes available. But this is possible only under the short run, as new firms enter in the long run to wipe away the abnormal profits.

In the figure above, 'E' is the point of equilibrium of firm because at this point marginal cost and marginal revenue of the firm are equal. At this point 'OP' is the equilibrium price, OQ is the equilibrium quantity of production and sale, PC is the profit per unit. In this situation, the firm is earning abnormal profit equal to the area PBTC.

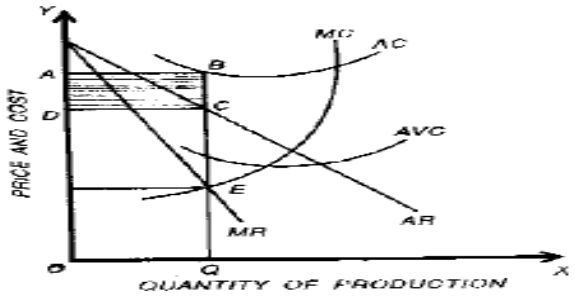
2. **Normal Profit**: If the demand of the firm's product is not extremely high, the firm could acquire only normal profit as soon as average revenue and average cost are equal. This is explained with the help of figure below.



(A) WITH NORMAL SITUATION

In the figure above, 'E' is the point of equilibrium of firm because at this point marginal cost and marginal revenue of the firm are equal. At this point, 'OQ' is the equilibrium quantity, 'OA' is the price per unit and 'OD' is the cost per unit. Here, average revenue is slightly more than average cost; in this case, the firm accrues profit equal to the area of 'ABCD'.

3. Loss: In short-run, a firm may have to suffer loss when demand of the product of firm is so weak that the firm has to sell its product at a price less than its cost, in this case, average revenue of the firm is less than its average cost. It can be illustrated with the help of figure given below.



Loss under Monopolistic Competition

In the figure above, AR of the firm is less than AC. 'E' is the point of equilibrium. At this point, 'OQ' is the equilibrium quantity, ' OD' is the priceper unit and 'OA' is the cost per unit.
Here price per unit is less than the cost per unit. Therefore, the firm is suffering a loss equal to the area ABCD.

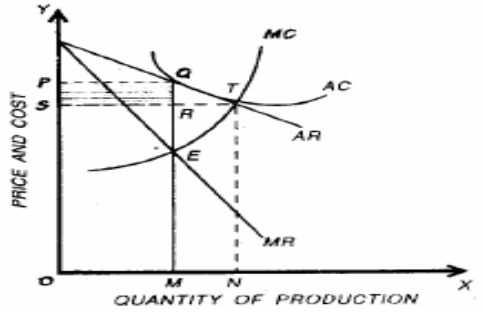
LONG-TERM EQUILIBRIUM OF A FIRM

In the long run, the firms get enough time to enter or exit from the market. Therefore, if there are abnormal profits, new firms enter to share these profits and each firm could earn only normal profit. On the other hand, in the case of losses, many firms leave the market & the firms recover to earn normal profits.

The following two conditions should be fulfilled for the equilibrium of a firm in the long run

- Marginal cost as well as marginal revenue of all the firms should be equal.
- Average cost as well as average revenue of all the firms should be equal.

It can be explained with the help of the following figure.



:: Long run Equilibrium under Monopolistic Market

In the figure mentioned above, 'E' is the point of equilibrium. At this point, MC = MR. At this point, 'OM' is the equilibrium quantity, 'OP' is the equilibrium price and 'QM' is the average cost. At this point, average cost and average revenue are equal. It satisfies the conditions of

normal profit. In this situation, the firm is accruing normal profit equal to the area of PQRS.

OLIGOPOLY

The type of market condition, which is most appropriate in the today's economy, is oligopoly. It is characterised by mutual interdependence among a few sellers who control the total market supply. Oligopoly, therefore, occurs when there are only a few sellers. It differs from both monopoly and perfect competition and from monopolist competition.

Oligopoly is a market where a small group of producers, have significant control over major portion of the market demand, with or without differentiated product.

DEFINITION OF OLIGOPOLY

Definition: An oligopoly is a market form with limited competition in which a few producers control the majority of the market share and typically produce similar or homogenous products. Due to the small number of firms and lack of competition, this market structure often allows for partnerships and collusion.

What Does Oligopoly Mean?

What is the definition of oligopoly? Oligopolistic firms are price setters that seek the best partnership to define prices higher than their marginal cost, thus maximizing their profits. Oligopoly is the result of lack of competition in the product price. If a firm lowers the price of a product and achieves significant sales growth, competitive firms will enter a price war to match the lower price; therefore, oligopolistic firms do not lower their prices, but they rather spend significant amounts of money for advertising and research for the improvement of their product.

Furthermore, the entrance of new firms in an oligopolistic industry is too difficult because the existing oligopolies offer well-established products through solid distribution systems. Thus, entering an oligopolistic industry requires substantial funds due to the economies of scale almost ensuring the industry status quo will always stay the same.

Let’s look at an example.

Example

Company A and Company B are responsible for the 90% of the water produced in Orange County. If Company B raises its prices, consumers most likely will shift to Company A for their water provision. But, if Company A raises its prices too, then both Companies will control the entire water market through their pricing setting ability.

The same is true for the U.S. cellular market where AT&T, Sprint Nextel, T-Mobile, and Verizon control 90% of the industry. Barclays, Halifax, HSBC, Lloyds TSB and Natwest control the U.K. banking sector. Boeing and Airbus dominate the airliner market. In all of these industries, only a few firms control their respective markets and provide almost indistinguishable goods and services. Thus, they can collude and set their prices.

In a truly competitive market, all these companies would not be able to set their prices, but they would rather be price takers to stay in business. Instead, under the oligopoly structure, these companies are interested in increasing their long-term profits by monopolizing the market and maintaining a competitive edge.

Most countries have laws put in place to prevent price fixing and other practices of collusion for this reason.

Mrs. John Robinson- "Oligopoly is market situation in between monopoly and perfect competition in which the number of sellers is more than one but is not so large that the market price is not influenced by any one of them".

Prof. Left Witch- "Oligopoly is a market situation in which there are a small number of sellers and the activities of every seller are important for others".

Thus, oligopoly is a market situation in which a few firms producing an identical product or the products, which are close substitutes to each other, compete with each other.

Oligopoly can be characterized as follows:

Small Number of Sellers: There are more than one sellers of a product however; the number is not so huge in order to generate perfect competition of monopolistic competition.

Interdependence of Sellers: All the sellers are dependent on each other. They are not free to establish their own marketing and price policies. Activities of one seller have an effect on others.

Homogenous product: The product of all the sellers is identical or a close substitute to each other.

Uniformity of Price: All the sellers adopt a uniform price policy due to the uniformity of their product.

Price Rigidity: As the activities of all sellers are inter-reliant, the sellers prefer not to change the price of their product too often. For that reason, the market price happens to be steady.

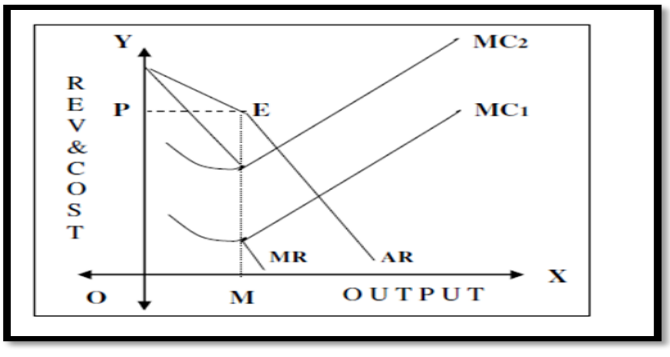
Entry and Exit of Firms: The entry as well as exit of organisations is relatively difficult because of non-availability of raw materials, labour, etc.

Uncertainty of Demand Curve: Demand curve is extremely erratic. A firm cannot predict its

demand curve without difficulty because it is extremely difficult to predict whether or not the competitors will change their policies of the firms. It is moreover extremely difficult to predict the level of such changes. For this reason, the demand curve of an oligopoly firm is constantly erratic.

PRICE-OUTPUT DETERMINATION UNDER OLIGOPOLY
(Kinky Demand Curve) Short Period

The kinked demand curve was first employed by Prof. Paul M. Sweezy to explain price rigidity under oligopoly. In an oligopoly market, the firm knows that if it increases price, other firms will not follow; but if price is reduced, other firms will follow the price reduction. In some respect, the price output analysis in oligopoly is simple. Since each seller wants to avoid uncertainty, every oligopolistic firm will adhere to the point of kink, where it is safe and where it can anticipate the reaction of its rivals. However, the firm will neither increase nor decrease price.



Kinked Demand Curve

This is an important consequence of the existence of the kink in the demand curve of the firm. Because, of the vertical section in MR, i.e. uncertainty range, without affecting the price or level of output. Under these circumstances, equality between MC and MR will not determine the point of equilibrium. The profits will, however, be determined as in any other market, by the difference between AR and AC. With a given marginal cost of production, OP is more likely to be the profit-maximising price. The length of the discontinuity portion in the

MR depends on the relative elasticity of demand at point E of AR. The greater the elasticity of demand of the portion of AR above point E and the lower the elasticity of demand of the portion of AR below point discontinuity portion of MR, the bigger will be the discontinuity portion of MR. Figure above shows that the price is fixed at OP and output is OM.

Price Rigidity Under Oligopoly

Every firm in an oligopoly market is faced with a Kinked Demand Curve, the kink being at that point on the demand curve which corresponds to the prevailing common price accepted by all the firms at which they sell their output. This common price or prevailing market price is such that none of the individual oligopolistic firms would make any change in it even when there might be some small variations in their production costs. There is thus a rigidity or stickiness about this price. None of the oligopolistic producers have either the will or the incentive to change this price. The main factors which contribute to price rigidity in an oligopoly market are discussed below:

Firstly under oligopoly each seller is faced with a Kinked Demand Curve. The point of kink divide the demand or AR curve into two distinct parts. The upper part, the part to the right of the kink is highly elastic portion of the demand curve. The lower part or the portion of demand curve to the right of the kink is less elastic. The market price corresponds to the point of the kink.

The price that corresponds to the point of kink K on the demand curve AKD. This price is accepted by every firm and no one is willing to change it. Every firm knows that if it raises the price above OP, the rival firms will not raise the price of their product. The firm which raises the price will thus lose many of its customers to the rivals and it may not be able to make any additions to its revenue; rather its total revenue may become smaller than before. On the other hand, if a firm reduces its prices to attract more customers, the others, faced with the prospects of losing their customers, also make a marketing cut in price. This firm, therefore, does not gain much from a price reduction. Thus each firm under oligopoly, faced with the Kinked Demand Curve is extremely reluctant to change the prevailing price. Therefore, there is rigidity or stickiness of the prevailing price under oligopoly.

Secondly, since the oligopolistic firm is maximizing its profits at the prevailing market price, they have no incentive to change it. The marginal cost surve MC of the oligopolistic firm passes

through the gap EF in the marginal revenue curve giving OQ quantity as the profit maximizing level of output. But beyond OQ, MR > MC and hence additional units add more to cost than to revenue and thus not worth producing. Since, profits are being maximized at that level of output and price which corresponds to the kink, the oligopolist is not interested in changing the price.

Thirdly, small variations in cost do not disturb oligopoly equilibrium. Even when marginal cost rises from MC to MC' or falls to MC", the equilibrium level of output and price remains the same, as all these curves pass through the gap EF in the marginal revenue curve. Thus, the profit maximizing output remains OQ whether the marginal cost increases or decreases by small amounts. However, when the rise in cost is substantial so that marginal cost curve intersects marginal revenue at a point above E, there is a case for price rise.

Fourthly, the price remains same even when there are small changes in the demand curve facing the individual producers. When the demand curve is kinked, an upward or downward shift in the demand curve only affects quantity produced and not the price level so long as marginal cost curve passes through the range of discontinuity or gap in the new marginal revenue curve.

Price Leadership under Oligopoly:

In certain situations, organizations under oligopoly are not involved in collusion.

There are a number of oligopolistic organizations in the market, but one of them is dominant organization, which is called price leader.

Price leadership takes place when there is only one dominant organization in the industry, which sets the price and others follow it.

Sometimes, an agreement may be developed among organizations to assign a leadership role to one of them. The dominant organization is treated as price leader because of various reasons, such as large size of the organization, large economies of scale, and advanced technology. According to the agreement, there is no formal restriction that other organizations should follow the price set by the leading organization. However, sometimes agreement is formal in nature.

Price leadership is assumed to stabilize the price and maintain price discipline.

This also helps in attaining effective price leadership, which works under the following conditions:

i. When the number of organizations is small

ii. Entry to the industry is restricted

iii. Products are homogeneous

iv. Demand is inelastic or less elastic

v. Organizations have similar cost curves

Types of Price Leadership:

Price leadership helps in stabilizing prices and maintaining price discipline. There are three major types of price leadership, which are present in industries over a passage of time.

These three types of price leadership are explained as follows:

i. Dominant Price Leadership:

Refers to a type of leadership in which only one organization dominates the entire industry. Under dominant price leadership, other organizations in the industry cannot influence prices. The dominant organization uses its power of monopoly to maximize its profits and other organizations have to adjust their output with the set price.

The interests of other organizations are ignored by the dominant organization. Therefore, dominant price leadership is sometimes termed-as partial monopoly. Price leadership by the leading organization is most commonly seen in the industry.

ii. Barometric Price Leadership:

Refers to a leadership in which one organization declares the change in prices at first and assumes that other organizations would accept it. The organization does not dominate others and need not to be the leader in the industry. Such type of organization is known as barometer.

This barometric organization only initiates a reaction to changing market situation, which other organizations may follow it if they find the decision in their interest. On the contrary, the leading organization has to be accurate while forecasting demand and cost conditions, so that the suggested price is accepted by other organizations.

Barometric price leadership takes place due to the following reasons:

a. Lack of capacity and desire of organizations to estimate appropriate supply and demand conditions. This influences organizations to follow price changes made by the barometric organization, which has a proven ability to make correct forecasts.

b. Rivalry among the organizations may make a leader, which can be unacceptable by other organizations. Thus, most of the organizations prefer barometric price leadership.

iii. Aggressive Price Leadership:

Implies a leadership in which one organization establishes its supremacy by threatening the organizations to follow its leadership. In other words, a dominant organization establishes leadership by following aggressive price policies and forces other/organizations to follow the prices set by it.

Price-Output Determination under Price Leadership:

Price leadership takes place when there is only one dominant organization in the industry, which sets the price and others follow it. Different economists have developed different models for determining price and output in price leadership.

Here, we would discuss a simple model for determining price and output in price leadership, which is shown in Figure-4:

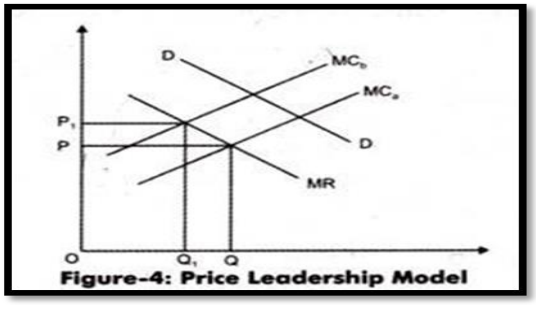


Figure-4: Price Leadership Model

Suppose there are two organizations, A and B producing identical products where organization A has a lower cost of the production than organization B. Therefore, consumers are indifferent between these two organizations due to identical products. This implies that both the organizations would face same demand curve, which further represents equal market share.

In Figure-4, DD is the demand curve of both the organizations and MR is their marginal revenue. MC_a and MC_b are the marginal cost curves of organization A and B respectively. As stated earlier, the cost of production of organization A is less than B, thus, MC_a is drawn below MC_b.

Let us first start the discussion of price leadership with the case of organization A. The profits of organization A would be maximized at a point where MR intersects MC_a. At this point, the output of organization A would be OQ with the price level OP. On the other hand, the profits of organization B would be maximized at a point where MR intersects MC_b with output OQ_1 and price OP_1.

In such a case, the price of organization B is more as compared to organization A. However, both the organizations have to charge the same price as products are homogeneous. In this case, organization A is the price leader and organization B is the follower.

Thus, organization A will dictate the price to organization B. Both the organizations will follow the same output, OQ and price OP. However, the profits earned by organization B are less than A, as it has to produce at price OP which is less than its profit maximizing price, OP_1. In addition, the organization B also has high costs of production that leads to lower profits at price OP_1.

Drawbacks of Price Leadership:

The price leadership suffers from various drawbacks.

These are discussed as follows:

i. Makes it difficult for the price leader to assess the reactions of followers.

ii. Leads to malpractices, such as charging lower prices by rival organizations in the form of rebates, money back guarantees, after delivery free services, and easy installment facility. The prices charged by rival organizations are comparatively less than the prices set by the price leader.

iii. Leads to non-price competition by rival organizations in the form of aggressive promotion strategies.

iv. Influences new organizations to enter into the industry because of price rise. These new organizations may not follow the leader of the industry.

v. Poses problems if there are differences in cost of price leaders and price followers. In case, if cost of production of price leader is less, then he/she would fix lower prices. This will lead to a loss for a price follower if his/her cost of production is more than the price leader.