Azadi Ka Amrit Mahotsav

Railway Executive's Guide to

LAW

(The Railway Act, 1989 and other important Acts & Rules)

Volume-I

by

Hari Shankar Verma, IRTS
Director General, IRITM

and

Rajesh Kumar, IRTS
Sr. Professor (Admin. & Law), IRITM



भारतीय रेल परिवहन प्रबंधन संस्थान
INDIAN RAILWAYS INSTITUTE OF TRANSPORT MANAGEMENT

THE RAILWAY EXECUTIVE'S GUIDE TO THE GENERAL LAW, RAILWAYS ACT 1989 AND OTHER RELATED ACTS AND RULES

VOLUME I

BY

HARI SHANKAR VERMA, IRTS

Director General, IRITM

AND

RAJESH KUMAR, IRTS

Sr. Professor (Admin. & Law), IRITM

INDIAN RAILWAYS INSTITUTE OF TRANSPORT MANAGEMENT

(Hardoi By-Pass Road, P.O. Manak Nagar, LUCKNOW-226011, Uttar Pradesh, India.)

ISBN 978-81-971687-7-2

First Published 2024

© Copyright Reserved by the Shri Hari Shankar Verma, it is also reserved the right as author of present work.

No part of this publication can be reproduced or transmitted in any form or by any means, without prior permission of the Author. Although every care has been taken to avoid errors or omissions in this publication, inspite of this, inadvertently, errors may creep in. This publication is for use as on the condition and understanding that information given herein is merely for guidance and reference. Disclaimer has already been given in this book. It must not be taken as having authority of, or binding in any way on, the author, and publisher who do not owe any responsibility for any damage or loss to any person, who may or may not be a purchaser of this publication, on account of any action taken on the basis of this publication. For authoritative text information, please contact the department concerned or refer to the Government publication, office memorandum or the gazette notification. The publishers shall be obliged if any mistake, error, or discrepancy is brought to their notice for carrying out correction in the next edition. In case of sale of publication, binding mistake, misprint, or missing pages etc., the publisher's liability is limited to replacement within one month of the purchase by similar edition/reprint. All disputes are subject to Lucknow Jurisdiction only.

The cost is free for Trainees undergoing training at Indian Railways Institute of Transport Management (IRITM), if Director General, desired so in the interest of learning or requisitioned by Railway Authorities for Internal use. However, for public use, the publication can also be sold, subject to the price fixed by the Director General, IRITM, and money be deposited in Railway Cash.

Printed by Maheshwari Printing Press, 289/214 Moti Nagar Chauraha, Lucknow-226004 & Bound by Rais Ahmad & Sons. 151 Phool Bagh Hussain Ganj Lucknow.

Published by
Director General,
Indian Railways Institute of Transport Management,
(Hardoi By-Pass Road, P.O. Manak Nagar, LUCKNOW-226011, Uttar Pradesh, India.)

भारत का संविधान

उद्देशिका

हम, भारत के लोग, भारत को एक सम्पूर्ण प्रभुत्व सम्पन्न समाजवादी पंथनिरपेक्ष
लोकतंत्रात्मक गणराज्य बनाने के लिये, तथा उसके समस्त नागरिकों को:
सामाजिक, आर्थिक और राजनैतिक न्याय,
विचार, अभिव्यक्ति, विश्वास, धर्म
और उपासना की स्वतंत्रता,
प्रतिष्ठा और अवसर की समता
प्राप्त कराने के लिये,
तथा उन सब में
व्यक्ति की गरिमा और राष्ट्र की एकता
और अखण्डता सुनिश्चित करने वाली बंधुता
बढ़ाने के लिये
दृढ़संकल्प होकर अपनी इस संविधान सभा में आज तारीख 26 नवम्बर, 1949 ई.
(मिति मार्गशीर्ष शुक्ला सप्तमी, संवत् दो हजार छः विक्रमी) को एतद्द्वारा इस
संविधान को अंगीकृत, अधिनियमित और आत्मसर्पित करते हैं।

THE CONSTITUTION OF INDIA

PREAMBLE

WE, THE PEOPLE OF INDIA,
having solemnly resolved to constitute India into a
SOVEREIGN SOCIALIST
SECULAR DEMOCRATIC REPUBLIC
and to secure to all its citizens:
JUSTICE, social, economic and political;
LIBERTY of thought, expression,
belief, faith and worship;
EQUALITY of status and of opportunity;
and to promote among them all
FRATERNITY assuring the dignity of the
individual and the unity and
integrity of the Nation;
IN OUR CONSTITUENT ASSEMBLY
this twenty-sixth day of November, 1949, do
HEREBY ADOPT, ENACT AND GIVE TO
OURSELVES THIS CONSTITUTION.

DISCLAIMER

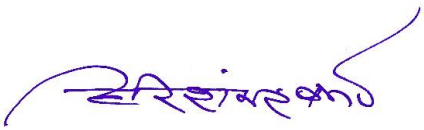
"The Railway Executive's Guide to The General Law, the Railway Act 1989 With Other Related Act's and Rules" is the reading material to the faculty and trainee officers, who are undergoing training in the law related courses at IRITM. The style of the book has been kept simple and language is also lucid and far away to the legal language. A detail index is given to find out the concerned topics with page number. The purpose of this publication is to train the officers and supervisors about the legal affairs occurring in railways specially while discharging duties. The book is covering most of the Acts, Rules and other legislature relating to Indian Railways. However, the efforts have been made to keep the content as original as possible however, there may be some variance as the content of the chapters has been taken from different authentic sources in books, government websites, and links. The views expressed in those chapters and content of report are not the views of Central Government and Authors of the reading material. This Volume is to be used for learning and academic purpose only and not to be taken as an authentic document. While, reading the book, the reader must keep in mind as under:

1. This book is printed as reading material for the purpose of training and learning by trainee officers.
2. The reading material is always prepared after reading several codes, manuals, and other relevant information from authentic Railway sources. It's for training purpose and nothing to do with actual working of Railways in field.
3. In case, any contradiction in writing,

readers are advised to follow the codes, manuals and other extent instructions of Ministry of Railway and Zonal Railway.

4. We have tried to remain to the point, but it is the responsibility of the trainer to prepare the digital content specially PowerPoint presentation, etc. as per latest guideline.
5. The various subjects specially the Acts, Rules referred in book keep changing due to need of the time. Therefore, trainee officer needs to update the same.
6. All railway officials are subject to follow the rules and instructions given time-to-time to them and those must be followed and not to adhere the contents written in this reading material.
7. As far as the statistics is concerned, the trainee officers are advised to keep it updated. In case, in any deviation, the Railway publication to be relied upon.

The reading material is for internal use and not for any commercial use and cannot be quoted as an authority or in any legal matter.



Hari Shankar Verma, IRTS
Director General, IRITM,
compiler and commentator of High Level Safey Review Committee Reports as reading material at IRITM.

सीमा कुमार
सदस्य (परिचालन एवं व्यवसाय विकास)
रेलवे बोर्ड एवं पदेन सचिव
SEEMA KUMAR
Member (Operations & Business Development) Railway Board
& ex-officio Secretary



भारत सरकार
रेल मंत्रालय
रेल भवन, रायसीना रोड
नई दिल्ली- 110001
Government of India
Ministry of Railways, Rail Bhawan,
Raisina Road, New Delhi- 110001

FOREWORD

It brings me great pleasure to introduce "Railway Executive's Guide to The General Law, The Railway Act 1989 with Other Related Acts and Rules." It is the first book on the Railway Act 1989 and associated laws, tailored for Probationary Officers and serving officers of Indian Railways. This work not only fills a crucial gap in providing accessible resources on railway legislation but also underscores IRITM's commitment to enhancing professional development through specialized training.

The comprehensive scope of this guide is truly commendable, covering essential topics that resonate with the daily practices of railway professionals. From a succinct introduction to the fundamentals of law and the intricacies of the Indian Judicial System to a detailed exploration of the Railway Act 1989, the content is both informative and engaging.

Of particular interest are the insights provided into various legal procedures, including filing Civil Suits, navigating contempt of court issues, understanding caveats, and offering legal assistance to Railway Servants. Moreover, the inclusion of vital information regarding citizens' rights during arrest and bail procedures adds practical value to the readers.

I extend my heartfelt congratulations to Shri Hari Shankar Verma, Director General of IRITM, and Shri Rajesh Kumar, Senior Professor of Administration and Law, for their diligent efforts towards this publication. Looking ahead, I am confident that IRITM will continue to lead the way in delivering high-quality training programs, ensuring that officers are well-equipped to navigate the complexities of railway law and governance.

My best wishes go out to the authors, the entire faculty of IRITM, and all participants engaging with this essential resource.



Seema Kumar
Member (Operations & Business Development)
Railway Board

PREFACE

To a Railway Officer, Law plays an important role in the execution of official duties. We all must aware that whatever we do on railways, everything is governed majorly by the Railways Act. The guiding principle of any Act in the country is constitution of India. Our all working in Government Department must be aligned with Constitution of India, Railway Act 1989 and other allied Acts and Rules.

Law is defined by a body of rules of action and conduct prescribed by controlling authority and has a legal binding, which may be adhered to and obeyed by every citizen of the country. The Law has certain consequences and effects, if not abided by its citizen. In Railways also, to conduct proper maintenance, operation and construction, there are definite sections of rules which to be followed. The Law helps society move progressively and prevents any chaos and on other hand it protects the public servant from taking up the appropriate action in the interest of larger good of society. The basic objective of Law is to serve society, save the morals, promote peace to implement productive and helpful public policies to facilitate the people to live harmoniously and with freedom.

We all know that our country is a democratic republic, which means that the owner of all public enterprises is public, therefore, every railway servant must serve the citizens rightfully, duty fully and with humility. Law is the King of Kings, thus; it is far more rigid and powerful than the Kings. In democracy, its Law only which rules the society. The goal of every society and its legal system is to ensure equal and impartial justice for all for maintaining greater space for peace and prosperity.

Law plays an important role in the social, political, and economic existence of ours and administers what is good, right, and desirable to society. Kahlil Gibran has written a poem titled “On Laws”,

which describes the philosophical aspect of Laws. The poem read as under:

On Laws

BY ***KAHLIL GIBRAN***

Then a lawyer said,
But what of our Laws, master?
And he answered:
You delight in laying down laws,
Yet you delight more in breaking them.
Like children playing by the ocean who
build sand-towers with constancy and
then destroy them with laughter.
But while you build your sand-towers the
ocean brings more sand to the shore,
And when you destroy them the ocean
laughs with you.
Verily the ocean laughs always with the
innocent.

But what of those
to whom life is not an ocean,
and man-made laws are not sand towers,
But to whom life is a rock,
and the law a chisel with which they would carve it in
their own likeness?
What of the cripple who hates dancers?
What of the ox who loves his yoke and
deems the elk and deer of the forest
stray and vagrant things?
What of the old serpent who cannot
shed his skin, and calls all others naked and shameless?
And of him who comes early to the
wedding-feast, and when over-fed and
tired goes his way saying that all feasts are
violation and all feasters' lawbreakers?

What shall I say of these save that
they too stand in the sunlight, but with their
backs to the sun?
They see only their shadows, and
their shadows are their laws.
And what is the sun to them but a caster of shadows?
And what is it to acknowledge the laws
but to stoop down and trace their shadows
upon the earth?
But you who walk facing the sun, what
images drawn on the earth can hold you?
You who travel with the wind, what
weathervane shall direct your course?
What man's law shall bind you if you
break your yoke but upon no man's prison door?
What laws shall you fear if you dance
but stumble against no man's iron chains?
And who is he that shall bring you to
judgment if you tear off your garment yet
leave it in no man's path?

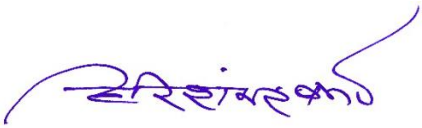
People of Orphalese,
you can muffle the
drum, and you can loosen the strings of the lyre,
but who shall command the skylark
not to sing.

Since beginning, Indian Railways are governed with Railway Act. During pre-independence time, Indian Railways were governed with the Indian Railways Act, 1890 and now with the new Act namely Railway Act 1989. In the market, there are several books on Railways Laws, but none is available in complete form, which can give all Law and Rules together for working of an executive of Railway. While, teaching the lessons in Law to the probationary officers of Indian Railway Management Service (IRMS), an urgent

need was felt to compile all the Acts relating to railways in one volume. Secondly, when we run the course for presenting officers and Additional Registrar of Railway Claim Tribunal (RCT) it is always felt need of reading material on Law.

I have not come across with any Railway reading material which is prepared in keeping most of the aspect of the Railway Acts and other Act and Rules along with certain introductory lessons in Law. To fill the learning requirement I have tried to put together all important Laws of Railways and detailed essays on day-to-day working relating to Law and Court working like- How to file a Civil Suits in India, Contempt of court to Civil Servant and how to deal it, Protection of Civil Servants under constitution and Doctrine of Pleasure, Knowing Citizens Rights if they arrested and how to obtain bail in India, etc. along with Railway Act, 1989 and other Acts. I am confident that the trainee officer will find this volume a useful read and will benefit at large.

I would like to put on record the hard work done by Shri Rajesh Kumar and Shri N.B. Vikramaditya for proofreading, Mr. Prabhat Verma in typing some chapters and Mr. Rohit Yadav for formatting and converting them into printable format. I am grateful to Shri Rajesh Kumar, IRTS, Sr. Professor Administration, who has helped me in preparing the manuscript and working on the subject as he is a Law Graduate. I would also like to thank Miss Krishna Tiwari, IRTS, Professor Administration and OSD, Shri Kishore Mehta and his colleague Mohd. Mohsin Quadir for helping me in getting it printed and published.



Hari Shankar Verma, IRTS
Director General
Indian Railways Institute of Transport Management (IRITM),
Lucknow, UP, India.
Sunday, 31st March 2024

Subject: TNA for Law for Railway Officers (LRO###)

1. **Organizational Goals:**
   The primary objective of this program is to enhance the legal competency of Railway officers across various cadres and departments. By providing them with a comprehensive understanding of relevant laws and legal procedures, the program aims to equip officers with the necessary legal knowledge to perform their duties effectively. Ultimately the program aims to contribute to the overall development of Railway officers by equipping them with essential legal knowledge, skills, and a deep understanding of the legal framework in which they operate.
   By achieving these organizational goals, the TNA program on Law for Railway Officers will play a crucial role in enhancing the capabilities and legal expertise of Railway officers, ultimately benefiting the Railway organization.
2. **Target Audience:**
   This program is designed for officers currently serving in various departments of Railways, including those in the JS, SS, JAG, SG & SAG. These officers are likely to be assigned to various branches within Railways, including Commercial/Operating, Personnel, Legal branch, RPF (Railway Protection Force), Accounts, and more.
3. **FRACing:**
   Framework for Role Activities and Competency is the key to Law for Railway officers. To provide in-depth knowledge of Law, essential for Railway officers in the performance of their duties and personal knowledge, to make legal concepts understandable to officers from various cadres/departments within the Railways. To cover various legal areas, including the Constitution of India, Right to Information Act, D&AR, Labor Laws, Commercial Laws, Civil Procedure Code, CRPC, laws related to women & children, and Prevention of Corruption. To

bridge the knowledge gap regarding legal matters, rules, regulations, and court proceedings.

To develop legal skills, ethical leadership, and team-building capabilities among officers. The objective of the course is to ensure officers are competent in handling cases with a strong legal basis and are confident in court proceedings. FRAC framework is placed at SN.23-26.

4. **Learning Objectives:**
   - Foundational Legal Knowledge
   - Legal Procedures and Practices:
   - Labor Laws
   - Legal Management
   - Ethical Leadership
   - Legal Awareness and Updates Case Studies
   - Understanding of Railway Laws Commercial and Contractual Laws
5. **Goal/Rationale:**

   The course is conducted with the need for Railway Officers and discussion with the faculty of IRITM.
6. **Basic information:**
   - Course name and number:

   "Law for Railway Officers" (LRO###)
   - Meeting time and place: Onsite at IRITM/Lucknow
   - Instructors: ln-house faculty and Visiting Faculty.
   - Contact information: Will be listed on course brochures/ letters.
   - Office hours: **09:30** to **18:00** hrs.
   - Instructional support staff information: Mentioned in course brochures/letters.
7. **Course Content:**
   - **Constitution of India: -** Rights of People, Directive Principals of state policy and Civil services

- **Right to Information Act, 2005: -** Towards a transparent and open governance
- **Public Interest Litigations: -** Scope of judicial intervention in working of Government
- **Railways Act 1989: -** Historical background of Railways act, its significance for Railways officers.
- **Administrative Laws: -** Subordinate Legislation, Administrative discretion, Principal of Natural justice, speaking orders and Quasi-Judicial functions.
- **Discipline & Appeal Rules and Railway Services (Conduct) Rules: -** 1966 & Annual Performance Appraisal Report (APAR), New developments in the APAR, how to be filled at different capacities of accepting, reporting and reported officers.
- **Labour Laws: -** Minimum Wages Act, Factories Act, Workmen Compensation Act Industrial Disputes Act etc.
- **Commercial Laws: -** Indian Contract Act, Arbitration and Conciliation Act, Companies Act & Partnership Act.
- **Civil procedure code: -** its application on Tribunals working.
- CRPC and Prevention of Corruption Act
- Prevention of Sexual Harassment of Women at Workplace
- **Evidence Act: -** Digitalization of court records, what is evidence? and the importance of Government records as evidence.
- Or any other subject concerning Law will also be dealt with as per administrative need and trainee officer's requirement.

Note: - The syllabus is dynamic and keeps changing as per the Academic Council Decisions under the purview of Capacity Building Standardization and EOMS certification.

8. **Trai nee Responsibilities:**
   Expected to participate in group and case study-based discussions. They are also expected to go through reading material shared with them.
9. **Grading Method:**
   Ungraded
10. **Material and Access:**
    The reading material for the course on "Law for Railway Officers" contains soft and hard copies of policy manuals, Acts, PPTs of faculty members, case study and Audio Video materials.
11. **Teaching philosophy:**
    Through case studies, group discussion and interaction with experienced serving and retired officers. Based on the above inputs, using FRAC framework as given in following pages.

FRAC Analysis of Law for Railway Officers

1.	**Leadership Role**
1.1	**Activities** **A1.** Development of Legal skill Thinking as per Legal Perspective. **A2.** Thinking as per Legal perspective. **A3.** IT applications knowledge and updated decisions. **A4.** Ethical Leadership.
1.2	**Competencies**
1.2.1	**Functional** • Handling expertise in legal matters • Approach with legal perspective
1.2.2	**Behavioural** • Collaborative working • Ability to handle legal matters
1.2.3	**Domain** • Legal Procedures & Policies • Legal Rules & Regulations
2	**Team Building**
2.1	**Activities** **B1.** Coordinated approach with subordinates towards objective. **B2.** Experienced lawyers' team for interaction of cases & submission of Views. **B3.** Coordination with legal expertise team. **B4.** Team management & Time management.
2.2	**Competencies**
2.2.1	**Function** • General Management • Inter-personal relations
2.2.2	**Behavioural** • Collaborative working
2.2.3	**Domain** • Legal Procedures & Policies • Legal Rules & Regulations
3	**Law in Railways & related skills**
3.1	**Activities** **C1.** Legal expertise thinking approach. Awareness about latest verdicts and court procedures. **C2.** Awareness of Best practices being followed in Railway Courts or Higher courts.

	C3. Updating of Legal knowledge **C4.** Indian Railways Act and Legal matters with past and current cases. Discipline & Appeal Rules and Railway Services (Conduct) Rules: - 1956 & Annual Performance Appraisal Report (APAR), **C5.** New developments in the APAR, how to be filled at different capacities of accepting, reporting, and reported officers. **C6.** Labour Laws: - Minimum Wages Act, Factories Act, Workmen Compensation Act, Industrial Disputes Act etc. Legal Management at Divisional & Zonal Offices
3.2	**Competencies**
3.2.1	**Function** • Working attitude • Approach towards application of Rules & regulation. • Knowledge of Railway claims matters • Official working knowledge and court procedures
3.2.2	**Behavioural** • Promptness • Transparent working • Organizational Goals centric approach • Transparent working • Promptness
3.2.3	**Domain** • Legal Procedures & Policies • Legal Rules & Regulations • Language proficiency • Use of IT applications
4	**Railway's Legal working framework**
4.1	**Activities** **D1.** Railways owned legal expertise team at Railway Board, Zonal Railways & Divisional. **D2.** Constitution and Working of Railway Legal Practices. **D3.** Law officer ad its role in settlement of cases
4.2	**Competencies**
4.2.1	**Function** • Approach towards application of Rules & regulations
4.2.2	**Behavioural** • Ethical Behaviour
4.2.3	**Domain**

	• Transparent working • Promptness
5	**Legal awareness: Study of various reports & case studies**
5.1	**Activities** **E1.** Reporting and recording of untoward incidents and accidental cases along with other Railways legal matters. **E2.** Study of Law as important subject for Railway officers' overall development **E3.** Its importance and how it should be prepared. **E4.** Railways cases, settlements, and preventions.
5.2	**Competencies**
5.2.1	**Function** • Legal working • Knowledge of Law • Handling of Claims Court cases • Knowledge of Railway claims matters • Official working knowledge and court procedures
5.2.2	**Behavioural** • Promptness • Right approach towards working on Claims Court cases with
5.2.3	**Domain** • Policies, Rules & Regulations • Language proficiency • Use of IT application • Analytical skills
6	**General**
6.1	**Activities** **F1.** Railway Court visit **F2.** Project Presentation
6.2	**Competencies**
6.2.1	**Function** • Interactive while visiting any bench. • Preparation of notes to counter and cross questioning
6.2.2	**Behavioural** • Alertness • Courteousness • Commitment

6.2.3	**Domain** • Legal Procedures & Policies • Legal Rules & Regulations • Language proficiency • Use of IT application • Analytical skills
7	**Focused Project work/Field visits**
7.1	**Activities** **G1.** Projects on important relevant topics are allotted to individual officers or groups of officers, which they are supposed to complete with the knowledge acquired during lectures, their experiences and reading of reference books/cases. **G2.** Trainees are supposed to make notes during field visits
7.2	**Competencies**
7.2.1	**Function** • Ability to present on subjected matters
7.2.2	**Behavioural** • Task oriented approach
7.2.3	**Domain** • Subjective knowledge
8	**Classroom Discussions**
8.1	**Activities** **H1.** Trainees are encouraged to actively participate in classroom discussions with Resource person as well as fellow officers.
8.2	**Competencies**
8.2.1	**Function** • to broaden thinking approach • Thinking as per legal perspective too
8.2.2	**Behavioural** • Participative • Knowledge sharing • Experience sharing
8.2.3	**Domain** • Subjective knowledge • Shareable working experience

CONTENTS

Chapter	Topics	Page No.
	Disclaimer	**I-II**
	Foreword	**III-IV**
	Preface	**V-VIII**
	TNA for Law for Railway Officers (LRO###)	**IX-XII**
	FRAC Analysis of Law for Railway Officers	**XIII-XVI**
	Contents	**XVII-XLI**
1	**Introduction of Law**	**1-14**
1.1	Definition and Meaning of The Term 'LAW'	2
1.2	Objectives of Law	7
1.3	Function and Purpose of Law	7
1.4	International and Municipal Law	9
1.5	Civil and Criminal Law	11
1.6	Memory Tickers	14
2	**Historical perspective of Indian Legal System**	**15-26**
2.1	Legal System in Ancient India	16
2.2	Legal System in Medieval India	18
2.3	Legal System During the Colonial Period in India	19
2.4	Legal System in India After Independence	20
2.5	Hierarchy of Courts	21
2.6	Issues in Indian Legal System	22
2.7	Reforms Needed for Indian Legal System	24
3	**Introduction of Indian judicial system**	**27-38**
3.1	Hierarchy of courts	27
3.2	Civil Courts	29
3.3	Criminal Courts	30
3.4	Judicial Authority of the Supreme Court	30
3.5	Binding value of Judicial Precedents	31
3.6	Public Interest Litigation (PIL)	32
3.7	Important Legislature or Acts in India	33
4	**Ministry of Law and Justice**	**39-44**
4.1	History of Ministry of law and justice	39
4.2	Organization	40
4.3	Department of Legal Affairs	40
4.4	Legislative Department	41
4.5	Department of Justice	43

5	**The constitution of India**	**45-64**
5.1	Background of Constitution	46
5.2	Membership	50
5.3	Drafting	51
5.4	Structure	52
5.5	Schedules	53
5.6	Governmental sources of power	55
5.7	The legislature and amendments	56
5.8	Limitations	56
5.9	The judiciary	57
5.10	Judicial review	58
5.11	The executive	59
5.12	Presidential power to Legislate	60
5.13	Federalism	60
5.14	State powers in the Constitution	61
5.15	Limitations on state powers	62
5.16	Appointment of governors	62
5.17	Creation of states	63
5.18	Federalism and the courts	63
5.19	International Law	63
5.20	Flexibility	64
6	**The Remedies available under the constitution**	**65-72**
6.1	Meaning of Constitutional Remedies	65
6.2	Right to Constitutional Remedies in India	66
6.3	Provisions under the Indian Constitution	66
6.4	Supreme Court's Views on Right to Constitutional Remedies	67
6.5	About the Writ Petitions	67
6.6	Types of Writs	68
6.6.1	Habeas Corpus	68
6.6.2	Certiorari	68
6.6.3	Prohibition	69
6.6.4	Mandamus	69
6.6.5	Quo Warranto	69
6.7	Writ Jurisdiction of Supreme Court and High Court	70
6.8	Significance of Writs in the Indian Constitution	71
6.9	Nature of Writ Jurisdiction	72
7	**Advocate, Their Functions and Rights**	**73-88**
7.1	History of the Advocates Act, 1961	74
7.2	The Bill behind Advocates Act, 1961	74
7.3	Features or the characteristics of the Advocate Act, 1961	75
7.4	Definitions under the Advocate Act, 1961	76

7.5	Important provisions under the Advocate Act, 1961	77
7.6	Functions of State Bar Councils	80
7.7	Functions of the Indian Bar Council	81
7.8	Certificate of enrolment	82
7.9	Rights of an advocate under the Advocate Act, 1961	83
7.9.1	Pre-audience rights	84
7.9.2	Right of opposition to arrest	84
7.9.3	Right to appear in any court	84
7.9.4	Right to see an accused person in jail	85
7.9.5	Right to professional communication	85
7.9.6	The right to protect the secrecy of communications	85
7.9.7	Right to pay a fee	85
7.9.8	Right with respect to vakalatnama	86
7.9.9	Right to refuse a case	86
7.10	Duties of an advocate	86
7.10.1	An advocate's obligations to the client	86
7.10.2	An advocate's obligations to the court	87
7.11	Punishments provided under the Advocate Act, 1961	87
8	**Attorney General and Solicitor General in India**	**89-94**
8.1	Attorney General of India	89
8.2	Powers, duties, and functions of Attorney General of India	89
8.3	Fee and allowances payable	90
8.4	Solicitor General of India (SGI)	91
8.5	Duties of Solicitor General	92
8.6	Restrictions of private practice	92
8.7	Fee and allowances payable	93
9	**How to file a Civil Suits in India**	**95-100**
9.1	Stages of a Civil Case	95
9.2	Procedure for Filing a Civil case in India.	96
9.3	Filing of Suit/Plaint	96
9.4	Vakalatnama	97
9.5	Filing of Plaint	97
9.6	Court Fees	97
9.7	How are proceedings conducted?	97
9.7.1	Hearing	97
9.7.2	Written Statement by Defendant	98
9.7.3	Replication by Plaintiff	98
9.7.4	Filing of Other Documents	98
9.7.5	Framing of Issues	99
9.7.6	List of Witness/Cross Examination	99
9.7.7	Final Hearing	100
9.8	Appeal, Reference, and Review	100

9.9	Procedure for Appeal	100
10	**Oaths Act 1969**	**101-106**
10.1	Why the Witness has to take an oath?	102
10.2	History of Oath	102
10.3	The Oaths Act, 1969	103
10.4	Power to administer oaths.	103
10.5	Oaths and affirmations to be made by witnesses, interpreter, and jurors.	104
10.6	Forms of Oaths and affirmations	105
10.7	Persons giving evidence bound to state the truth.	106
11	**Evidence Act 1872**	**107-110**
11.1	The Act	108
11.2	Applicability	108
11.3	Contents	108
11.4	Indian Evidence Act Classic Classification	109
12	**Contempt of court to Civil Servant and how to deal it**	**111-150**
12.1	Contempt of Court and Indian Constitution	112
12.2	Essentials	113
12.3	Kinds of Contempt	113
12.4	Punishment Under the Contempt of Court Act	119
12.5	Period of Limitation	120
12.6	Defences In Civil Contempt	121
12.7	Defences Against Criminal Contempt	124
12.8	Remedy Against the Order of Punishment	127
12.9	Procedure to be Adopted in Contempt Proceedings	130
12.10	Procedure to be Adopted in Cases of Contempt in the Face of the Court	131
12.11	Procedure of Criminal Contempt Committed Outside the Court	133
12.12	Bar on Private Persons	134
12.13	Role of ethics in the contempt of court and analysis of criminal contempt of the courts	135
12.14	Punishment for contempt of court	138
12.15	Scope of punishment for contempt of courts	139
12.16	Punishments that can be given to an advocate under the Advocates Act, 1961 for professional misconduct	140
12.17	Punishment for professional misconduct under the Advocates Act	140
-	The Contempt of Courts Act, 1971 Act no. 70 of 1971	142
13	**Caveat**	**151-158**
13.1	Caveat Petition	152
13.2	Meaning and definition of caveat	152

13.3	Legislative history of caveat	152
13.4	Objective and scope of section 148 A	153
13.5	Advantages of filing a caveat	153
13.6	Can a Caveat be Filed Against a Criminal Case?	154
13.7	Who can lodge a caveat petition?	154
13.8	Rights and duties as per Section 148 A	154
13.9	The time limit for the caveat	155
13.10	Implication of non-serving of notice by the court	155
13.11	Where can a caveat petition be filed?	156
13.12	How to file a caveat petition.	156
-	Caveat Petition IV Form [See Rule 22] Memorandum of Caveat	158
14	**Special Leave Petitions- What, How and When to be Filed**	**159-164**
14.1	The circumstances, when an SLP be made to supreme court	160
14.2	What is "special" about SLP?	160
14.3	The Rules about Special Leave Petition	161
14.4	How can a SLP be filed?	161
14.5	The Time Frame for SLP	162
14.6	The Scope of Article 136	162
14.7	A few case studies in brief	163
15	**Protection of Civil Servants under constitution and Doctrine of Pleasure in India**	**165-190**
15.1	Who are Actually Civil Servants?	165
15.2	Origin of doctrine of pleasure in England	171
15.3	Doctrine of Pleasure	172
15.4	Doctrine of pleasure in India	174
15.5	What is the implication of the doctrine of pleasure?	175
15.6	Exceptions of Doctrine of Pleasure	175
15.7	Other offices subject to the doctrine of pleasure	176
15.8	Comparative analysis of the doctrine of pleasure under Article 310 and Common Law	177
15.9	Civil servants and the doctrine of pleasure	178
15.10	Independence of civil services	179
15.11	What are the constitutional provisions and safeguards to civil servants?	182
15.12	Summary	184
15.13	Exceptions of Article 311 of the Indian Constitution	185
15.14	Recruitment and Regulations in The Conditions of Service of Civil Servants	188
16	**Legal Assistance to Railway servants**	**191-210**

17	**Knowing Citizens Rights if they arrested and how to obtain bail in India**	**211-236**
17.1	Warrant of Arrest	211
17.2	Valid Warrant	211
17.3	Arrest without Warrant	212
17.4	When can a person be arrested without a warrant?	212
17.5	How is Arrest made?	213
17.6	What happens if you resist arrest?	213
17.7	What are your rights when you are arrested?	214
17.8	Can any person be handcuffed?	214
17.9	Search of an arrested person	214
17.10	Examination of arrested person by medical practitioner	215
17.11	Detention of an arrested person	215
17.12	Search Warrant	216
17.12.1	Search with Warrant	216
17.13	Procedure to be followed when search is being done	219
17.14	Rights of the occupants of the premises searched	219
17.15	Bail	220
17.16	The basic concept of bail	220
17.17	Evolution of the concept of bail	220
17.18	In which cases can you get your client, bail?	221
17.19	Power of the Court to grant bail	222
17.20	If you are arrested, how to get released immediately from police custody?	223
17.21	Granting of Bail by the Magistrate	223
17.22	Common police objections to bail	224
17.23	Application for Bail	224
17.24	Refusal of Bail by the Magistrate	225
17.25	Appeal	225
17.26	Conditions for Bail	225
17.27	Bond and Sureties	225
17.28	Bail after Conviction	226
17.29	Anticipatory Bail	226
17.30	Recent Observations and Recommendations of the Supreme Court on Bail	227
17.31	How to Take Bail in India?	227
17.32	Types of Bail	228
17.33	Procedure To Apply for Bail	229
17.34	Interim bail	231
17.35	Circumstances under which bail is given by police.	231
17.36	When the arrest is made with the issuance of the warrant.	231
17.37	Theories behind the provision of bail	232

17.38	Process of bail	232
17.38.1	Bail application	233
17.38.2	Bail on Appeal	233
17.38.3	Bail hearing	233
17.38.4	Determinants to grant bail.	234
18	**Railway Act, 1989**	**237-372**
-	**Chapter I – Preliminary: Railway Act, 1989**	
18.001	Section 001 - Short title and commencement	247
18.002	Section 002 - Definitions	247
-	**Railway Administrations: Railway Act, 1989**	
18.003	Section 003 - Zonal Railways	253
18.004	Section 004 - Appointment of General Manager	253
-	**Commissioners of Railway Safety: Railway Act, 1989**	
18.005	Section 005 - Appointment of Chief Commissioner of Railway Safety and Commissioners of Railway Safety	254
18.006	Section 006 - Duties of Commissioner	254
18.007	Section 007 - Power of Commissioner	254
18.008	Section 008 - Commissioner to be public servant	255
18.009	Section 009 - Facilities to be afforded to Commissioners	255
18.010	Section 010 - Annual report of Commissioners	255
-	**Construction and Maintenance of Works: Railway Act, 1989**	
18.011	Section 011 - Power of railway administrations to execute all necessary works	256
18.012	Section 012 - Power to alter the position of pipe, electric supply fine, drain or sewer, etc.	258
18.013	Section 013 - Protection for Government property	258
18.014	Section 014 - Temporary entry upon land to remove obstruction, to repair or to prevent accident	259
18.015	Section 015 - Payment of amount for damage or loss	260
18.016	Section 016 - Accommodation works	261
18.017	Section 017 - Power of owner, occupier, State Government, or local authority to cause additional accommodation works to be made	263
18.018	Section 018 - Fences, gates, and bars	264
18.019	Section 019 - Over-bridges and under-bridges	264
18.020	Section 020 - Power of Central Government to give directions for safety	265

-	**Opening of Railways: Railway Act, 1989**	
18.021	Section 021 - Sanction of the Central Government to the opening of railway	266
18.022	Section 022 - Formalities to be complied with before giving sanction to the opening of a railway	266
18.023	Section 023 - Sections 21 and 22 to apply to the opening of certain works	267
18.024	Section 024 - Temporary suspension of traffic	267
18.025	Section 025 - Power to close railway opened for the public carriage of passengers	268
18.026	Section 026 - Re-opening of closed railway	268
18.027	Section 027 - Use of rolling stock	269
18.028	Section 028 - Delegation of powers	269
18.029	Section 029 - Power to make rules in respect of matters in this Chapter	270
-	**Fixation of Rates: Railway Act, 1989**	
18.030	Section 030 - Power to fix rates	271
18.031	Section 031 - Power to classify commodities or alter rates	271
18.032	Section 032 - Power of railway administration to charge certain rates	272
-	**Railway Rates Tribunal: Railway Act, 1989**	
18.033	Section 033 - Constitution of the Railway Rates Tribunal	273
18.034	Section 034 - Staff of the Tribunal	274
18.035	Section 035 - Sittings of the Tribunal	274
18.036	Section 036 - Complaints against a railway administration	274
18.037	Section 037 - Matters not within the jurisdiction of the Tribunal	275
18.038	Section 038 - Powers of the Tribunal	276
18.039	Section 039 - Reference to the Tribunal	276
18.040	Section 040 - Assistance by the Central Government	277
18.041	Section 041 - Burden of proof, etc.	277
18.042	Section 042 - Decision, etc., of the Tribunal	278
18.043	Section 043 - Bar of jurisdiction of courts	278
18.044	Section 044 - Relief's which the Tribunal may grant	278
18.045	Section 045 - Revision of decisions given by the Tribunal	279
18.046	Section 046 - Execution of decisions or orders of the Tribunal	279

18.047	Section 047 - Report of the Central Government	279
18.048	Section 048 - Power of the Tribunal to make regulations	279
-	**Carriage of Passengers: Railway Act, 1989**	
18.049	Section 049 - Exhibition of certain timings and Tables of fires at stations	281
18.050	Section 050 - Supply of tickets on payment of fare	281
18.051	Section 051 - Provision for case in which ticket is issued for class or train not having accommodation for additional passengers	282
18.052	Section 052 - Cancellation of ticket and refund	283
18.053	Section 053 - Prohibition against transfer of certain tickets	283
18.054	Section 054 - Exhibition and surrender of passes and ticket	283
18.055	Section 055 - Prohibition against traveling without pass or ticket	284
18.056	Section 056 - Power to refuse to carry persons suffering from infections or contagious diseases	284
18.057	Section 057 - Maximum number of passengers for each compartment	285
18.058	Section 058 - Earmarking of compartment, etc., for ladies	285
18.059	Section 059 - Communication between passengers and railway servant in charge of train	285
18.060	Section 060 - Power to make rule in respect of matters in this Chapter	286
-	**Carriage of Good: Railway Act, 1989**	
18.061	Section 061 - Maintenance of rate-books, etc., for carriage of goods	288
18.062	Section 062 - Conditions for receiving, etc., of goods	288
18.063	Section 063 - Provision of risk rate	289
18.064	Section 064 - Forwarding note	289
18.065	Section 065 - Railway receipt	290
18.066	Section 066 - Power to require statement relating to the description of goods	290
18.067	Section 067 - Carriage of dangerous or offensive goods	292
18.068	Section 068 - Carriage of animals suffering from infectious or contagious diseases	293

18.069	Section 069 - Deviation of route	293
18.070	Section 070 - Prohibition of undue preference	294
18.071	Section 071 - Power to give direction in regard to carriage of certain goods	294
18.072	Section 072 - Maximum carrying capacity for wagons and trucks	295
18.073	Section 073 - Punitive charge for overloading a wagon	296
18.074	Section 074 - Passing of property in the goods covered by railway receipt	296
18.075	Section 075 - Section 74 not to affect right of stoppage in transit or claims for freight	297
18.076	Section 076 - Surrender of railway receipt	297
18.077	Section 077 - Power of railway administration to deliver goods or sale proceeds thereof in certain cues	297
18.078	Section 078 - Power to measure, weigh, etc.	298
18.079	Section 079 - Weighment of consignment on request of the consignee or endorsee	298
18.080	Section 080 - Liability of railway administration for wrong delivery	299
18.081	Section 081 - Open delivery of consignments	299
18.082	Section 082 - Partial delivery of consignments	299
18.083	Section 083 - Lien for freight or any other sum due	300
18.084	Section 084 - Unclaimed consignment	301
18.085	Section 085 - Disposal of perishable consignments in certain circumstances	302
18.086	Section 086 - Sales under sections 83 to 85 not to affect the right to suit	302
18.087	Section 087 - Power to make rules in respect of matters in this Chapter	302
-	**Special Provisions as to Goods Booked to Notified Stations: Railway Act, 1989**	
18.088	Section 088 - Definitions	304
18.089	Section 089 - Power to declare notified stations	304
18.090	Section 090 - Disposal of unremoved goods at notified stations	306
18.091	Section 091 - Price to be paid to person entitled after deducting dues	309

18.092	Section 092 - Power to make rules in respect of matters in this Chapter	310
-	**Responsibilities of Railway Administrations as Carriers: Railway Act, 1989**	
18.093	Section 093 - General responsibility of a railway administration as carrier of goods	311
18.094	Section 094 - Goods to be loaded or delivered at a siding not belonging to a railway administration	312
18.095	Section 095 - Delay or retention in transit	312
18.096	Section 096 - Traffic passing over railways in India and railways in foreign countries	313
18.097	Section 097 - Goods carried at owner's risk rate	313
18.098	Section 098 - Goods in defective condition or defectively packed	315
18.099	Section 099 - Responsibility of a railway administration after termination of transit	316
18.100	Section 100 - Responsibility as carrier of luggage	317
18.101	Section 101 - Responsibility as a carrier of animals	318
18.102	Section 102 - Exoneration from liability in certain cases	318
18.103	Section 103 - Extent of monetary liability in respect of any consignment	319
18.104	Section 104 - Extent of liability in respect of goods carried in open wagon	320
18.105	Section 105 - Right, of railway administration to cheek contents of certain consignment or luggage	320
18.106	Section 106 - Notice of claim for compensation and refund of over charge	320
18.107	Section 107 - Applications for compensation for loss, etc., of goods	321
18.108	Section 108 - Person entitled to claim compensation	321
18.109	Section 109 - Railway administration against which application for the compensation for personal injury is to be filed	322
18.110	Section 110 - Burden of proof	322
18.111	Section 111 - Extent of liability of railway administration in respect of accidents at sea	323

18.112	Section 112 - Power to make rules in respect of matters in this Chapter	323
-	**Accident: Railway Act, 1989**	
18.113	Section 113 - Notice of railway accident	325
18.114	Section 114 - Inquiry by Commissioner	326
18.115	Section 115 - Inquiry by railway administration	326
18.116	Section 116 - Powers of Commissioner in relation to inquiry	327
18.117	Section 117 - Statement made before Commissioner	327
18.118	Section 118 - Procedure, etc.	328
18.119	Section 119 - No inquiry, investigation, etc., to be made if the Commission of inquiry is appointed	328
18.120	Section 120 - Inquiry into accident not covered by section 113	328
18.121	Section 121 - Returns	328
18.122	Section 122 - Power to make rules in respect of matters in this Chapter	329
-	**Liability of Railway Administration for Death and Injury to Passengers Due to Accident: Railway Act, 1989**	
18.123	Section 123 - Definitions	330
18.124	Section 124 - Extent of liability	331
18.12A	Section 124A - Compensation on account of untoward incidents	332
18.125	Section 125 - Application for compensation	333
18.126	Section 126 - Interim relief by railway administration	334
18.127	Section 127 - Determination of compensation in respect of any injury or loss of goods	334
18.128	Section 128 - Saying as to certain rights	335
18.129	Section 129 - Power to make rules in respect of matters in this Chapter	335
-	**Regulation of Hours of Work and Period of Rest: Railway Act, 1989**	
18.130	Section 130 - Definitions	336
18.131	Section 131 - Chapter not to apply to certain railway servants	337
18.132	Section 132 - Limitation of hours of work	337

18.133	Section 133 - Grant of periodical rest	338
18.134	Section 134 - Railway servant to remain on duty	339
18.135	Section 135 - Supervisors of railway labour	339
18.136	Section 136 - Power to make rules in respect of matters in this Chapter	339
-	**Penalties and Offences: Railway Act, 1989**	
18.137	Section 137 - Fraudulently traveling or attempting to travel without proper pass or ticket	341
18.138	Section 138 - Levy of excess charge and fare for traveling without proper pass or ticket or beyond authorized distance	342
18.139	Section 139 - Power to remove persons	344
18.140	Section 140 - Security for good behaviour in certain cases	344
18.141	Section 141 - Needlessly interfering with means of communication in a train	345
18.142	Section 142 - Penalty for transfer of tickets	345
18.143	Section 143 - Penalty for unauthorized carrying on of business of procuring and supplying of railway tickets	346
18.144	Section 144 - Prohibition on hawking, etc., and begging	347
18.145	Section 145 - Drunkenness or nuisance	348
18.146	Section 146 - Obstructing railway servant in his duties	348
18.147	Section 147 - Trespass and refusal to desist from trespass	349
18.148	Section 148 - Penalty for making a false statement in an application for compensation	349
18.149	Section 149 - Making a false claim for compensation	349
18.150	Section 150 - Maliciously wrecking or attempting to wreck a train	350
18.151	Section 151 - Damage to or destruction of certain railway properties	351
18.152	Section 152 - Maliciously hurting or attempting to hurt persons traveling by railway	351
18.153	Section 153 - Endangering safety of persons traveling by railway by willful act or omission	352
18.154	Section 154 - Endangering safety of persons traveling by railway rash or negligent act or omission	352
18.155	Section 155 - Entering into compartment reserved or resisting entry into a compartment not reserved	352

18.156	Section 156 - Traveling on roof, step or engine of a train	353
18.157	Section 157 - Altering or defacing pass or ticket	353
18.158	Section 158 - Penalty for contravention of any of the provision of Chapter XIV	353
18.159	Section 159 - Disobedience of drivers or conductors of vehicles to directions of railway servant, etc.	354
18.160	Section 160 - Opening or breaking a level crossing gate	354
18.161	Section 161 - Negligently crossing unmanned level crossing	354
18.162	Section 162 - Entering carriage or other place reserved for females	355
18.163	Section 163 - Giving false account of goods	355
18.164	Section 164 - Unlawfully bringing dangerous goods on a railway	356
18.165	Section 165 - Unlawfully bringing offensive goods on a railway	356
18.166	Section 166 - Defacing public notices	356
18.167	Section 167 - Smoking	357
18.168	Section 168 - Provision with respect to commission of offence by the children of acts endangering safety of person traveling on railway	357
18.169	Section 169 - Levy of penalty on non-Government railway	357
18.170	Section 170 - Recovery of penalty	358
18.171	Section 171 - Section 169 or 170 not to preclude Central Government from taking any other action	358
18.172	Section 172 - Penalty for intoxication	358
18.173	Section 173 - Abandoning train, etc., without authority	359
18.174	Section 174 - Obstructing running of train, etc.	359
18.175	Section 175 - Endangering the safety of persons	360
18.176	Section 176 - Obstructing level crossing	360
18.177	Section 177 - False returns	360
18.178	Section 178 - Making a false report by a railway servant	361
18.179	Section 179 - Arrest for offences under certain sections	361
18.180	Section 180 - Arrest of persons likely to abscond, etc.	361
18.181	Section 181 - Magistrate having jurisdiction under the Act	362
18.182	Section 182 - Place of trial	362

-	**Miscellaneous: Railway Act, 1989**	
18.183	Section 183 - Power to provide other transport services	363
18.184	Section 184 - Taxation on railways by local authorities	363
18.185	Section 185 - Taxation on railways for advertisement	364
18.186	Section 186 - Protection of action taken in good faith	364
18.187	Section 187 - Restriction on execution against railway property	365
18.188	Section 188 - Railway servants to be public servants for the purposes of Chapter IX and section 409 of the Indian Penal Code	365
18.189	Section 189 - Railway servants not to engage in trade	366
18.190	Section 190 - Procedure for delivery to railway administration of property detained by a railway servant	366
18.191	Section 191 - Proof of entries in records and documents	367
18.192	Section 192 - Service of notice, etc., on railway administration	367
18.193	Section 193 - Service of notice, etc., by railway administration	368
18.194	Section 194 - Presumption where notice is served by post	368
18.195	Section 195 - Representation of railway administration	368
18.196	Section 196 - Power to exempt railway from Act	369
18.197	Section 197 - Matters supplemental to the definitions of "railway" and "railway servant"	369
18.198	Section 198 - General power to make rules	370
18.199	Section 199 - Rules to be laid before Parliament	370
18.200	Section 200 - Repeal and saving	370
19	**Railway Protection Force (RPF) Act 1957**	**373-386**
	1. Short title, extent, and commencement	373
	2. Definitions	374
	3. Constitution of the Force	375
	4. Appointment and powers of superior officers	375
	5. Classes and ranks among members of the Force	376
	6. Appointment of members of the Force	376
	7. Certificates to members of the Forces	376
	8. Superintendence and administration of the Force	377
	9. Dismissal, removal, etc., of members of the force	377

	10. Officers and members of the Force to be deemed to be railway servants	378
	11. Duties of members of the Force	378
	12. Power to arrest without warrant	379
	13. Power to search without warrant	380
	14. Procedure to be followed after arrest	380
	15. Officers and members of the Force to be considered always on duty and liable to be employed in any part of the railways	381
	15A. Restrictions respecting right to Form association, etc.	381
	16. Responsibilities of members of the Force during suspension	382
	16A. Surrender of certificate, arms, etc., by persons ceasing to be members of the Force	382
	17. Penalties for neglect of duty, etc.	383
	18. Application of act 22 of 1922 to members of the Force	384
	19. Certain Acts not to apply to members of the Force	384
	20. Protection of acts of members of the Force	385
	21. Power to make rules	385
20	**Railway Property unlawful Possession Act, 1966**	**387-396**
	Introduction	387
	Salient features	388
	Important definitions (Section 2)	388
	Penalty for Unlawful Possession of Railway Property [Sec. 3]	389
	Punishment for Connivance [Sec. 4]	389
	Power to Arrest without Warrant [Sec. 6]	389
	Inquiry under the Act [Sec. 8]	390
	Other Important Provisions	390
	1. Short title, extent, and commencement	391
	2. Definitions.	391
	3. Penalty for theft, dishonest misappropriation, or unlawful possession of railway property	392
	4. Punishment for abetment, conspiracy, or connivance at offences	392
	5. Offences under the Act not to be cognizable-	393
	6. Power to arrest without warrant	393
	7. Disposal of persons arrested	393
	8. Inquiry how to be made	393
	9. Power to summon persons to give evidence and produce documents	394
	10. Issue of search warrant	395

	11. Searches and arrests how to be made-	395
	12. Officers required to assist	396
	13. Power of courts to order forfeiture of vehicles, etc.	396
	14. Act to override other laws	396
	15. Construction of references to laws not in force in Jammu and Kashmir	396
	16. Repeal and savings	396
21	**The Statutory Investigation into Railway Accidents Rules, 1998**	**397-402**
	3. Commissioner of Railway Safety to submit a brief preliminary narrative report	400
	4. Commissioner of Railway Safety to submit a report	400
	5. Publication of reports	401
	6. District Magistrate or his representative to attend the inquiry conducted by Commissioner of Railway Safety-	401
	7. District Superintendent of Police or his representative.	401
	8. Commissioner of Railway Safety to assist the Magistrate of the Commission of Inquiry etc. in clarifying technical matters	402
	9. Powers of the Commissioner of Railway Safety	402
	10. Repeal and Saving	402
22	**The Railway (Notices of and inquiries into Accidents) Rules, 1998 as amended by (Amendment) Rules, 2019**	**403-418**
	1. Short title and commencement	403
	2. Particulars to be given in the notices	403
	3. Responsibility for sending notices, to whom to be sent and mode thereof	404
	4. Mode of sending notices to the State Government	405
	5. Railway servants to report accidents	405
	6. Station Master or railway servant in charge of the section to report accidents	405
	6A. Responsibility of ensuring correct reporting of accidents	405
	7. Railway Administration to report serious accidents	405
	8. Facility for reaching the site of the accident	407
	9. Medical aid to the persons grievously hurt in accidents	407
	10. Arranging attendance of railway servants at the place of judicial inquiries	408
	11. Action to be taken by Head of the Railway Administration on receipt of the report of Commissioner of Railway Safety.	409

	12. Head of the Railway Administration to offer remarks on the suggestions made in the report of Commissioner of Railway Safety.	409
	13. Joint inquiry when dispensed with	410
	14. Notice of joint inquiry-	411
	15. Report of joint inquiry or departmental inquiry to be sent to the Head of the Railway Administration and the action to be taken thereon	411
	16. Reports of inquiries into accidents not covered by section 113 to be forwarded to Commissioner of Railway Safety	413
	17. Magisterial inquiry	413
	18. Notice of Magisterial inquiry	414
	19. Judicial Inquiry	414
	20. The result of magisterial inquiry to be communicated to the Head of the Railway Administration	414
	21.Procedure for summoning railway servants to assist the Magistrate holding judicial inquiry	414
	22. Communication of the decision of judicial inquiry to the Railway Administration, Commissioner of Railway Safety, and the State Government	415
	23. Police investigation-w to be dispensed with-report on loss of life, grievous hurt, or damage to railway property	415
	24. Status of police officer investigating the accident	416
	25. Notice of police investigation	417
	26. Assistance by the District Police	417
	27. Communication of the result of police investigation	418
	28. District Police to discharge duties of Railway Police	418
	29. Repeal and saving	418
23	**The Rail Land Development Authority (Development of Land and Other Works) Regulations, 2012**	**419-438**
	Chapter I: Preliminary	
	1. Short title and commencement	419
	2. Definitions	420
	3. Manner of Development of Railway Land	420
	4. Administration of Regulations and Delegation of Powers	421
	Chapter II: Identification And Entrustment of Railway Land	
	5. Identification of Railway Land	421
	6. Review of the Entrusted Railway Land	421

	Chapter III: Terms And Conditions of Development of Railway Land	
	7. Written Agreement before usage of Railway Land	422
	8. No Transfer of Ownership of Railway Land	422
	9. Possession of Railway land until Transfer to the Developer	422
	10. Feasibility Study and Market Survey	423
	11. Fixation of Guidance or Reserve Price	423
	12. Period of Lease	423
	13. Return of Railway land to Railway Administration	424
	14. Types of Development	424
	15. Local Master Plan and Building Byelaws	424
	16. Selection of Developers	424
	17. Lease of Built-Up Area	425
	18. Eligibility of Bidder	425
	19. Manner of Payment	426
	20. Security and Guarantee	426
	21. Escrow Account	427
	22. Redevelopment Works by Developer	428
	23. Joint Partnership with the Developer	428
	24. Extension of Time for Payment and Development	429
	25. Agreement with the company	429
	26. Sub-lease by the Lessee	430
	27. Transfer of lease and sub-lease	430
	28. Purposes of Use of Land	431
	29. Usage within Railway Station Premises	431
	30. Maintenance of Railway land and Buildings	432
	31. Termination of Lease	432
	32. Substitution of Lessee	432
	33. Rights of sub-lessee on termination or expiry of Lease	433
	34. Unforeseen Situations	433
	Chapter IV: Procedure For Development	
	35. Appointment of Consultants and Estate Agencies	434
	36. Issue of Tender and Public Notice	434
	37. Tender Document Fee	434
	38. Right of Rejection of Bid and Cancellation of Bidding Process	435
	39. Opening of Financial Bid	435
	40. Letter of Acceptance	435
	41. Execution of Agreement	435
	42. Possession of the Railway Land	436
	43. Copy of Agreement	436
	44. Assistance from Railway Administration	436

	Chapter V: Miscellaneous	
	45. Re-Development Work of Railway Administration	437
	46. Project Management	437
	47. Enabling Works for Development Project	437
	48. Works entrusted by the Central Government	437
	49. Methods of Execution	438
	50. Consultancies under clause (iii) sub-section (2) of section 4D	438
	51. Relaxation of Regulations	438
	52. Interpretation	438
24	**The Railway (Punitive Charges for Overlading of Wagon) Rules, 2012 as amended by (Amendment) Rules, 2022**	**439-444**
	Situation-A	
	Part-I: For wagons other than BCNHL, BCCW, BFNSM22.9, BCFC and BCFCM	440
	Part- II: For BCNGL, BCCW, BFNSM22.9 BCFC and BCFCM wagons	441
	Part- III: For Container Trains	441
	Situation-B	
	Part-I: For wagons other than BCNHL, BCCW, BFNSM22.9, BCFC and BCFCM	442
	Part-II: For BCNHL, BCCW, BFNSM22.9, BCFC and BCFCM wagons	443
	Part-III: For Container Trains	443
25	**The IR (Penalties for Activities Affecting Cleanliness at Railway Premises) Rules, 2012**	**445-450**
	Commercial Circular No. 76 of 2012	445
	1. Short title and Commencement	448
	2. Definitions	449
	3. Prohibition of activities affecting cleanliness and hygiene in the railway premises	449
	4. Penalties for contravention of these rules	450
	5. Officials authorized to collect penalties under these rules	450
26	**The Land Acquisition (special railway projects) Rules, 2016**	**451-452**
	1. Short title, commencement, and application	451
	2. Definitions	451
	3. Appointment of arbitrator	452
	4. Manner of depositing amount with competent authority	452
	5. Maintenance of fund	452
27	**The Authorisation of Rail Travellers Service Agents Rules, 2014 as amended by (Amendment) Rules, 2019**	**453-460**
	1. Short title and commencement	453
	2. Definitions	453

	3. Conditions for appointment of an agent	454
	4. Issue of a licence	454
	5. The condition on which the licence may be granted	455
	6. Suspension/Cancellation of the Licence	457
	7. Renewal of licence	457
	8. Utilisation of Security Deposit	457
	9. Appeal	457
	10. Liability of Railways	458
	FORM I [See Rule 4]	458
	FORM II [See Rule 5]	459
28	**The Railway Claims Tribunal Act 1987**	**461-478**
	Chapter I: Preliminary	
	1. Short title, extent, and commencement	462
	2. Definitions	462
	Chapter II: Establishment of Railway Claims Tribunal and Benches Thereof	
	3. Establishment of Railway Claims Tribunal	463
	4. Composition of Claims Tribunal and Benches thereof	463
	5. Qualifications for appointment as Chairman, Vice-Chairman or other Member	464
	6. Vice-Chairman to act as Chairman or to discharge his functions in certain circumstances	465
	7. Term of office	466
	8. Resignation and removal	466
	9. Salaries and allowances and other terms and conditions of service of Chairman, Vice-Chairman, and other Members	467
	9A. Qualifications, terms, and conditions of service of Chairman, Vice-Chairman and Member	467
	10. Provision as to the holding of offices by Chairman, Vice-Chairman, etc., on ceasing to be such Chairman or Vice-Chairman, etc.	467
	11. Financial and administrative powers of Chairman	468
	12. Staff of Claims Tribunal	468
	Chapter III: Jurisdiction, Powers, And Authority of Claims Tribunal	
	13. Jurisdiction, powers, and authority of Claims Tribunal	469
	14. Distribution of business amongst Benches	470
	15. Bar of jurisdiction	470
	Chapter IV: Procedure	
	16. Application to Claims Tribunal	470
	17. Limitation	471

	18. Procedure and powers of Claims Tribunal	471
	19. Right to legal representation and presenting officers	472
	20. Power of Chairman to transfer cases from one Bench to another	473
	21. Decision to be by majority	473
	22. Execution of orders of Claims Tribunal	473
	Chapter V: Appeals	
	23. Appeals	473
	Chapter VI: Miscellaneous	
	24. Transfer of pending cases	474
	25. Proceedings before Claims Tribunal to be judicial proceedings	475
	26. Members and staff of Claims Tribunal to be public servants	475
	27. Protection of action taken in good faith	475
	28. Act to have overriding effect	475
	29. Power to remove difficulties	475
	30. Power to make rules	475
	30A. Power to make rules retrospectively	477
	Chapter VII: Amendments to the Railways Act	
	31. Amendment of section 3	477
	32. Amendment of section 78-A	477
	33. Substitution of new section for section 80	477
	34. Omission of sections 82-B, 82-D and 82-F	478
	35. Amendment of section 82-C	478
	36. Amendment of sections 82-E, 82-G and 82-HH	478
	37. Amendment of section 82-I	478
	38. Amendment of section 82-J	478
29	**Railway Claims Tribunal (Procedure) Rules 1989**	**479-498**
	1. Short title and commencement	479
	2. Definitions	479
	3. Territorial jurisdiction of Benches	480
	4. Language of the Claims Tribunal	481
	5. Procedure for filing applications	481
	6. Application fees for cases other than compensation for death or injury to passengers	482
	7. Documents to accompany the application	482
	8. Place of filing application for compensation in accident or untoward incident claim	483
	9. Place of filing application for compensation for loss, damage, destruction, deterioration or non-delivery of goods or animals	483
	10. Place of filing application for refund of fare and freight	484
	11. Scrutiny of applications	484

	11-A. Maintenance of Cash Register	485
	12. Notice to opposite party	485
	13. Service of notices and processes issued by the Tribunal	485
	14. Filing of affidavit	486
	15. Filing of reply and other documents by the respondents	486
	15-A. Filing of rejoinder	487
	15-B. Admission and denial of documents	487
	15-C. Marking of documents	487
	16. Summary dismissal of application	487
	17. Hearing of applications	487
	17-A. Oath to the witness	487
	18. Action on application for applicant's default	488
	19. Ex parte hearing and disposal of applications	488
	20. Procedure and powers of Tribunal	489
	21. Framing and determination of issues	489
	22. Summoning of witnesses and method of recording evidence	489
	22-A. Documents not to form part of records	490
	23. Power to issue commission	490
	24. Procedure in connected cases	491
	25. Calendar of transferred cases	491
	26. Substitution of legal representatives	491
	27. Assessors	491
	28. Adjournment of hearing	492
	29. Costs	492
	30. Decision of the Tribunal	492
	31. Order to be passed and signed	492
	31-A. Execution of order	493
	31-B. Application for execution	493
	32. Review of decision	493
	33. Publication of orders	494
	34. Certified copy of the order and inspection of record.	494
	35. Orders or directions by the Tribunal.	494
	36. Registration of legal practitioner's clerks	495
	37. Powers, functions, and duties of the Registrar	495
	38. Working hours of the Tribunal	497
	39. Sitting hours of the Tribunal	497
	40. Seal and emblem	497
	41.[* * *]	497
	42. Headquarters of the Tribunal	497
	43. Preservation of record	497
	44. Inherent powers of the Tribunal	498
	45. Monthly progress report of Tribunal	498

	46. Maintenance of order sheets	498
	47. Maintenance of Court Diary	498
	48. Preparation and publication of daily cause list	498
	49. Retention, preservation, and destruction of records	498
30	**Railway Claims Tribunal (Financial and Administrative Powers) Rules, 1989**	**499-500**
	1. Short title and commencement	499
	2. In these rules, unless the context otherwise requires	500
	3. Sitting of a Bench at a place other than the place where it ordinarily sits	500
	4. Powers of Chairman	500
	Schedule	500
31	**Railway Claims Tribunal (Procedure for Investigation of Misbehaviour or Incapacity of The Chairman, Vice-Chairman and Members)**	**501-502**
	1. Short title and commencement	501
	2. Definitions	502
	3. Judge to conduct inquiry	502
	4. Powers of Judge	502
32	**Railway Accidents and Untoward Incidents (Compensation) Rules, 1990**	**503-512**
	1. Short title and commencement	503
	2. Definitions	504
	3. Amount of compensation	504
	4. Limit of compensation	505
	5. Mode of Payment	505
	[Appendix-1]: List of Approved Banks for Implementation of Motor Accident Claims Annuity Deposit (Macad) Scheme	509
	[Appendix-II]: Motor Accident Claims Annuity Deposit (Macad) Scheme	509
	[Appendix-II]: Mact Claims Sb Account	510
	[Schedule]: (See Rule 3): Amount of Compensation Payable in respect of Death and Injuries	511
33	**The Railway Passengers (Manner of Investigation of Untoward Incidents) Rules, 2020**	**513-524**
	1. Short title and commencement	513
	2. Definitions	513
	3. Report about untoward incident	515
	4. Duties of Station Superintendent, Guard, Conductor and Train Ticket Examiner in charge of the train	515

	5. Additional duties of Station Superintendent	516
	6. Conducting of investigation and submission of report by the Force-	517
	7. Conducting of investigation and submission of report by the Police	517
	8. The injured and the next of kin of the deceased passenger	518
	9. Forwarding of investigation report by the police and the Force	518
	10. Action on the Report by the Divisional Railway Manager	519
	11. Communication of order	520
	12. Sending report to Claim Office	520
	FORM 1: (Refer Rule 4): Report of Untoward Incident	521
	FORM 2: (Refer Rule 6): Brief Particulars of Untoward Incident	522
34	**Common Legal Terms**	**525-580**
	A	525
	B	530
	C	533
	D	540
	E	543
	F	546
	G	547
	H	548
	I	549
	J	552
	K	554
	L	554
	M	556
	N	558
	O	559
	P	561
	Q	567
	R	567
	S	570
	T	575
	U	576
	V	577
	W	578
35	**About the Author**	**581-587**



LAW

VOLUME I

INTRODUCTION OF LAW

1

The law affects every aspect of our lives; it governs our conduct from the cradle to the grave and its influence even extends from before our birth to after our death. We live in a society which has developed a complex body of rules to control the activities of its members. There are laws which govern working conditions (e.g. by laying down minimum standards of health and safety), laws which regulate leisure pursuits (e.g. by banning alcohol on coaches and trains travelling to football matches), and laws which control personal relationships (e.g. by prohibiting marriage between close relatives). So, what is 'law' and how is it different from other kinds of rules?

The law is a set of rules, enforceable by the courts, which regulate the government of the state and govern the relationship between the state and its citizens and between one citizen and another. As individuals we encounter many 'rules.' The rules of a particular sport, such as the off-side rule in football, or the rules of a club, are

designed to bring order to a particular activity. Other kinds of rule may really be social conventions, such as not speaking ill of the dead. In this case, the 'rule' is merely a reflection of what a community regards to be appropriate behaviour. In neither situation would we expect the rule to have the force of law and to be enforced by the courts.

NATURE OF LAW

- **Law is powerful**
  - Affects all people, from cradle to grave
  - Affects most of life, from work to leisure
- **Law is important**
  - Virtually all known civilizations throughout history have had some kind of law.
  - But which is more important – written law or the people who enforce it?
- **Law is fascinating**
  - Complex, but never just theoretical

1.1 Definition and Meaning of The Term 'LAW'

It is very difficult to state a single and accurate definition of the term 'LAW' as it is a general term and has different connotation for different people. For example, a common man may think of law as a set of rules he has to obey whereas for a judge, it is nothing but a set of guiding principles to be applied in deciding cases. Likewise, law has been variously defined by various individuals from different point of view and hence there could not be and is not any unanimity of opinion regarding the real nature of the law and its definition.

'Law' in simple term implies 'rules' and as such includes different sets of rules which govern or regulate various external human action and conduct of individuals, institutions, and the Government with each other. But merely rules or sets of rules do not mean law, they

must be enforced by the sovereign state and must receive due recognition.

The term 'Law' has been defined by many authorities. It has been defined as 'rules of human action'. It denotes different kinds of rules and principles. In order to understand its meaning clearly, let us consider the definition stated by some of the Jurists:

Jurisprudence, or "What is Law?"

Legal Positivism	▪ "Law is what the sovereign says it is." ▪ Decisions stand, regardless of morality.
Natural Law	▪ "An unjust law is no law at all and need not be obeyed." ▪ Laws must have a good moral basis.
Legal Realism	▪ "Enforcement of the law is more important than the law itself." ▪ Enforcers determine if the law is applied in a fair and consistent way.

The ancient Greek Philosopher Aristotle defined law **'as an embodiment of reasons whether in individual or the community'.**

British philosopher Jeremy Bentham defined the law as **'a collection of signs declarative of a volition conceived or adopted by the sovereign'.** Noted British Jurist John Austin says, **'law is a body of rules determined and enforced by a sovereign political authority'.** Well, known British philosopher H.L.A. Hart defines law as, **'a system of rules, a union of primary and secondary rules. The Primary rules impose duties on people to behave in certain ways. Secondary rules, by contrast, pertain to the**

primary rules.' Von Savigny said, **'Law is a product of the general consciousness of the people.'**

According to Salmond, **'Law is the body of principles recognised and applied by the state in the administration of justice.'** According to Holland, **'Law is a rule of external human action enforced by the sovereign political authority.'**

According to Blackstone, **"Law in its most general and comprehensive sense signifies a rule of action and is applied indiscriminately to all kinds of actions whether animate or inanimate, rational, or irrational. Thus, we say, the laws of gravitation, of optics, of mechanics, as well as the laws of nature and of nations."** According to Anson, **"The object of Law is order, and the result of order is that men are enabled to look ahead with some sort of security as to the future. Although human actions cannot be reduced to the uniformities of nature, men have now endeavoured to reproduce by law something approaching to this uniformity."** According to Woodrow, Wilson- **"Law is that portion of established habits and thoughts of mankind which has gained distinct and formal recognition in the shape of uniform rules backed by the authority and power of the government."**

> According to Article 13(3) of Constitution of India, 1950, **"Law includes any Ordinance, order, byelaw, rule, regulation, notification, custom or usage having in the territory of India, the force of law."**

On the basis of the definitions of law as provided by jurists and legal philosopher over time, one can understand that there cannot be a

universally accepted definition of law as different schools of law are characteristically different in their approach. For example, the positive school does not consider moral values as part of the law, while the natural law school considers law and morality as inseparable. The analysis of the above definitions suggests that law is a body of rules recognised and maintained by the state to regulate the human behaviour and conduct in a society. A law will present the following characteristics.

1. It is a set of rules.
2. It regulates the human conduct.
3. It is created and maintained by the state.
4. It has a certain amount of stability, flexibility, and uniformity.
5. It is backed by coercive authority.
6. Its violation leads to punishment.
7. It is the expression of the will of the people and is generally written down to give it definiteness.
8. It is related to the concept of 'sovereignty' which is the most important element of state.
9. Law creates legal rights.
10. Law is essentially of a territorial nature, and it applies within the territory of the State.

All definitions and characteristics of law hang between two extreme positions:

a. It's coercive character.
b. Social acceptance of the community.

It can also be said that:

1. Law is related to external human actions. Many times, internal human actions can also be the subject of law.

For example, if 'A' is killed in an accident caused by the action of 'B' and if it is proved that 'B' purposely killed 'A', he can be prosecuted under Section 302 of the Indian Penil Code. But if it is proved that B had no intention to kill 'A', the law may take lenient view. Thus, the cognizance of both actions, external as well as internal, is taken by the law.

2. Law is a rule of conduct imposed and enforced by the sovereign. The Government regulates the conduct of the citizen by passing necessary acts. It ordains a general course of conduct to be followed by the citizens of the country. Such rules or Acts enforced by the Government are termed as 'Law'.
3. The rules of conduct are essential for peaceful and prosperous living of the people in the country. In a sense, they help all people to have maximum freedom.
4. Law is supreme and is applicable to all. It is the same for the poor and for the rich, for the rulers as well as for the subjects of the country.

Thus, law includes all the rules or Acts enforced by the sovereign which regulate the relations between the citizens and also the relations with the Government or State. It is the body of principles of which regard to human behaviour as determined by the legislature from time to time. All these principles are interpreted and enforced by the judiciary of the country.

1.2 Objectives of Law

A long-standing problem of legal philosophy is the clash between the interest of an individual and the interest of the group. It is true that law is an instrument of society. The law assures to an individual the maximum freedom for the exercise of his rights, at the same time an unrestricted exercise of free will by an individual may clash with the interest of the group to which he belongs. That group may be his family, his village or a tribal group or a club which may be recreational, professional, or religious. This group may demand from the individual certain sacrifice of the freedom in the interest of the larger group. The unrestricted freedom enjoyed by the primitive man does not and cannot exist in an organised society as society functions on the mutual dependence between the society and the individual. Here the role of law is to act as a regulator to strike balance between the rights of the individual and the rights of the group.

According to Manusmruti, an orderly society would be in existence if everyone acts according to Dharma and thereby protects Dharma. Such an orderly society in turn protects the rights of an individual. Therefore, it can be said that the object of law is to enforce standards of the social behaviour, to provide rules whereby the relations of individual to individual, group to group, government and citizens may be such that conflict is avoided; where conflict cannot be avoided the law provides the means of adjudication through courts.

1.3 Function and Purpose of Law

Law is not static. It changes with change in society. Functions and purpose of law have been changing with time and place. They depend on the nature of the state. However, at present in a welfare

and democratic state, there are several important functions of law. In fact, the State interacts with and protects its citizens throughout their lives, with the help of law.

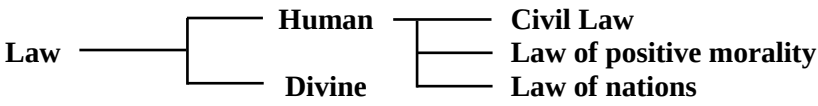
According to Hindu Law, the purpose of law is that **"it should aim at the welfare of the people in this world and also from salvation after death."** According to Muslim law, **"the purpose of law is the discipline of the soul, the improvement of morals and the preservation of life, property and reputation."**

According to Bentham, the purpose of law is the maximisation of the happiness of the greatest number of members of the community.

According to Salmond, the purpose of law is justice. Law is those principles which are applied by the State in the administration of justice.

1. To maintain law and order within a given society.
2. To maintain the status quo in society.
3. To enable and guarantee enjoyment of the maximum freedom to the individual.
4. To obtain security and fair play for every individual.
5. To achieve the highest good of the individual and society.
6. To deliver justice.
7. To provide equality and uniformity.
8. To maintain impartiality.
9. To maintain social control.
10. To resolve conflicts.
11. To bring orderly change through law and social reform.

Classification of Law



For a proper understanding of law, a classification of laws is not only desirable but also necessary. Classifications of law have been made from time to time. However, no classification of law is permanent as law keeps on changes according to the needs and changes of society. In modern times, the law is classified into following categories:

Classification of Law

	Categories	Examples
Law	**General Law** Territorial Law or Ordinary Law of the Land	
	Special Law	Local Law
		Foreign Law
		Autonomic Law
		Martial Law
		International Law

1.4 International and Municipal Law:

Law may be broadly divided into two classes: international law and municipal law. International law is not only law but also a very important branch of law. International law is divided into two classes: Public International Law and Private International Law. Public International Law is that body of rules which governs the conduct and relations of the States with each other. By Private International Law it means those rules and principles according to which cases having foreign element are decided. Private International Law applies to individuals and not to States.

Moreover, the rules and principles of Private International Law vary from State to State and there is no uniformity. Private International Law is enforced by municipal courts which apply municipal law and not international law. Municipal law is the law applied within a State. Municipal laws are basically domestic or national laws. They regulate the relationship between the State and its citizen and determine the relationship among citizens.

Public Law and Private Law: Public Law determines and regulates the organization and functioning of the State and determines the relation of the State with its subjects.

Public law is divided into three classes: Constitutional Law, Administrative Law, and Criminal Law.

Constitutional law determines the nature of the State and the structure of the government. It is superior to the ordinary law of land. Constitutional law is written in India and the United States, but it is unwritten in England. The modern tendency is to have written constitutions.

Administrative law deals with the structure, powers, and functions of the organization of administration, the limits of their powers, the methods and procedures followed by them and the methods by which their powers are controlled including the legal remedies available to persons whose rights have been infringed.

Criminal law defines offences and prescribes punishments for them. It not only prevents crimes but also punishes the offenders. Criminal law is necessary for the maintenance of law and order and peace within the State. In criminal cases, it is the State which initiates proceedings against the wrongdoers. The State is always a party in criminal case.

Classification of Law

	Categories	Examples
LAW	**PUBLIC LAW** (relationship between the state and its citizens)	Constitutional Administrative International
	PRIVATE OR CIVL LAW (rights and duties of individuals towards each other)	Contract Tort Property Trusts Family

Private law regulates and governs the relations of citizens with one another. The parties are private individuals, and the State decides the disputes among the people. There is great difficulty in classifying private law. A general classification of private law is the law of persons, law of property, the law of obligations, the conflict of laws, contracts, quasi-contracts, and tort.

1.5 Civil and Criminal Law:

There are two types of law and justice: civil and criminal. It means there are two types of wrongs – civil wrongs and criminal wrongs.

Civil wrongs are private wrongs while criminal wrongs are public wrongs.

Civil wrong is an infringement or deprivation of private or civil rights belonging to individuals which are generally termed as civil injuries whereas a breach and violation of public rights and duties which affect the whole community are distinguished as the harsher appellation of crimes.

A crime is an act which is deemed by law to be harmful to the society in general, even though its immediate effect is on an

individual. Here proceedings against such persons who commit crime are done by the State and if convicted, they are punished.

The law regulating the criminal wrongs are defined as crim-

Classification of Law	
Criminal Law	**Civil Law**
▪ Dangerous behaviour outlawed by society	▪ Regulates rights and duties of parties
▪ Government prosecutes accused	▪ Plaintiff, not government brings suit
▪ Guilt is determined	▪ Guilt not determined
▪ Punishment or fine is imposed	▪ Compensation is ordered

	Criminal law	**Civil law**
Concerns	Offences against the state	Disputes between private individuals
Purpose of the action	To preserve order in the community by punishing offenders and deterring others	To remedy the wrong which has been suffered
The parties	A prosecutor prosecutes a defendant Prosecutions are brought in the name of the State. Case title: Mithu vs State of Punjab	A Plaintiff sues a defendant. Case title: Mohiri Bibi vs Dhramodas Gosh
Where the action is heard	The criminal courts, i.e. magistrate's court or Sessions Court	The civil courts, i.e. District Court or High Court
Standard and burden of proof	The prosecutor must prove his case beyond a reasonable doubt	The claimant must establish his case on the balance of probabilities

Decision	An accused may be convicted if he is guilty and acquitted if he is innocent	A defendant may be found liable or not liable
Sanctions	Imprisonment, fine	Damages, injunction, specific performance, rescission
Examples	Murder, theft, driving with excess alcohol, engaging in an unfair commercial practice	Contract, tort, trusts, property law

Substantive Law and Procedural Law: Statute law can be either substantive or procedural. The substantive law defines the rights while the procedural law deals mainly with the procedure or remedies. Most part of the Code of Criminal Procedure and the Law of Evidence pertains to the procedural law whereas the Indian Penal Code, the Law of Contract, etc are the examples of substantive law. In case of Code of Civil Procedure, the first part is mostly substantive law whereas the second part consisting of Orders mainly pertains to procedural law. According to Salmond, **"the law of procedure may be defined as that branch of the law which governs the process of litigation. It is the law of actions. It includes all legal proceedings – civil or criminal. All residue is substantive law which relate not to the process of litigation, but to its purposes and subject matter."** Salmond has given the following points of distinction between the Substantive.

Substantive Law	Procedural Law
It determines the conduct and relations of the parties inter se in respect of the matter litigated.	It regulates the conduct and relations of the courts and litigants in respect of the litigation.
It deals with the ends which the administration of justice contemplates.	It deals with the means and instruments by which the ends of administration of justice are to be attained.

The question as to what facts constitute a wrong is determined by the substantive law.	What facts constitute the proof of wrong is procedural law.
Substantive law defines the rights.	Procedural law defines the modes and conditions of the application of one to the other.
It relates to the matter outside the courts.	Procedural law regulates the affairs inside the courts.

Critics point out many defects in the above classification of laws. Many of the classes of laws do not exist in many legal systems of the world. Those branches of law which have recently been developed cannot be put under any classification. The result is that classification given above is neither universal nor exhaustive. Many jurists have attempted classification on different principles. New branches of law are growing and developing rapidly in different parts of the world and provision has to be made for them in any classification of laws. Industrial law and commercial law are such.

1.6 Memory Tickers

1. 'Law' in simple terms implies 'rules.'
2. 'Law' includes different sets of rules which govern or regulate various external human actions and conduct of individuals, institutions, and the Government with each other.
3. The function of law is to achieve justice, stability, and peaceful changes in society.
4. In the wider sense, Justice is synonymous with morality.
5. In the narrower sense, Justice means impartiality or equality.
6. According to Article 13(3) of Constitution of India, 1950, **"Law includes any Ordinance, order, byelaw, rule, regulation, notification, custom or usage having in the territory of India the force of law."**
7. In modern times, the law is classified into International and Municipal Law; Public and Private Law; Civil and Criminal Law; and Substantive and Procedural Law.

HISTORICAL PERSPECTIVE OF INDIAN LEGAL SYSTEM

2

India has one of the oldest legal systems in the world with its laws and jurisprudence dating back to centuries and evolving like a living way of life with the people of India adapting to the changing times. It's a misconception that the Indian legal system gained a systematic shape and development only during the British rule rather we have a traditional mindset of following laws and regulations and doing our duties for the society which can be inferred from the verses of Manusmriti that Dharma i.e. Rule Of Law is the supreme power in the state and the King is also subject to Law to realize the goal of Dharma.

During India's history, it has seen several civilizations and rulers like the ancient Indus valley civilization to Vedic Age era to Haryanka and Mauryan dynasties in North followed by Sangam and Chola dynasties in southern India and then the Islamic Delhi Sultanate empire followed by Mughals and finally The British Empire in India, whose legal system and machinery we still use in India.

After the Independence of India on 15th August 1947, India formed a constituent assembly to frame its constitution, which adopted the principles of Democracy, Secularism, Fraternity, and most importantly the Right to Equality for every individual in the country, but we continued the same legal system and infrastructure and also most of the laws which are currently forced in India are from the British era. The constitution has borrowed many of the principles from foreign Constitutions like the parliamentary form of government and Rule of law is taken from United Kingdom (UK) and legal systems, even the majority of its structure is taken from the Government of India Act, 1935 passed by the British parliament.

With the advent of Information Technology and Artificial Intelligence, the future of the Indian Legal System and profession seems bright as these technologies will bring more efficient and cost delivery access to justice.

> "India has the oldest judiciary in the world. No other judicial system has a more ancient or exalted pedigree" - Justice S.S. Dhavan

2.1 Legal System in Ancient India:

India's legal history is the oldest in the world which can be traced back to the Neolithic age, consisting of the civil and criminal adjudication process, which followed till the Indus Valley Civilization, but the main evidence of India's historical legal system and heritage can be traced from the Vedic period, where the main idea of justice and law is given by the idea of Dharma as illustrated by various Hindu texts like **Puranas** and **Smritis**.

Dharma is generally mean principle of righteousness or duty, principle of holiness and also the principle of unity. Yudhishthira says in his instructions to Bhishma that whatever creates conflict is

Adharma, and whatever puts an end to conflict and brings about unity and harmony is Dharma.

According to Brihaspati Smiriti, there was a hierarchy of courts in Ancient India starting from the family courts and ending with the King. The lowest was the family arbitrator. The next higher court was that of the judge; the next of the Chief Justice who was called Praadivivaka, or adhyaksha; and at the top was the Kings court.

There was also a concept of popular courts which was very similar to the present panchayat system in India and the government and King had not to control it. As the king was responsible for his subjects and has to protect them. Disputes in these courts were decided on the graveness of the situation and decisions were also overturned by the higher court of authority, as existed in the present system of India. Therefore, the present structure has some resemblance in the order of hierarchy to the ancient one.

In the administration of justice, King was given paramount importance and he/she was expected to follow it with due diligence and integrity and there were learned and fearless judges to guide the king according to the prevalent rule of law at that time. But with the progress in time, the king had to perform several other tasks and had to bear many other responsibilities due to which special judges were selected for the task of administration of justice, which is found in Mauryan Empire.

The integrity and the transparency in the judicial system which existed at that time was unparalleled with strict adherence to rules and regulations, which Brihaspati described in ancient Hindu texts as a Judge should decide cases without any personal bias or without any expectation of profit in accordance with prescribed regulations. One of the most striking features of ancient or vedic judicial system was the Jury System or sabhyas, where councilors or jurors act as the advisers of the king or judge, which is similar to the Jury System

in India which existed after the Independence but was later abolished after the famous **KM Nanavati vs State of Maharashtra case**.

The jury system at that time used caste as the basis for determining jurors or sabhyas for different cases. For Example, any important question of law or shastra to be determined was given to a Brahmin juror and if there was a dispute between two communities, the jurors had to be from that communities to decide the judgment. Thus, we can see that a caste-based judicial system existed in Ancient India.

The nature of the trial in those days was inquisitorial where the judges instead of lawyers were expected to duly examine the witnesses by cross-questioning them, which in the present time is mostly missing as judges are expected to follow a particular procedure and listening to the arguments and then giving the judgments. However, the legal profession, with professional conduct did not exist at that time as instead professional lawyers there were shastris and pandits who had great knowledge of law.

2.2 Legal System in Medieval India:

During the Medieval period in India, the Mitakshara school of law was the most prevalent law compiled by a Chalukya ruler in the 11th century, which was a very definite interpretation of the law. Today this law has become the basis of Hindu Joint Family laws. Then Islam came into India during the 11th century when Mohammed Ghori defeated Prithviraj Chauhan at the Second Battle of Tarain in 1192 AD, after which Qutubuddin Aibak became the first Sultan of Delhi, belonging to the Slave Dynasty.

For Islamic rulers, The Holy Koran is the supreme and the only book that contains the words of Allah During the Islamic era in India, the Hanafi school of law was administered and practiced, which required non-Muslims to pay a tax called jeziya, and conversion to Islam for non-Muslims was not mandatory. The

Islamic rule in India under the title Delhi Sultanate ruled from Slave Dynasty to Lodhi Dynasty (1206-1526) after that Babur defeated Ibrahim Lodhi which started the rule of the Mughal Empire effectively up to A.D. 1707 and then after the death of Bahadurshah Zafar, the Muslim rule in India came to an end.

During the Sultanate period, there were seven courts of Justice, related to seven different branches of law. For Example- Diwan-i-Mazlim deals with disputes concerning with administration or bureaucracy. The Qazi did not come under any judicial supervision, and they deal with religious laws. Non-Muslims had their autonomy to practice their personal laws and to have their separate courts. Thus, the judicial system during the Sultanate period was not properly organized.

During the Mughal period courts were divided into two categories:

1. Courts Of Religious or Personal Laws.
2. Courts of secular, common law, and political offenses.

But the hierarchy at the administrative level or the defined jurisdiction of courts was missing in the Mughal era. The judicial decisions were very subjective and vary from judges to judges which results in inconsistency in judgments.

2.3 Legal System During the Colonial Period in India:

The common law system a system of law based on recorded judicial precedents- came to India with the British East India Company. The Mughal judicial system was not very organized and efficient due to which, the English Governor of Surat, where the first English factory was set up after the permission was given by Emperor Jehangir, decided to have their own legal procedures and rules to govern the workers who worked at the factory.

The East India Company was granted a charter by King George-1 to establish the mayors court in Madras, Bombay, and Calcutta

(now Chennai, Mumbai, and Kolkata respectively). These courts had the authority to decide cases related to both civil and criminal matters, but they derived their source of power from the Company.

The Charter issued by King George led to the establishment of Mayor's Courts, which had jurisdictions over all other courts, and they try to deal with cases that arise within their territory or company's area. After the victory of the Britishers in the Battle of Plassey (1757), the Regulating Act of 1773 was passed by the British Parliament, under which a Supreme Court at Calcutta was established, whose powers are very similar to our present-day Supreme Court at Delhi.

After the First War of Independence, the control of India from East India Company passed on to the British Crown, with the passing of Acts like the High Courts Act 1861 and the Indian Council Act 1961, which led to the establishment of three high courts at Calcutta, Bombay and Madras and the abolition of Supreme Courts, with Privy Council as the highest court of appeal for nearly 200 years. After the passing of the Government of India Act 1935, India under British rule became a Federal Structure, with a new Federal Court at Delhi with jurisdiction over both states and provinces. It has both appellate and advisory jurisdiction and also interpret any substantive question of law like the Supreme Court of India.

2.4 Legal System in India After Independence:

After Independence, India's leaders had the huge task of formulating a constitution to govern a country with a population of more than 350 million which has so much diversity in it. The task fell on a constituent assembly, which consists of representation from all sections of society, with Dr. B.R. Ambedkar as the chief of the drafting committee of the constitution and Dr. Rajendra Prasad as President of the constituent assembly. Thus, after nearly three

years, The Constitution of India came into force on 26th January 1950 and India became a Republic.

The Constitution of India is the guiding force for making legislations and Acts throughout India and any law which is in contravention of the provisions of the constitution will be deemed unconstitutional. While India has formed its own constitution by itself, if still follows many of the archaic laws and even full codes from the British era for different offenses like the Indian Contract Act,1872, Indian Penal Code 1860, and laws like Sedition (section 124A of the IPC) which were use before Independence to suppress voices of freedom fighters, but now used by different governments.

Not only the laws but also the judicial system and the legal profession we follow in India are from the British era.

2.5 Hierarchy of Courts:

The Judicial System in India follows a common law system in which the sources of law are statutes enacted by Parliament or State legislatures, Customary law, and judicial decisions of Supreme Court and High courts, which have very significant value while giving judgments.

The Judicial structure is mainly divided into a three-tier structure with:

1. Supreme Court at the top of the judicial system
2. Along with 25 High courts across the country, which have jurisdictions over more than one state.
3. District, sessions courts and various tribunals for different types of disputes.

2.6 Issues in Indian Legal System:

Judiciary is one of the pillars of the Indian democracy which had stood against the injustices to the individuals and also to secure the rights of the aggrieved parties. But in recent times it is being seen that many issues and problems are plaguing the delivery of justice to the common people. The issues which are affecting the Indian judiciary are

1. **Pending cases:**

   It has become a huge problem for both the judiciary and the common people for the last 75 years with over 3.5 crores cases pending across the country's various courts. Around 59,867 cases pending in the Supreme Court, and 44.75 lakh cases in high courts. At the district and subordinate court levels, the number of pending cases stands at a shocking 3.14 crore. In a democratic society with an independent judiciary, it is expected that cases to be resolved in a reasonable time, but the above figures have shown that reality is far from ideals. This delay in justice is a very suffering experience for the litigants and also increases the cost of access to justice. It also degrades the belief of the common people in the judiciary and leads to litigants searching for alternative dispute resolutions like settlement out of court.

   The high pendency in cases can be attributed to many factors like:

   - Population of India, which is staggering at more than 1.4 billion.
   - Increase in the dynamics of the legal sector in respect of various fields such as Information Technology, economic offenses, company laws, Intellectual Property Rights have led to a large increase in cases and subsequently, the courts have not evolved with this level of advancement.

- Review petitions and higher appeals in higher courts also account for a large number of pending cases.

2. **Infrastructural Issues:**
   Court infrastructure is often neglected while deliberating on the issues of access to timely justice, but it is a very important aspect as it impacts the efficiency of both the judges and lawyers who work in these courts for six to seven hours in an uninhabitable environment. The absence of hygiene is also a big cause of concern, as it can lead to the spreading of diseases and lack of separate female toilets, obstructs female lawyers to practice in these courts which is also gender discriminatory.
3. **Vacancy:**
   It is one of the issues which need to be resolved at the earliest both Subordinate courts and High courts level, as 38% of the sanctioned seats for judges at the High courts across the country are lying vacant, with is affecting the delivery of justice to the common people. The conditions of lower courts are also very abysmal as state governments have the sole responsibility in the appointments to these lower court judges/Munsifs posts and their promotions are determined by high courts of the respective states. Thus, there is always inconsistency and delays in the appointments to the lower's courts recruitment because of which aspirants of judicial services often lose their interest to appear in these exams.
4. **Transparency and Unaccountability:**
   Transparency in the working and appointments of judges to the top courts of the country has been a controversial topic since Independence. Though the Independence of the judiciary is one of the basic structures of the constitution, yet sometimes the collegium system seems to take decisions without any accountability and explanation, which promotes the breeding ground for corruption and favouritism in recruitments for

judges and magistrates. Also, allocation of cases should be taken into consideration, as in recent times we have seen unrest in the judiciary in 2018 when a press conference was held by four judges of the apex court for selective allocation of cases to a particular bench.

2.7 Reforms Needed for Indian Legal System:

Various Law Commission reports and independent research works from civil society organizations have come out for improvement of our judicial system, but still, the reality remains far from implementation of these reports.

Here are some of the measures which can transform the judiciary:

1. **Filling up the Judicial Vacancies:**
   From the above findings, judicial appointments should be filled on an urgent basis as the backlog of cases is overburdening the system, which is already very inefficient and slow. From Report No. 245 of the law commission of India it can be seen that Higher Judicial services are disposing less number of cases and also they have the highest vacant seats as compared to Subordinate Judicial Services. Thus, more judges are required to clear the pending cases.
2. **Creation Of All India Judicial Services:**
   Creating an Indian Judicial Services on the grounds of IAS, IPS, and IFS would certainly help in reducing more than 5000 vacancies across the states in district and subordinate's courts. It would also attract the best talents from the country as we are witnessing a transformation in legal education from 3 years traditional LLB course to an integrated 5-year BA LLB course and also the opening of National Law Universities, which provides global standards of education in the legal domain. It would also increase the diversity in the judiciary and will increase the representation of backward communities like SC, ST, and OBC as in the current system different states have

different reservation policies, which can be disadvantageous to the marginalized communities.

3. **Decriminalization of Petty offenses:**
   These cases include minor offenses like traffic challans and cheque bounce cases which should be disposed of within a specific timeline as they account for a majority of the pending cases and special courts headed by retired judges can be established to deal with these petty offenses.
4. **Solving Infrastructural Issues:**
   Creating modern and accessible infrastructure for existing courts across sessions and high courts should be done on a priority basis, as a comfortable environment for judges and lawyers will increase their overall efficiency. Special arrangements should be made inside the complexes for child witnesses and Persons with Disability (PWD) facilities like ramp and special Braille documents should be made available for blind litigants. During the Covid-19 pandemic, the courts which were the most disrupted were the district courts, as they lack the necessary virtual hearing systems like computers or proper internet connectivity unlike the High court or the Apex court. Thus, future arrangements should be made for both judges and lawyers to deal with any uncertain event, which might disrupt the normal physical hearings of courts.
5. **Promoting Alternative Dispute Resolutions (ADR):**
   Promoting ADR culture like mediations and negotiations among individuals and families and streamlining its process can be a viable option to reduce the burden of the judiciary. It will lead to a greater sense of satisfaction among the parties who might get dissatisfied after a court judgment and will also reduce the cost of litigation.

Though India has one of the oldest legal systems, its judicial system has not kept pace with the best practices of modern democratic legal systems and is lagging in many yard sticks such as the number of judges-people ratios, modern infrastructure, pendency in heinous offenses like sexual assault, and lack of access to justice to most vulnerable sections of society.

While India has gained Independence from Britain seventy years back, there are lot of reforms needed to address issues such as delay in justice because of the heavy procedural based system and non-decriminalization of obsolete laws like obscenity law, homosexuality law (Section 377 of IPC).

There is also issue of corruption and non-transparency in the judicial system, as judges are given very high status in Indian society and are kept out of the purview of any kind of supervision and criticism. There has also been demands from governments and civil society activists for a change in the current collegium system to bring more accountability, but these reforms cannot happen unless there is open discussion between judiciary, executive and civil society.



Allahabad High Court

INTRODUCTION OF INDIAN JUDICIAL SYSTEM

3

The Indian judicial system follows the common law system based on recorded judicial precedents as inherited from the British colonial legacy. The court system of India comprises the Supreme Court of India, the High Courts and subordinate courts at district, municipal and village levels.

3.1 Hierarchy of courts

The Indian judiciary is divided into several levels in order to decentralize and address matters at the grassroots levels. The basic structure is as follows:

1. **Supreme Court:**
   It is the Apex court of the country and was constituted on 28th January 1950. It is the highest court of appeal and enjoys both original suits and appeals of High Court judgments. The Supreme Court is comprised of the Chief Justice of India and 25 other judges. Articles 124-147 of the Constitution of India lay down the authority of the Supreme Court.

2. **High Courts:**
   High Courts are the highest judicial body at the State level. Article 214 lays down the authority of High Courts. There are 25 High Courts in India. High Courts exercise civil or criminal jurisdiction only if the subordinate courts in the State are not competent to try the matters. High Courts may even take appeals from lower courts. High Court judges are appointed by the President of India upon consultation with the Chief Justice of India, the Chief Justice of the High Court, and the Governor of the State.
3. **District Courts:**
   District Courts are established by the State Governments of India for every district or group of districts based on the caseload and population density. District Courts are under the direct administration of High Courts and are bound by High Court judgments. Every district generally has two kinds of courts:
   a. Civil Courts
   b. Criminal Courts

   District Courts are presided over by District Judges. Additional District Judges and Assistant District Judges may be appointed based on the caseload. Appeals against District Court judgments lie in the High Court.
4. **Lok Adalats/Village Courts:**
   These are subordinate courts at the village level which provide a system for alternate dispute resolution in villages.

5. **Tribunals:**
   The Constitution provides the government with the power to set up special Tribunals for the administration of specific matters such as tax cases, land cases, consumer cases etc.

Appellate jurisdiction refers to the authority of a court to rehear/review a case decided by a lower court. In India, appellate jurisdiction is vested in both the Supreme Court and High Courts. They may either overrule or uphold the judgments of lower courts.

3.2 Civil Courts

Civil courts provide remedies for civil wrongs committed by individuals against other individuals and entities. Civil matters range from property disputes to breaches of contract to divorce cases. Civil courts follow the principle of **ubi jus ibi remedium** (where there is a right, there is a remedy). It encapsulates the principle that when a legal right is violated, the law provides a corresponding remedy or relief to the aggrieved party. Unless expressly or impliedly barred by any other law in force, civil courts have the jurisdiction to try all suits of civil nature.

The **Code of Civil Procedure (CPC) 1908** governs the procedures to be followed by civil courts in administering civil cases in India.

As a matter of fact, every suit must be instituted before the court of lowest jurisdiction (the Munsif court). Upon institution, it is decided whether the respective court has competence to try the case.
The Civil Court hierarchy in districts is as follows:

1. **District Court:**
   The court of district judges is the highest civil court in a district. It exercises both judicial and administrative functions. The District Judge combines the powers of trying both civil and

criminal cases. Hence, they are designated the District and Sessions Judge.

2. **Sub-judge Court:**
   If the value of the subject-matter of the suit is worth more than Rs. 1 lakh, the Sub-judge and Additional Sub-judge courts may try the suit.
3. **Additional Sub-judge Court:**
   This is created based on the caseload.
4. **Munsif Court:**
   If the value of the subject-matter of the suit is worth Rs. 1 lakh or below, the Munsif court is competent to try the suit.

3.3 Criminal Courts

The power of the various criminal courts is mentioned under the Code of Criminal Procedure (CrPC).

According to Section 26 of the CrPC, any offence mentioned under the Indian Penal Code may be tried by:

1. High Courts
2. Courts of Session
3. Any other Court as specified in the First Schedule of the Code of Criminal Procedure

3.4 Judicial Authority of the Supreme Court

Articles 141 and 144 of the Constitution uphold the authority and jurisdiction given to the Supreme Court to make decisions and uphold the law of the land. These Articles give animal welfare judgments their binding force, ensuring that they are appropriately enforced and implemented by the respective authorities. They allow for the Supreme Court to issue directives and fill gaps in law until the legislature steps in.

Article 141

Article 141 lays down that **"the law declared by the Supreme Court shall be binding on all courts within the territory of India."**

This Article embodies the English principle of stare decisis which holds that law must be definite, fixed, known, and consistent. Since the Supreme Court is the Apex court of the country and all courts and tribunals are bound by its decisions, Supreme Court judgments become a source of law in themselves.

The binding part is the operative part of the judgment or the **ratio decidendi** ("reason of decision") determined after reading the judgment in its entirety. It is the general principle derived from a judgment that is deduced by courts when deciding the case based on facts. Mere observations, or the **obiter dictum** ("said by the way"), on the other hand, refer to those parts of judicial decisions which are general observations of the judge in the case. Obiter dictums have only persuasive value, not binding authority.

Article 144

Article 144 lays down that **"all authorities, civil and judicial, in the territory of India shall act in aid of the Supreme Court."**

The Supreme Court has the power to hold any authority in contempt if they disregard or disobey the order of the court.

3.5 Binding value of Judicial Precedents

Since India is a common law country, previously decided judgments of higher courts such as the Supreme Court and High

Courts are binding on subordinate and lower courts, i.e., subordinate courts are bound to follow the decisions and hold them to be the law. Precedents are an important source of law in India. The binding value of different courts in the court hierarchy is as follows:

1. Decisions of the **Supreme Court** are binding on all courts in India. The Supreme Court is not bound by decisions of High Courts, lower courts or other judicial authorities.
2. Decisions of a **High Court** are binding on all inferior courts (as long as they don't conflict with Supreme Court decisions) within its jurisdiction but holds only persuasive value for courts outside its jurisdiction. In case the decisions of the High Court conflict with the decisions of a similar bench, the matter is referred to a higher bench.
3. **Lower Courts** are bound by decisions of higher courts in their own states. Decisions by High Courts of other states hold only persuasive value.

3.6 Public Interest Litigation (PIL)

Public Interest Litigation (PIL) is an effective tool to advance social justice in India. Borrowed from the American tradition of Social Action Litigation, PILs have been widely used in India to advance the causes of disadvantaged and marginalized communities. The general rule to bring a cause of action in court is the rule of locus standi i.e. the party must possess sufficient connection or suffer particular harm in order to be a party to the case. In PILs, this rule is relaxed considerably as any citizen of India may bring an action in court to reduce a wrong if there has been a breach of Fundamental Rights. PILs are an effective tool in the furtherance of animal protection by allowing animal rights groups and activists to file PILs at the Supreme Court and give a voice to the voiceless.

Some landmark PILs related to animal welfare filed in the Supreme Court of India include the cases of **People for Ethical Treatment of Animals v. Union of India** (a case regarding the protection of animals against exploitation and ill-treatment during filmmaking) and **Animal Welfare Board of India v. A. Nagaraja & Ors.** (a case regarding the prohibition of a traditional bull-fighting practice called Jallikattu).

3.7 Important Legislature or Acts in India

Historical Act-

1. The Regulating Act, 1773
2. The Charter Act, 1833
3. The Government of India Act, 1858
4. The Government of India Act, 1909
5. The Government of India Act, 1919
6. The Government of India Act, 1935
7. The Indian Independence Act, 1947

Acts For Consolidations and Reorganizations Within the Country

1. The States Reorganization Act, 1956
2. The Northeastern Areas (Reorganization) Act, 1971
3. The Jammu and Kashmir Reorganization Act, 2019

Acts of Meeting the Needs of Indian Societal Structure and Preserving Heritage

1. The Citizenship Act, 1955
2. The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989
3. The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006
4. The Prohibition of Child Marriage Act, 2006
5. The Special Marriage Act, 1954

6. The Ancient Monuments and Archaeological Sites and Remains Act, 1958

Acts for Welfare and Empowerment of Women

1. The Dowry Prohibition Act, 1961
2. The Protection of Women from Domestic Violence Act, 2005
3. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013
4. The Muslim Women (Protection of Rights on Marriage) Act, 2019
5. The Muslim Women (Protection of Rights on Divorce) Act, 1986

Acts Addressing Issues Arising out of Technology.

1. The Information Technology Act, 2000
2. The Telegraph Act, 1885

Acts related to Indian Polity, Governance and Judicial Structure

1. The Representation of the People Act, 1950
2. The Representation of the People Act, 1951
3. The Parliament (Prevention of Disqualification) Act, 1959
4. The Provisions of the Panchayats (Extension to the Scheduled Areas) Act (PESA), 1996
5. The Administrative Tribunals Act, 1985
6. The Arbitration and Conciliation Act, 1996
7. The Gram Nyayalayas Act, 2008
8. The Contempt of Courts Act, 1971
9. The Prevention of Insults to National Honour Act, 1971

10. The National Judicial Appointments Commission Act, 2014

Acts for Vulnerable Sections of Populations, Health, Education and Human Resource

1. The Juvenile Justice (Care and Protection of Children) Act, 2015
2. The Protection of Children from Sexual Offences Act, 2012
3. The Rights of Persons with Disabilities Act, 2016
4. The Transgender Persons (Protection of Rights) Act, 2019
5. The National Food Security Act, 2013
6. The Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016
7. The Mental Healthcare Act, 2017
8. The Right of Children to Free and Compulsory Education Act, 2009
9. The Industrial Disputes Act, 1947
10. The Payment of Gratuity Act, 1972
11. The Unorganised Workers' Social Security Act, 2008
12. The Maternity Benefit Act, 1961
13. The Code on Wages, 2019
14. The Mahatma Gandhi National Rural Employment Guarantee Act, 2005
15. The Bonded Labour System (Abolition) Act, 1976
16. The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013
17. The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013

Acts Promoting Transparency in Governance

1. The Prevention of Corruption Act, 1988
2. The Central Vigilance Commission Act, 2003
3. The Right to Information Act, 2005
4. The Lokpal and Lokayuktas Act, 2013
5. The Whistle Blowers Protection Act, 2014

Acts Addressing Issues Arising out of Economy.

1. The Fiscal Responsibility and Budget Management Act, 2003
2. The Comptroller Auditor-General's (Duties, Powers and Conditions of Service) Act, 1971
3. The Income Tax Act, 1961
4. The Goods and Services Tax Legislation, 2017
5. The Companies Act, 2013
6. The Competition Act, 2002
7. The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interests (SARFAESI) Act, 2002
8. The Insolvency and Bankruptcy Code, 2016
9. The Fugitive Economic Offenders Act, 2018
10. The Prevention of Money Laundering Act, 2002
11. The Foreign Exchange Management Act, 1999
12. The Foreign Contribution (Regulation) Act, 2010
13. The Reserve Bank of India Act, 1934
14. The Securities and Exchange Board of India Act, 1992
15. The Essential Commodities Act, 1955
16. The Food Safety and Standards Act, 2006
17. The Mines and Minerals (Development and Regulation) Act, 1957
18. The Motor Vehicles Act, 1988

19. The Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003
20. The Narcotic Drugs and Psychotropic Substances Act, 1985
21. The Consumer Protection Act, 2019

Acts Dealing with Intellectual Property Rights

1. The Copyright Act, 1957
2. The Patents Act, 1970
3. The Trademarks Act, 1999
4. The Geographical Indications of Goods (Registration and Protection) Act, 1999

Acts Protecting Environment and Biodiversity

1. The Indian Forest Act, 1927
2. The Wildlife Protection Act, 1972
3. The Environment Protection Act, 1986
4. The Water (Prevention and Control of Pollution) Act, 1974
5. The Air (Prevention and Control of Pollution) Act, 1981
6. The National Green Tribunal Act, 2010
7. The Protection of Plant Varieties and Farmers' Rights Act, 2001
8. The Biological Diversity Act, 2002

Acts Dealing with Security and Disaster Management

1. The Indian Penal Code, 1860
2. The Code of Civil Procedure, 1908
3. The Code of Criminal Procedure, 1973

4. The Indian Evidence Act, 1872
5. The Arms Act, 1959
6. The Unlawful Activities (Prevention) Act, 1967
7. The National Security Act, 1980
8. The Official Secrets Act, 1923
9. The National Investigation Agency Act, 2008
10. The Armed Forces (Special Powers) Act, 1958
11. The Epidemic Diseases Act, 1897
12. The Disaster Management Act, 2005



Lucknow High Court

MINISTRY OF LAW AND JUSTICE (INDIA)

4

The Ministry of Law and Justice in the Government of India is a cabinet ministry which deals with the management of the legal affairs, legislative activities, and administration of justice in India through its three departments namely the Legislative Department and the Department of Legal Affairs and the Department of Justice respectively. The Department of Legal Affairs is concerned with advising the various Ministries of the Central Government while the Legislative Department is concerned with drafting of principal legislation for the Central Government. The first Law and Justice minister of independent India was Dr. B. R. Ambedkar, who served in the Prime Minister Jawaharlal Nehru's cabinet during 1947–51.

4.1 History of Ministry of law and justice

Ministry of law and justice is the oldest limb of the government of India dating back to 1833 when the Charter Act 1833 was enacted by the British Parliament when India was under British control. The said Act vested for the first-time legislative power in a single authority, namely the Governor General in Council. By virtue of this authority and the authority vested under him under section 22

of the Indian Councils Act 1861 the Governor General in Council enacted laws for the country from 1834 to 1920. After the commencement of the Government of India Act 1919 the legislative power was exercised by the Indian Legislature constituted thereunder. The Government of India Act 1919 was followed by the Government of India Act 1935. With the passing of the Indian Independence Act 1947 India became a 'dominion' and the 'dominion legislature' made laws from 1947 to 1949 under the provisions of section 100 of the Government of India Act 1935 as adapted by the India (Provisional Constitution) Order 1947. When the Constitution of India came into force on 26 January 1950, the legislative power thereafter got vested in the Parliament of India.

4.2 Organisation

The Government of India (Allocation of Business) Rules of 1961 entail the various departments working under the Ministry of Law and Justice of Government of India. In terms of these Rules, the Ministry comprises the following departments:

- Department of Legal Affairs
- Legislative Department
- Department of Justice.

4.3 Department of Legal Affairs

The Department of Legal Affairs has two main duties: advice and litigation. Specifically, the following functions are allocated to the Department:

1. Advice to Ministries on legal matters including interpretation of the Constitution and the laws, conveyancing, and engagement of counsel to appear on behalf of the Union of India in the High Courts and subordinate courts where the Union of India is a party.
2. Attorney General of India, Solicitor General of India, and other Central Government law officers of the States whose services are shared by the Ministries of the Government of India.

3. Conduct of cases in the Supreme Court and the High Courts on behalf of the Central Government and on behalf of the Governments of States participating in the Central Agency Scheme.
4. Reciprocal arrangements with foreign countries for the service of summons in civil suits, for the execution of decrees of Civil Courts, for the enforcement of maintenance orders, and for the administration of the estates of foreigners dying in India intestate.
5. Authorization of officers to execute contracts and assurances and of property on behalf of the President under Article 299(1) of the Constitution, and authorization of officers to sign and verify plaints or written statements in suits by or against the Central Government.
6. Indian Legal Service.
7. Treaties and agreements with foreign countries in matters of civil law.
8. Law Commission.
9. Legal Profession including the Advocates Act, 1961 (25 of 1961) and persons entitled to practice before High Courts.
10. Enlargement of the jurisdiction of Supreme Court and the conferring thereon of further powers; persons entitled to practice before the Supreme Court; references to the Supreme Court under Article 143 of the Constitution of India.
11. Administration of the Notaries Act, 1952 (53 of 1952).
12. Income-tax Appellate Tribunal.
13. Appellate Tribunal for Foreign Exchange.
14. Legal aid to the poor.

The Department's Main Secretariat is in New Delhi. It also maintains Branch Secretariats in the cities of Mumbai, Kolkata, Chennai, and Bengaluru.

4.4 Legislative Department

The Legislative Department is mainly concerned with drafting of all principal legislation for the Central Government i.e. Bills to be introduced in Parliament, Ordinances to be promulgated by the President, measures to be enacted as President's Acts for States under the President's rule and Regulations to be made by the President for Union territories. It is also concerned with election Laws namely the Representation of the People Act 1950 and the Representation of the People Act 1951. In addition, it is also

entrusted with the task of dealing with certain matters relating to List III of the Seventh Schedule to the Constitution like personal law, contracts evidence, etc. The responsibility of maintaining up to date the statutes enacted by Parliament is also with this Department. The Allocation of Business Rules identify the following functions to be carried out by this Department:

1. The drafting of Bills, including the business of the Draftsmen in Select Committees, drafting and promulgation of Ordinances and Regulations; enactment of State Acts as President's Acts whenever required; scrutiny of Statutory Rules and Orders (except notifications under clause (a) of section 3, section 3A and section 3D, of the National Highways Act, 1956 (48 of 1956)).
2. Constitution Orders; notifications for bringing into force Constitution (Amendment) Acts.
3. (a) Publication of Central Acts, Ordinance and Regulations; (b) Publication of authorised translations in Hindi of Central Acts, Ordinances, Orders, Rules, Regulations and byelaws referred to in section 5(1) of the Official Languages Act, 1963 (19 of 1963).
4. Compilation and publication of unrepealed Central Acts, Ordinances and Regulations of general statutory Rules and Orders, and other similar publications.
5. Elections to Parliament, to the Legislatures of States, to the Offices of the President and Vice-President; and the Election Commission.
6. Preparation and publication of standard legal terminology for use, as far as possible, in all official languages.
7. Preparation of authoritative texts in Hindi of all Central Acts and of Ordinances promulgated and Regulations made by the President and of all rules, regulations and orders made by the Central Government under such Acts, Ordinances and Regulations.
8. Making arrangements for the translation into official languages of the States of Central Acts and of Ordinances promulgated and Regulations made by the President and for the translation of all State Acts and Ordinances into Hindi if the texts of such Acts or Ordinance are in a language other than Hindi.
9. Publication of law books and law journals in Hindi.
10. Marriage and divorce; infants and minors; adoption, wills; intestate and succession; joint family and partition.

11. Transfer of property other than agricultural land (excluding benami transactions registration of deeds and documents).
12. Contracts, but not including those relating to agricultural land.
13. Actionable wrongs.
14. Bankruptcy and insolvency.
15. Trusts and trustees, Administrators, General and Official Trustees.
16. Evidence and oaths.
17. Civil Procedure including Limitation and Arbitration.
18. Charitable and religious endowments and religious institutions.

4.5 Department of Justice

The Department of Justice performs the administrative functions in relation to the appointment of various judges at various courts in India, maintenance and revision of the conditions and rules of service of the judges and other related areas. The Department is housed in Jaisalmer House. The Allocation of Business Rules identify the following functions to be carried out by this Department:

1. Appointment, resignation and removal of the Chief Justice of India and Judges of the Supreme Court of India; their salaries, rights in respect of leave of absence (including leave allowances), pensions and travelling allowances.
2. Appointment, resignation, and removal, etc., of Chief Justice and Judges of High Courts in States; their salaries, rights in respect of leave of absence (including leave allowances), pensions and travelling allowances.
3. Appointment of Judicial Commissioners and Judicial officers in Union Territories.
4. Constitution and organisation (excluding jurisdiction and powers) of the Supreme Court (but including contempt of such Court) and the fees taken therein.
5. Constitution and organisation of the High Courts and the Courts of Judicial Commissioners except provisions as to officers and servants of these courts.
6. Administration of justice.
7. Creation of all India Judicial Service.

8. Conditions of service of District Judges and other Members of Higher Judicial Service of Union Territories.

9. Extension of the Jurisdiction of a High Court to a Union Territory or exclusion of a Union Territory from the Jurisdiction of a High Court.

10. Extension of the Jurisdiction of a High Court to a Union Territory or exclusion of a Union Territory from the Jurisdiction of a High Court.

11. Appointment, resignation and removal of the Chief Justice of India and Judges of the Supreme Court of India; their salaries, rights in respect of leave of absence (including rules of service of the judges and other related areas the allocation of business rules identify the following functions to be carried out by this department leave of creation of all India Judicial Service).



Madras High Court

CONSTITUTION OF INDIA

5

The **Constitution of India** is the supreme law of India. The document lays down the framework that demarcates fundamental political code, structure, procedures, powers, and duties of government institutions and sets out fundamental rights, directive principles, and the duties of citizens. It is the longest written national constitution in the world.

It imparts constitutional supremacy (not parliamentary supremacy, since it was created by a constituent assembly rather than Parliament) and was adopted by its people with a declaration in its preamble. Parliament cannot override the constitution.

It was adopted by the Constituent Assembly of India on 26 November 1949 and became effective on 26 January 1950. The constitution replaced the Government of India Act 1935 as the country's fundamental governing document, and the Dominion of India became the Republic of India. To ensure constitutional autochthony, its framers repealed prior acts of the British

parliament in Article 395. India celebrates its constitution on 26 January as Republic Day.



B. R. Ambedkar and Constitution of India on a 2015 postage stamp of India

The constitution declares India a sovereign, socialist, secular, and democratic republic, assures its citizens justice, equality, and liberty, and endeavours to promote fraternity. The original 1950 constitution is preserved in a nitrogen-filled case at the Parliament House in New Delhi.

5.1 Background of Constitution

The constitution was drafted by the Constituent Assembly, which was elected by elected members of the provincial assemblies. The 389-member assembly (reduced to 299 after the partition of India) took almost three years to draft the constitution holding eleven sessions over a 165-day period.

In the constitution assembly, a member of the drafting committee, T. T. Krishnamachari said:

> Mr. President, Sir, I am one of those in the House who have listened to Dr. Ambedkar very carefully. I am aware of the amount of work and enthusiasm that he has brought to bear on the work of drafting this Constitution. At the same time, I do realise that that amount of attention that was necessary for the purpose of drafting a constitution so important to us at this moment has not been given to it by the Drafting Committee. The House is perhaps aware that of the seven members nominated by you, one had resigned from the House and was replaced. One died and was not replaced. One was away in America and his place was not filled up and another person was engaged in State affairs, and there was a void to that extent. One or two people were far away from Delhi and perhaps reasons of health did not permit them to attend. So, it happened ultimately that the burden of drafting this constitution fell on Dr. Ambedkar and I have no doubt that we are grateful to him for having achieved this task in a manner which is undoubtedly commendable.

B. R. Ambedkar in his concluding speech in constituent assembly on 25 November 1949 stated that:

> The credit that is given to me does not really belong to me. It belongs partly to Sir B.N. Rau the Constitutional Advisor to the Constituent Assembly who prepared a rough draft of the Constitution for the consideration of Drafting Committee.

While deliberating the revised draft constitution, the assembly moved, discussed and disposed off 2,473 amendments out of a total of 7,635.

Timeline of formation of the Constitution of India

6 December 1946	Formation of the Constitution Assembly (in accordance with French practice).
9 December 1946	The first meeting was held in the constitution hall (now the Central Hall of Parliament House). The 1st person to address was J. B. Kripalani, Sachchidananda Sinha became temporary president. (Demanding a separate state, the Muslim League boycotted the meeting.)
11 December 1946	The Assembly appointed Rajendra Prasad as its president, H. C. Mukherjee as its vice president and, B. N. Rau as constitutional legal adviser. (There were initially 389 members in total, which declined to 299 after partition. Out of the 389 members, 292 were from government provinces, four from chief commissioner provinces and 93 from princely states.)
13 December 1946	An "Objective Resolution" was presented by Jawaharlal Nehru, laying down the underlying principles of the constitution. This later became the Preamble of the Constitution.
22 January 1947	Objective resolution unanimously adopted.
22 July 1947	National flag adopted.
15 August 1947	Achieved independence. India split into the Dominion of India and the Dominion of Pakistan.
29 August 1947	Drafting Committee appointed with B. R. Ambedkar as its chairman. The other six members of committee were K.M. Munshi, Muhammed Sadulla, Alladi Krishnaswamy Iyer, N. Gopalaswami Ayyangar, Devi Prasad Khaitan and BL Mitter.

16 July 1948	Along with Harendra Coomar Mookerjee, V. T. Krishnamachari was also elected as second vice president of Constituent Assembly.
26 November 1949	The Constitution of India was passed and adopted by the assembly.
24 January 1950	Last meeting of Constituent Assembly. The Constitution was signed and accepted (with 395 Articles, 8 Schedules, and 22 Parts).
26 January 1950	The Constitution came into force. (The process took 2 years, 11 months and 18 days—at a total expenditure of ₹6.4 million to finish.)

G. V. Mavlankar was the first Speaker of the Lok Sabha (the lower house of Parliament) after India turned into a republic.



Babasaheb Ambedkar, chairman of the drafting committee, presenting the final draft of the Indian constitution to Constituent Assembly president Rajendra Prasad on 25 November 1949

5.2 Membership

B. R. Ambedkar, Sanjay Phakey, Jawaharlal Nehru, C. Rajagopalachari, Rajendra Prasad, Vallabhbhai Patel, Kanaiyalal Maneklal Munshi, Ganesh Vasudev Mavalankar, Sandipkumar Patel, Abul Kalam Azad, Shyama Prasad Mukherjee, Nalini Ranjan Ghosh, and Balwantrai Mehta were key figures in the assembly,which had over 30 representatives of the scheduled classes. Frank Anthony represented the Anglo-Indian community, and the Parsis were represented by H. P. Modi. Harendra Coomar Mookerjee, a Christian assembly vice-president, chaired the minorities committee and represented non-Anglo-Indian Christians. Ari Bahadur Gurung represented the Gorkha community. Judges, such as Alladi Krishnaswamy Iyer, Benegal Narsing Rau, K. M. Munshi and Ganesh Mavlankar were members of the assembly. Female members included Sarojini Naidu, Hansa Mehta, Durgabai Deshmukh, Amrit Kaur and Vijaya Lakshmi Pandit.

The first, two-day president of the assembly was Sachchidananda Sinha; Rajendra Prasad was later elected president. It met for the first time on 9 December 1946.



1950 Constituent Assembly meeting

5.3 Drafting

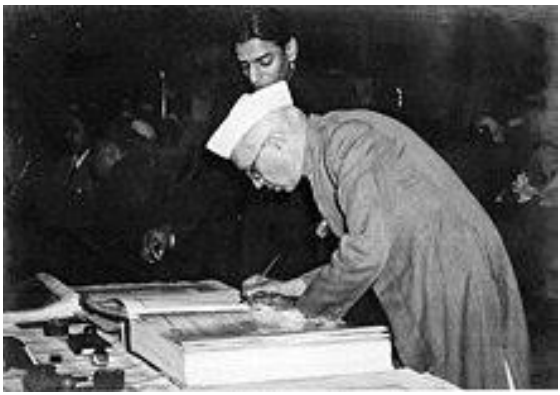
Sir B. N. Rau, a civil servant who became the first Indian judge in the International Court of Justice and was president of the United Nations Security Council, was appointed as the assembly's constitutional adviser in 1946. Responsible for the constitution's general structure, Rau prepared its initial draft in February 1948.The draft of B.N. Rau consisted of 243 articles and 13 schedules which came to 395 articles and 8 schedules after discussions, debates, and amendments.

On 14 August 1947 meeting of the assembly, committees were proposed. Rau's draft was considered, debated, and amended by the eight-person drafting committee, which was appointed on 29 August 1947 with B. R. Ambedkar as chair. A revised draft constitution was prepared by the committee and submitted to the assembly on 4 November 1947.

Before adopting the constitution, the assembly held eleven sessions in 165 days. On 26 November 1949, it adopted the constitution, which was signed by 284 members. The day is celebrated as National Law Day, or Constitution Day. The day was chosen to spread the importance of the constitution and to spread thoughts and ideas of Ambedkar.

The assembly's final session convened on 24 January 1950. Each member signed two copies of the constitution, one in Hindi and the other in English. The original constitution is hand-written, with each page decorated by artists from Shantiniketan including Beohar Rammanohar Sinha and Nandalal Bose. Its calligrapher was Prem Behari Narain Raizada. The constitution was published in Dehradun and photolithographed by the Survey of India. Production of the original constitution took nearly five years. Two days later, on 26 January 1950, it became the law of India. The estimated cost of the

Constituent Assembly was ₹6.3 crore. The constitution has had more than 100 amendments since it was enacted



Jawaharlal Nehru signing the constitution

5.4 Structure

The Indian constitution is the world's longest for a sovereign nation. At its enactment, it had 395 articles in 22 parts and 8 schedules. At about 145,000 words, it is the second-longest active constitution—after the Constitution of Alabama—in the world.

The amended constitution has a preamble and 470 articles, which are grouped into 25 parts. With 12 schedules[d] and five appendices, it has been amended 105 times; the latest amendment became effective on 15 August 2021.

The constitution's articles are grouped into the following parts:

Preamble	With the words "socialist", "secular" and 'integrity' added in 1976 by the 42nd amendment	
Part I	The Union and its Territory	Articles 1 to 4
Part II	Citizenship	Articles 5 to 11
Part III	Fundamental Rights	Articles 12 to 35
Part IV	Directive Principles of State Policy	Articles 36 to 51
Part IVA	Fundamental Duties	Article 51A
Part V	The Union	Articles 52 to 151
Part VI	The States	Articles 152 to 237

Part VII	States in the B part of the first schedule (repealed)	Article 238
Part VIII	Union Territories	Articles 239 to 242
Part IX	Panchayats	Articles 243 to 243(O)
Part IXA	Municipalities	Articles 243(P) to 243(ZG)
Part IXB	Co-operative societies	Articles 243(ZH) to 243(ZT)
Part X	Scheduled and tribal areas	Articles 244 to 244A
Part XI	Relations between the Union and the States	Articles 245 to 263
Part XII	Finance, property, contracts and suits	Articles 264 to 300A
Part XIII	Trade and commerce within India	Articles 301 to 307
Part XIV	Services under the union and states	Articles 308 to 323
Part XIVA	Tribunals	Articles 323A to 323B
Part XV	Elections	Articles 324 to 329A
Part XVI	Special provisions relating to certain classes	Articles 330 to 342
Part XVII	Languages	Articles 343 to 351
Part XVIII	Emergency provisions	Articles 352 to 360
Part XIX	Miscellaneous	Articles 361 to 367
Part XX	Amendment of the Constitution	Articles 368
Part XXI	Temporary, transitional and special provisions	Articles 369 to 392
Part XXII	Short title, date of commencement, authoritative text in Hindi and repeals	Articles 393 to 395

5.5 Schedules

Schedules are lists in the constitution which categorise and tabulate bureaucratic activity and government policy.

Schedule	Article(s)	Description
First	1 and 4	Lists India's states and territories, changes in their borders and the laws used to make that change.

Second	59(3), 65(3), 75(6), 97, 125, 148(3), 158(3), 164(5), 186 and 221	Lists the salaries of public officials, judges, and the comptroller and auditor general.
Third	75(4), 99, 124(6), 148(2), 164(3), 188 and 219	Forms of oaths – Lists the oaths of office for elected officials and judges
Fourth	4(1) and 80(2)	Details the allocation of seats in the Rajya Sabha (upper house of Parliament) by state or union territory.
Fifth	244(1)	Provides for the administration and control of Scheduled Areas and Scheduled Tribes (areas and tribes requiring special protection).
Sixth	244(2) and 275(1)	Provisions made for the administration of tribal areas in Assam, Meghalaya, Tripura, and Mizoram.
Seventh	246	Central government, state, and concurrent lists of responsibilities
Eighth	344(1) and 351	Official languages
Ninth	31-B	Validation of certain acts and regulations.
Tenth	102(2) and 191(2)	Anti-defection provisions for members of Parliament and state legislatures.
Eleventh	243-G	Panchayat Raj (rural local government)
Twelfth	243-W	Municipalities (urban local government)

Appendices

Appendix I	The Constitution (Application to Jammu and Kashmir) Order, 1954
Appendix II	Re statement, referring to the constitution's present text, of exceptions and modifications applicable to the state of Jammu and Kashmir

Appendix III	Extracts from the Constitution (Forty fourth Amendment) Act, 1978
Appendix IV	The Constitution (Eighty sixth Amendment) Act, 2002
Appendix V	The Constitution (Eighty eighth Amendment) Act, 2003

5.6 Governmental sources of power

The executive, legislative, and judicial branches of government receive their power from the constitution and are bound by it. With the aid of its constitution, India is governed by a parliamentary system of government with the executive directly accountable to the legislature.

Under Articles 52 and 53:
The president of India is head of the executive branch

Under Article 60:
The duty of preserving, protecting, and defending the constitution and the law.

Under Article 74:
The prime minister is the head of the Council of Ministers, which aids and advises the president in the performance of their constitutional duties.

Under Article 75(3):
The Council of Ministers is answerable to the lower house.

The constitution is considered federal in nature, and unitary in spirit. It has features of a federation, including a codified, supreme constitution; a three-tier governmental structure (central, state, and local); division of powers; bicameralism; and an independent judiciary. It also possesses unitary features such as a single constitution, single citizenship, an integrated judiciary, a flexible constitution, a strong central government, appointment of state governors by the central government, All India Services (the IAS, IFS and IPS), and emergency provisions. This unique combination makes it quasi-federal in form.

Each state and union territory has its own government. Analogous to the president and prime minister, each has a governor or (in union

territories) a lieutenant governor and a chief minister. Article 356 permits the president to dismiss a state government and assume direct authority if a situation arises in which state government cannot be conducted in accordance with constitution. This power, known as president's rule, was abused as state governments came to be dismissed on flimsy grounds for political reasons. After the S. R. Bommai v. Union of India decision, such a course of action is more difficult since the courts have asserted their right of review.

The 73rd and 74th Amendment Acts introduced the system of panchayati raj in rural areas and Nagar Palikas in urban areas. Article 370 gave special status to the state of Jammu and Kashmir which has been abrogated in 2019.

5.7 The legislature and amendments

Article 368 dictates the procedure for constitutional amendments. Amendments are additions, variations, or repeal of any part of the constitution by Parliament. An amendment bill must be passed by each house of Parliament by a two-thirds majority of its total membership when at least two-thirds are present and vote. Certain amendments pertaining to the constitution's federal nature must also be ratified by a majority of state legislatures.

Unlike ordinary bills in accordance with Article 245 (except for money bills), there is no provision for a joint session of the Lok Sabha and Rajya Sabha to pass a constitutional amendment. During a parliamentary recess, the president cannot promulgate ordinances under his legislative powers under Article 123, Chapter III.

5.8 Limitations

In Kesavananda Bharati v. State of Kerala, the Supreme Court ruled that an amendment cannot destroy what it seeks to modify; it cannot tinker with the constitution's basic structure or framework, which are immutable. Such an amendment will be declared invalid,

although no part of the constitution is protected from amendment; the basic structure doctrine does not protect any one provision of the constitution. According to the doctrine, the constitution's basic features (when "read as a whole") cannot be abridged or abolished. These "basic features" have not been fully defined, and whether a particular provision of the constitution is a "basic feature" is decided by the courts.

The Kesavananda Bharati v. State of Kerala, 1973 decision laid down the constitution's basic structure:

1. Supremacy of the constitution
2. Republican, democratic form of government
3. Its secular nature
4. Separation of powers
5. Its federal character

This implies that Parliament can only amend the constitution to the limit of its basic structure. The Supreme Court or a high court may declare the amendment null and void if this is violated, after a judicial review. This is typical of parliamentary governments, where the judiciary checks parliamentary power.

In its 1967 Golak Nath v. State of Punjab decision, the Supreme Court ruled that the state of Punjab could not restrict any fundamental rights protected by the basic structure doctrine. The extent of land ownership and practice of a profession, in this case, were considered fundamental rights. The ruling was overturned with the ratification of the 24th Amendment in 1971.

5.9 The judiciary

The judiciary is the final arbiter of the constitution. Its duty (mandated by the constitution) is to act as a watchdog, preventing any legislative or executive act from overstepping constitutional bounds. The judiciary protects the fundamental rights of the people

(enshrined in the constitution) from infringement by any state body and balances the conflicting exercise of power between the central government and a state (or states).

The courts are expected to remain unaffected by pressure exerted by other branches of the state, citizens, or interest groups. An independent judiciary has been held as a basic feature of the constitution, which cannot be changed by the legislature or the executive. Article 50 of the Constitution provides that the state must take measures to separate the judiciary from the executive in the public services.

5.10 Judicial review

Judicial review was adopted by the constitution of India from judicial review in the United States. In the Indian constitution, judicial review is dealt with in Article 13. The constitution is the supreme power of the nation and governs all laws. According to Article 13:

1. All pre-constitutional laws, if they conflict wholly or in part with the constitution, shall have all conflicting provisions deemed ineffective until an amendment to the constitution ends the conflict; the law will again come into force if it is compatible with the constitution as amended (the Doctrine of Eclipse).
2. Laws made after the adoption of the constitution must be compatible with it, or they will be deemed void ab initio.
3. In such situations, the Supreme Court (or a high court) determines if a law is in conformity with the constitution. If such an interpretation is not possible because of inconsistency (and where separation is possible), the provision which is inconsistent with the constitution is considered void. In addition to Article 13, Articles 32, 226 and 227 provide the constitutional basis for judicial review.

Due to the adoption of the Thirty-eighth Amendment, the Supreme Court was not allowed to preside over any laws adopted during a state of emergency which infringe fundamental rights under article 32 (the right to constitutional remedies). The Forty-second Amendment widened Article 31C and added Articles 368(4) and 368(5), stating that any law passed by Parliament could not be challenged in court. The Supreme Court ruled in Minerva Mills v. Union of India that judicial review is a basic characteristic of the constitution, overturning Articles 368(4), 368(5) and 31C.

5.11 The executive

Chapter 1 of the Constitution of India creates a parliamentary system, with a Prime Minister who, in practice, exercises most executive power. The prime minister must have the support of a majority of the members of the Lok Sabha, or lower House of Parliament. If the Prime Minister does not have the support of a majority, the Lok Sabha can pass a motion of no confidence, removing the Prime Minister from office. Thus, the Prime Minister is the member of parliament who leads the majority party or a coalition comprising a majority. The Prime Minister governs with the aid of a Council of Ministers, which the Prime Minister appoints and whose members head ministries. Importantly, Article 75 establishes that "the Council of Ministers shall be collectively responsible to the House of the People" or Lok Sabha. The Lok Sabha interprets this article to mean that the entire Council of Ministers can be subjected to a no confidence motion. If a no confidence motion succeeds, the entire Council of Ministers must resign.

Despite the Prime Minister exercising executive power in practice, the constitution bestows all the national government's executive power in the office of the President. This de jure power is not exercised in reality, however. Article 74 requires the President follow the "aid and advice" of the council, headed by the Prime Minister. In practice, this means that President's role is mostly ceremonial, with the Prime Minister exercising executive power because the President is obligated to act on the Prime Minister's wishes. The President does retain the power to ask the council to reconsider its advice, however, an action the President may take publicly. The council is not required to make any changes before

resubmitting the advice to the President, in which case the President is constitutionally required to adhere to it, overriding the President's discretion. Previous Presidents have used this occasion to make public statements about their reasoning for sending a decision back to the council, in an attempt to sway public opinion. This system, with an executive who only possesses nominal power and an official "advisor" who possess actual power, is based on the British system and is a result of colonial influences on India before and during the writing of its constitution.

The President is chosen by an electoral college composed of the members of both the national and state legislatures. Article 55 outlines the specifics of the electoral college. Half of the votes in the electoral college are assigned to state representatives in proportion to the population of each state and the other half are assigned to the national representatives. The voting is conducted using a secret, single transferable vote.

While the Constitution gives the legislative powers to the two Houses of Parliament, Article 111 requires the President's signature for a bill to become law. Just as with the advice of the council, the President can refuse to sign and send it back to the Parliament, but the Parliament can in turn send it back to the President who must then sign it.

5.12 Presidential power to Legislate.

When either or both Houses of Parliament are not in session, the Prime Minister, acting via the President, can unilaterally exercise the legislative power, creating ordinances that have the force of law. These ordinances expire six weeks after Parliament reconvenes or sooner if both Houses disapprove.

5.13 Federalism

The first article of the Constitution declares that India is a "Union of States". Under the Constitution, the States retain key powers for themselves and have a strong influence over the national government via the Rajya Sabha. However, the Constitution does provide key limits on

their powers and gives final say in many cases to the national government.

5.14 State powers in the Constitution

1. **Rajya Sabha**
   At the Union level, the States are represented in the Rajya Sabha or Council of States. The Fourth Schedule of the Constitution lays out the number of seats that each State controls in the Council of States, and they are based roughly on each State's population. The members of each state legislature elect and appoint these representatives in the Council of States. On most topics the Rajya Sabha is coequal with the lower house or Lok Sabha, and its consent is required for a bill to become a law. Additionally, as one of the Houses of Parliament, any amendment to the Constitution requires a two-thirds majority in the Rajya Sabha to go into effect. These provisions allow the States significant impact on national politics through their representation in the "federal chamber".

2. **State List**
   The Constitution provides the States with a long list of powers exclusive to their jurisdiction. Generally only State Legislatures are capable of passing laws implementing these powers; the Union government is prohibited from doing so. These powers are contained in the second list of the Seventh Schedule of the Constitution, known as the State List. The areas on the State List are wide-ranging and include topics like public health and order and a variety of taxes. The State List grants the states control over the police, healthcare, agriculture, elections, and more.

   Powers can only be permanently removed from the State List via a constitutional amendment approved by a majority of the states. The Rajya Sabha, as the representative of the States, can temporarily remove an item from the State List so the Union parliament can legislate on it. This requires a two-thirds vote and lasts for a renewable one-year period.

3. **Amendments**
   In addition to exerting influence over the amendment process via the Rajya Sabha, the States are sometimes involved in the amendment process. This special, entrenched process is triggered when an amendment to the Constitution specifically concerns the States by modifying the legislature or the powers reserved to the states in the Seventh Schedule. When this

occurs, an amendment must be ratified by a majority of state legislatures for the amendment to go into effect.

5.15 Limitations on state powers

1. Union and Concurrent Lists

While the State List mentioned above provides powers for the States, there are two other lists in the Seventh Schedule that generally weaken them. These are the Union and Concurrent lists. The Union List is the counterpart to the State List, containing the areas of exclusive jurisdiction of the Union government, where the states are prohibited from legislating. Items on the Union List include the national defense, international relations, immigration, banking, and interstate commerce.

The final list is the Concurrent List which contains the topics on which both the Union and State-level governments may legislate on. These topics include courts and criminal law, unions, social security, and education. In general, when the Union and State laws on a Concurrent List item conflict, the Union-level laws prevail. The only way for the State-level law to override the national one is with the consent of the President, acting on the advice of the Prime Minister.

Additionally, any powers not on any of the three lists are reserved for the Union government and not for the states.

5.16 Appointment of governors

The Governor of each State is given the executive power of the respective State by the Constitution. These Governors are appointed directly by the President of the central government. Because the Prime Minister acts via the President, the Prime Minister is the one who chooses the Governors in practice. Once appointed, a Governor serves for a five-year term or can be replaced by the President at any time, if asked to do so by the Prime Minister. Because the Union government can remove a Governor at any time, it is possible that Governors may act in a way the Union Government wants, to the detriment of their state, so that they can maintain their office. This has become a larger issue as the State Legislatures are often controlled by different parties than that of the Union Prime Minister, unlike the early years of the constitution. For example, Governors have used stalling tactics to delay giving their assent to legislation that the Union Government disapproves of.

In general the influence of the Union on State politics via the Governor is limited, however, by the fact that the Governor must listen to the advice of the Chief Minister of the State who needs to command a majority in the State Legislature. There are key areas where the Governor does not need to heed the advice of the Chief Minister. For example, the Governor can send a bill to president for consideration instead of signing it into law.

5.17 Creation of states

Perhaps the most direct power over the States is the Union's ability to unilaterally create new states out of territories or existing states and to modify and diminish the boundaries of existing states. To do so, Parliament must pass a simple law with no special majority requirements. The States involved do not have a say on the outcome, but the State Legislature must be asked to comment. The most recent state to be created was Telangana in 2014. More recently, Ladakh was created as a new Union Territory after being split off from Jammu and Kashmir in 2019, and Daman and Diu and Dadra and Nagar Haveli were combined into a single Union Territory in 2020.

5.18 Federalism and the courts

While the states have separate legislative and executive branches, they share the judiciary with the Union government. This is different from other federal court systems, such as the United States, where state courts mainly apply state law, and federal courts mainly apply federal law. Under the Indian constitution, the High Courts of the States are directly constituted by the national constitution. The constitution also allows states to set up lower courts under and controlled by the state's High Court. Cases heard at or appealed to the High Courts can be further appealed to the Supreme Court of India in some cases. All cases, whether dealing with federal or state laws, move up the same judicial hierarchy, creating a system sometimes termed integrated federalism.

5.19 International Law

The Constitution includes treaty making as part of the executive power given to the President. Because the President must act in accordance with the advice of the Council of Ministers, the Prime Minister is the chief party responsible for making international treaties in the Constitution. Because the legislative power rests with Parliament, the President's signature on an international agreement does not bring it into effect domestically or enable courts to enforce its provisions. Article 253 of the Constitution bestows this power on Parliament, enabling it to make laws necessary for implementing international agreements

and treaties. These provisions indicate that the Constitution of India is dualist, that is, treaty law only takes effect when a domestic law passed using the normal processes incorporates it into domestic law.

5.20 Flexibility

According to Granville Austin, "The Indian constitution is first and foremost a social document and is aided by its Parts III & IV (Fundamental Rights & Directive Principles of State Policy, respectively) acting together, as its chief instruments and its conscience, in realising the goals set by it for all the people." The constitution has deliberately been worded in generalities (not in vague terms) to ensure its flexibility. John Marshall, the fourth chief justice of the United States, said that a constitution's "great outlines should be marked, its important objects designated, and the minor ingredients which compose those objects be deduced from the nature of the objects themselves." A document "intended to endure for ages to come", it must be interpreted not only based on the intention and understanding of its framers, but in the existing social and political context.

The "right to life" guaranteed under Article 21 has been expanded to include a number of human rights, including:

1. the right to a speedy trial.
2. the right to water.
3. the right to earn a livelihood,
4. the right to health, and
5. the right to education.

At the conclusion of his book, Making of India's Constitution, retired Supreme Court Justice Hans Raj Khanna wrote:

> "If the Indian constitution is our heritage bequeathed to us by our founding fathers, no less are we, the people of India, the trustees and custodians of the values which pulsate within its provisions! A constitution is not a parchment of paper, it is a way of life and has to be lived up to. Eternal vigilance is the price of liberty and in the final analysis, its only keepers are the people."

REMEDIES AVAILABLE UNDER THE CONSTITUTION

6

The Right to Constitutional Remedies, enshrined as a fundamental right in the Indian Constitution, is pivotal for justice, accountability, and the protection of individual rights. It empowers citizens to seek redress for the violation of rights, which is crucial for safeguarding liberties in a democracy.

6.1 Meaning of Constitutional Remedies

Constitutional Remedies refer to the legal mechanisms provided by the constitution of a country to safeguard and enforce the fundamental rights of individuals. These remedies empower citizens to seek relief from the judiciary when their constitutional rights are violated by the state or any other entity. These remedies serve as a crucial means of upholding the rule of law, ensuring accountability, and protecting the rights and liberties of citizens within a democratic society.

6.2 Right to Constitutional Remedies in India

The Right to Constitutional Remedies is a Fundamental Right enshrined in the Constitution of India. The detailed provisions related to the Right to Constitutional Remedies contained in Article 32 of the Indian Constitution serve as a bulwark against the infringement of fundamental rights in India. By providing a legal mechanism for enforcement of the fundamental rights of an aggrieved citizen, this right makes the fundamental rights real.

6.3 Provisions under the Indian Constitution

Article 32 of the Indian Constitution of India confers the Right to Constitutional Remedies for the enforcement of the fundamental rights of an aggrieved citizen. It contains the following four provisions in this regard:

- The right to move to the Supreme Court for enforcement of Fundamental Rights is guaranteed.
- The Supreme Court shall have the power to issue directions, orders, or writs for the enforcement of any of the Fundamental Rights.
- The Parliament can empower any other court to issue directions, orders, and writs of all kinds, without prejudicing the same powers of the Supreme Court.
    - Here, the phrase 'any other court' does not include the High Court, because Article 226 has already conferred this power on the High Court.
- The right to move to the Supreme Court shall not be suspended, except as otherwise provided for by the Constitution.
    - President can suspend the right to move to any court for the enforcement of Fundamental Rights during a National Emergency.

The following points are to be noted with respect things the Right to Constitutional Remedies:

- This right makes the right to get the Fundamental Rights protected itself a Fundamental Right, thus making the Fundamental Rights real.

- Its significance made Dr. B.R. Ambedkar hail this right as the "heart and soul" of the Constitution.
- This provision makes the Supreme Court the defender and guarantor of Fundamental Rights.
    - It vests the Supreme Court with 'Original' and 'Wide', but 'Not Exclusive' powers to enforce Fundamental Rights.
    - Original Powers – An aggrieved citizen can directly go to the Supreme Court, not necessarily by way of appeal.
    - Wide Powers – The powers of the Supreme Court in this regard are not restricted to issuing orders or directions, but also writs of all kinds.
    - Not Exclusive Powers – The powers of the Supreme Court in this regard are concurrent with that of any other court as empowered by the Parliament for this purpose. e.g. the writ jurisdiction of High Courts under Article 226.
- Only Fundamental Rights, and not any other rights, can be enforced under Article 32.

6.4 Supreme Court's Views on Right to Constitutional Remedies

The Supreme Court has declared that Article 32 of the Indian Constitution is a basic feature of the Constitution. Thus, it cannot be abridged or taken away even by way of a Constitutional Amendment Act.

6.5 About the Writ Petitions

A writ petition is a formal written application or request submitted to the Supreme Court or a High Court seeking the issuance of a writ. These petitions are filed by individuals, organizations, or entities to invoke the court's jurisdiction to protect their fundamental rights, enforce statutory rights, or challenge governmental or administrative actions.

6.6 Types of Writs

In India, the Supreme Court, the High Courts or any other courts empowered for the purpose can issue the following five types of writs:

1. Habeas Corpus
2. Certiorari
3. Prohibition
4. Mandamus
5. Quo Warranto

6.6.1 Habeas Corpus

The literal meaning of this term is – 'to have the body of'. It is an order issued by the court to a person who has detained another person to produce the body of the latter before it. The court then examines the cause and legality of detention. It would set the detained person free if the detention was found to be illegal.

- Thus, this writ is the bulwark of individual liberty against arbitrary detention.

This writ can be issued against both public authorities and private individuals. However, it is not issued in cases where:

- detention is lawful,
- the proceeding is for contempt of a legislature or a court,
- detention is by a competent court,
- detention is outside the jurisdiction of the court.

6.6.2 Mandamus

The literal meaning of this term is – 'we command'. It is a command issued by the court to a public official, asking him to perform his official duties that he has failed or refused to perform. It can be issued to a public official, a public body, a corporation, an inferior court, a tribunal, or the government for the same purpose. This writ cannot be issued:

- against a private individual or body,

- to enforce departmental instruction that does not possess statutory force,
- when the duty is discretionary in nature,
- to enforce a contractual obligation,
- against the President of India, the State Governors, and the Chief Justice of a High Court.

6.6.3 Prohibition

The literal meaning of this term is – 'to forbid'. It is issued by a higher court to a lower court or tribunal to prevent the latter from exceeding its jurisdiction or usurping a jurisdiction that it does not possess. Thus, while the writ of 'Mandamus' directs activity, the writ of 'Prohibition' directs inactivity. The writ of prohibition can be issued only against judicial and quasi-judicial bodies and cannot be issued against administrative authorities, legislative bodies, or private entities.

6.6.4 Certiorari

The literal meaning of this term is – 'to be certified' or 'to be informed'. It is issued by a higher court to a lower court or tribunal either to transfer a case pending with the latter to itself or to squash the order of the latter in a case. This writ is issued on the grounds of excess of jurisdiction or lack of jurisdiction or error of law.

- Thus, while the writ of 'Prohibition' is only preventive, the writ of 'Certiorari' is both preventive as well as curative.

It can be issued against judicial, quasi-judicial, as well as administrative authorities, but not available against legislative bodies, private individuals or bodies, etc.

6.6.5 Quo-Warranto

The literal meaning of this term is – 'by what authority or warrant'. It is issued by the court to inquire into the legality of a claim of a person to a public office.

- Hence, it prevents illegal usurpation of public office by a person.

Unlike the other writs, this can be sought by any interested person and not necessarily by the aggrieved person. This writ can be issued only in the case of substantial public office of a permanent character created by a statute or by the Constitution. It cannot be issued in the case of ministerial or private offices.

6.7 Writ Jurisdiction of Supreme Court and High Court

The writ jurisdiction of the Supreme Court differs from that of the High Courts in three respects:

Parameters	Supreme Court	High Court
Scope	The Supreme Court can issue writs only for the enforcement of Fundamental Rights.	The High Court can issue writs not only for the enforcement of Fundamental Rights but also for any other purposes. Thus, the writ jurisdiction of the High Court is broader than that of the Supreme Court.
Territorial Jurisdiction	The Supreme Court can issue writs against a person or government throughout the territory of India.	The High Court can issue writs against a person residing or against a government or authority located within its territorial jurisdiction only or outside its territorial jurisdiction only if the cause of action arises within its territorial jurisdiction. Thus, the territorial jurisdiction of the Supreme Court to issue writs is wider than that of a High Court.
Discretion	A remedy under Article 32 is in itself a Fundamental Right and hence Supreme Court cannot refuse to exercise its writ jurisdiction.	A remedy under Article 226 is discretionary, and hence a High Court may refuse to exercise its writ jurisdiction.

6.8 Significance of Writs in the Indian Constitution

Writs, by their very nature, hold immense significance in the context of India. Some of their significance can be seen as follows:

1. **Protection of Fundamental Rights –** These writs provide individuals with a swift and effective means to seek judicial intervention when their rights are infringed upon by the state or any other authority.
2. **Judicial Review –** These writs enable the judiciary to exercise its power of judicial review over the actions of government bodies, administrative authorities, and other institutions. This ensures that governmental actions are lawful, within the scope of their authority, and consistent with constitutional provisions.
3. **Checks and Balances –** These writs allow courts to review and potentially overturn decisions or orders of lower authorities. This contributes to maintaining a system of checks and balances within the system.
4. **Prevention of Abuse of Power –** Writs such as mandamus, prohibition, certiorari, and quo warranto act as preventive measures against the arbitrary exercise of authority by public officials or bodies. They compel adherence to legal procedures, fairness, and transparency in decision-making processes.
5. **Ensuring Administrative Accountability –** Writs hold administrative and judicial bodies accountable for their actions or omissions. They help rectify errors of law or excesses of jurisdiction thereby promoting administrative accountability and integrity.
6. **Promotion of Justice and Equity –** Writs contribute to the promotion of justice and equity by providing individuals with access to timely and effective remedies against injustice, oppression, or unlawful deprivation of rights. They uphold the rule of law and ensure equal protection under the law for all citizens.

In conclusion, the Right to Constitutional Remedies stands as a cornerstone of democracy and justice. By enabling individuals to seek redressal of violations of their fundamental rights, they foster a just and equitable society. Thus, the Right to Constitutional

Remedies serves as a bulwark against tyranny and injustice, embodying the essence of a vibrant and inclusive democracy.

6.9 Nature of Writ Jurisdiction

The nature of Writ Jurisdiction provided under this Article is discretionary. There are five important factors for guiding this discretion.

Factors Guiding the Discretion	Meaning
1. Locus Standi	Right to bring an action or to be heard before a court.
2. Alternative Relief	Remedies sought in a lawsuit in various or alternative forms.
3. Res Judicata	A case that has been decided.
4. Questions of the Fact	An issue that involves resolution of a factual dispute or controversy.
5. Laches	A defence to an equitable action, that bars recovery by the plaintiff because of the plaintiff's undue delay in seeking relief.



ADVOCATE, THEIR FUNCTIONS AND RIGHTS UNDER ADVOCATES ACT, 1961

7

The Advocates Act, 1961 contains rules and laws pertaining to advocates. The major goal of the Act is to create a single class of legal practitioners known as "advocates." Advocates are permitted to represent clients before all courts and tribunals in all states of Indian territory. The advocates can only join one state Bar Council [vide Section 17(4) of the Act], although they are free to move to another State Bar Council. The Indian Bar Councils Act has been replaced by the Advocates Act, 1961. The Advocate Act of 1961 was created in order to carry out the recommendations of the All-India Bar Committee, which were supported by the Law Commission's fourteenth report in 1955. This Act's primary goal is to unite and create a single class of attorneys called "advocates." Their major goals are to establish an All-India Bar Council and State Bar Councils, as well as a common qualification for the bar. It also outlines an advocate's obligations and rights.

7.1 History of the Advocates Act, 1961

India's legal profession was managed under the Advocates Act, of 1961, which was set up by Parliament after Independence. The All-India Bar Committee was established in 1953 by the government to oversee and control the Indian judiciary after Independence in 1947. The Advocates Act and the Bar Council of India were formed in 1961 as a result of a recommendation submitted to Parliament by the All-India Bar Committee. Legal practitioners were divided into various classes under the Legal Practitioners Act of 1879 until the Advocates Act, 1961 came into effect. They were classified as Advocates, Lawyers, Vakils, Barristers, etc. After the Act came into effect, several classes of legal practitioners were abolished and combined into one class of advocates. These advocates were categorised as Senior Advocates and other subdivision advocates based on their qualifications for expertise and experience. Senior Advocates are given the title with the Supreme Court's or the High Court's confirmation.

7.2 The Bill behind Advocates Act, 1961

The Bill was drafted in order to carry out the recommendations of the All-India Bar Committee, which were issued in 1953. After considering the Law Commission's proposals on Judicial Administration Reform, as well as the suggestions relating to the Bar and legal education. The Bill was amended to recognise the dual system in operation in the High Courts of Calcutta and Bombay by including the necessary provisions, according to the recommendations provided to the All-India Bar Committee and the Law Commission. If they intend to abolish the dual system at any moment, it will only be open to two Courts. The Indian Bar Councils Act, 1926, as well as any other legislation on the subject, may be repealed by this bill because it is a comprehensive measure. This was published on November 19, 1959, in Section 2 of Part II of the Extraordinary Gazette of India. The bill's primary features were:

1. The All-India Bar Council must be established, there must be a single class of attorneys, and it must grant attorneys the right to practise in any

area of the country, in any High Court, as well as at the Supreme Court of India.
2. Combining the bar together into a single class of legal practitioners known as advocates.
3. The procedures of a uniform qualification for admitting individuals as advocates and qualifying them as advocates.
4. According to their merit, senior advocates and other advocates must be divided.
5. There must be the establishment of autonomous Bar Councils, one for all of India and another for each State.

7.3 Features or the characteristics of the Advocate Act, 1961

1. The Advocates Act, 1961 had the following features:
   It established the Bar Council of India and State Bar Councils and paved the way for their formation.
2. Even though advocates may be transferred from one state to another, advocates are not permitted to enrol in more than one State-Bar Council.
3. A self-governing authority has been given to the Bar Council.
4. Additionally, the Act has made it possible for advocates to work in positions that are similar all across the world.
5. It also included provisions that allowed for the consolidation of all legal system legislation into a single class or document.
6. Various Bar Council regulations have been implemented in both state and central laws.
7. A single title called 'advocate' replaced the several titles that were previously granted to advocates such as legal practitioners, vakils, attorneys, etc.
8. On the basis of their qualifications, experience, and level of expertise, there are senior advocates and other advocates as legal practitioners.
9. The act primarily focuses on the consolidation of existing legal laws for the legal profession.
10. The Bar Council was given control over an autonomous body that has been assigned certain duties.
11. It may be seen that the Bar Council is a member of a number of international organisations, including the international bar organisation.

The Bar Council is a recognised legal entity with the ability to acquire both moveable and immovable property through litigation.

12. Additionally, there are several state Bar Councils that are under the control of the All-India Bar Council.
13. They also have the same responsibilities as the All-India Bar Council, but they solely look after their particular states. The Bar Council was granted an autonomous entity that is entrusted with these responsibilities.
14. According to the Act, State Bar Councils must exist in every state.

7.4 Definitions under the Advocate Act, 1961

Advocate: The term 'advocate' is discussed under Section 2(1)(a) of the Act. A person who has registered on any roll created by this Act is an advocate. There were various classifications of legal professionals known as pleaders, vakils, lawyers, and attorneys before the enactment of this Act.

Appointed day: The term 'appointed day' is discussed under Section 2(1)(b) of the Act. The term 'appointed day' refers to the day the Provisions took effect.

Bar Council of India: The word 'Bar Council' is covered by Section 2(1)(e) of the Act. Section 4 of the Act establishes the Bar Council for the territories to which the Act applies.

Law graduate: The word 'law graduate' is discussed under Section 2(1)(h) of the Act. A person is referred to as a law graduate if they have completed a bachelor's degree in law from any university recognised by Indian law.

Legal practitioner: The word 'legal practitioner' is covered by Section 2(1)(i) of the Act. A legal practitioner is a person who is an advocate or vakil in any High Court, as well as a pleader, mukhtar, or tax agent.

High Court: The term 'High Court' is covered by Section 2(1)(g) of the Act. The term 'High Court' does not include a court for Judicial Commissioner, except in Sections 34(1) and 34(1A), as well as Sections 42 and 43. The term High Court in relation to a State Bar Council means:

1. If a State Bar Council is established for a state or for a state and one or more union territories, the High Court for the state.
2. If a Bar Council is constituted for Delhi, the High Court of Delhi.

Roll: The term 'roll' is discussed under Section 2(1)(k) of the Act. Under this Act, rolls are recorded and maintained. It is a list of advocates or legal practitioners who practise in a court or who are frequently present in court.

State: The term 'State' is discussed under Section 2(1)(l) of the Act. A state is a country or territory that is organised as a political community and has a single state government under the territory. The union territory is not included as a state.

State roll: The term 'State roll' is discussed under Section 2(1)(n) of the Act. According to Section 17, a State Bar Council must record, prepare, and maintain a state roll, which is a list of advocates.

7.5 Important provisions under the Advocate Act, 1961

Application of the Act (Section 1): In India, the Advocates Act, 1961 is in effect nationally, which is described under Section 1 of the Act. In the State of Jammu and Kashmir as well as the Union Territories of Goa, Daman, and Diu, which comes into effect on the day that the Central Government specifies in a notice published in the official gazette on their behalf.

State Bar Councils (Section 3): Section 3 of the Act allows for the establishment of a Bar Council in each state. Union territories are joined by neighbouring countries. There is a unique Bar Council for the union territory of Delhi. This is based on the All-India Bar Committee's recommendations. For each State Bar Council, a chairman and vice chairman will be chosen by the respective State Bar Council.

Bar Council of India (Section 4): Section 4 of the Act permits the establishment of an All-India Bar Council. The attorney general of India, who serves as an ex officio member, the solicitor general of India, who also serves as an ex officio member and one member who is chosen by each State Bar Council from among its members shall make up the body. The All-India Bar Council will have a chairman and vice-chairman who were chosen by the Council itself according to the established procedures.

Bar Council which is to be a body corporate (Section 5): Any corporate body, including the Bar Council of India and all state Bar Councils with

perpetual succession and their own common seal, is covered by Section 5 of the Act. Each Bar Council has the authority to acquire and hold real property in its own name. It is capable of being sued, being sued in its name, and entering into contracts in its name. A Bar Council can continue to exist since it is a corporate entity with perpetual succession; therefore, it is unaffected by the fact that the members' terms of office have ended.

Membership in an international legal body (Section 7A): In accordance with Section 7A of the Act, the Bar Council of India is permitted to join organisations that represent international law, such as the International Bar Association or the International Legal Aid Association. The Bar Council of India is also required under this Section to pay dues to the aforementioned international organisations, and it is also permitted to spend money to send delegates to any international legal conference or seminar.

Term of office of members under the State Bar Council (Section 8): According to Section 8 of the Act, State Bar Council members are chosen to serve terms of five years, starting from the day the results of the election are published. The Bar Council of India will extend the term of office by examining the reasons if the State Bar Council fails to hold elections for its members before the term expires, provided that the extension does not exceed a 6-month period. By extending the term of members, the council will be notified that it must hold a new election for members as the previous one was not held before the term's expiry.

Transaction of business by the Bar Council and committees (Section 10A): According to Section 10-A, the State Bar Council meets at its headquarters, and the Bar Council of India meets in New Delhi. The meetings of these councils may take place anywhere, but the justifications must be recorded in writing. The headquarters of the relevant Bar Council should be the location of meetings for all committees, excluding the disciplinary committee. The disciplinary committee will henceforth hold a meeting at a time and location where it is possible to follow the rules established by the Indian Bar Council for conducting business at meetings.

The staff of the Bar Council (Section 11): Section 11 deals with the appointment of personnel to the Bar Council. Each and every Bar Council is required to have a secretary. The accountant and other staff that are required for the office's efficient operation may be appointed by the Bar Council.

Senior and other advocates (Section 16): Section 16 discusses the senior advocate as well as other advocates. The Supreme Court of India or the High Court, believes that if a person has the skill, expertise, or experience to merit the title of "senior advocate," they may use it with the court's approval.

State Bar Councils maintain the roll of advocates (Section 17): According to Section 17, it is the responsibility of the State Bar Council to create and maintain a list of state advocates. The roll has two sections. Senior advocates make up the first part, while other advocates make up the second part. The entry is based on seniority in the state roll record. According to Section 17(4), no person may be listed as an advocate on the rolls of more than one State Bar Council.

Transferring the name from one state to another state (Section 18): According to Section 18, anybody who wishes to move from one state's Bar Council to another must submit an application to the bar association of India, New Delhi, using Form C Rule I Chapter III and Part V of All India Bar Council's Rules.

The following are required-

- A certified copy of the applicant's enrollment on the state register.
- There is no disciplinary action ongoing against the applicant, and there is no objection to transfer being ordered, according to a certificate from the state Bar Council stating that the applicant's enrollment has not been recalled and that they are permitted to practise as of the date of their application.

Enrolment of certain Supreme Court advocates (Section 20): Section 20 of the Act addresses the certificate of enrolment. For the enrollment of an advocate, a certificate would be issued. The certificate is issued in accordance with the State Bar Council's authorised format. Any change

to a person's permanent address must be reported to the relevant State Bar Council within 90 days.

Disqualification of enrolment (Section 24A): According to Section 24A of the Act, anyone who has been arrested for an offence involving moral turpitude is ineligible to become a member of the bar. This applies until two years have passed since the end of the imprisonment. This disqualifies you from enrolling; according to the Supreme Court, if the disqualification occurred after you enrolled, the advocate must serve a two-year disqualification from the bar.

Advocates are recognised as a class of persons entitled to practice law (Section 29): According to Section 29 of the Act, advocates are only recognised among a specific group of people who are qualified to practise law. Advocates have been permitted to practice law as of the date on which they were appointed under that class alone.

Right of advocates to practise (Section 30): Section 30 of the Act defines the right to practise as an advocate. An advocate is granted the right to practise law across the territory before all courts and tribunals under this statute.

No one other than advocates are permitted to practice (Section 33): This section states that anyone must be enrolled as an advocate under this Act in order to be permitted to represent themselves in any court or before any authority.

7.6 Functions of State Bar Councils

The Section 6 of advocate act outlines the duties of the State Bar Council as under:

1. The Council must compile, maintain, and keep a record of such a roll in addition to allowing applicants to be listed as advocates.
2. If there is any misconduct on the part of any of the advocates on its list, the council must investigate it and make a decision.
3. It must also defend the rights, privileges, and interests of those advocates.

4. It must encourage the growth of the bar association in order to effectively implement welfare programmes.
5. It must support and promote law reform; and
6. It must also host seminars and organise lectures by eminent jurists on legal subjects.
7. It also allows for the publication of journals and papers of legal interest.
8. It organises legal help for the poor in a prescribed manner.
9. It facilitates elections for its members of the State Bar Council, manages finances for the Bar Council, and invests those funds.
10. They can visit and inspect universities in accordance with the guidelines set forth in Section 7(1)(i).
11. They can carry out all other duties imposed by the Act; and
12. They must also take additional actions required for carrying out the aforementioned duties.
13. The council shall establish one or more funds for the following purposes:
    - Providing financial assistance to set up welfare programmes for the needy, the disabled, or other advocates.
    - It also provides legal assistance or advice when rules are adopted in this regard.
    - To create law libraries.
14. The State Council may accept grants, donations, gifts, or benefactions for any of the purposes indicated in subsection 2 of Section 6, which must be credited to the relevant fund or funds established under the Subsection.

7.7 Functions of the Indian Bar Council

The following are the functions of the Bar Council of India under Section 7 of the Act:

1. It must establish standards of professional conduct and etiquette for advocates.

2. It must establish specific procedures to be followed by its disciplinary committee and the disciplinary committee of each State Bar Council.
3. Their primary function is to prepare and maintain a common roll of advocates and to exercise general supervision and control over State Bar Councils.
4. Its duties include general supervision of and control over state Bar Councils.
5. It has to promote legal education.
6. It has to set standards for that education in consultation with state Bar Councils and universities in India that deal with higher education.
7. They also have the responsibility of identifying the universities where a law degree qualifies a graduate for enrolment as an advocate, and to that end, they either visit and inspect those universities or give State Bar Councils specific directions to visit and inspect.
8. They also recognise a reciprocal basis for foreign legal qualifications gained outside of India for the purpose of admission as an advocate under the Act.
9. Other duties exist that are similar to those of the Indian State Bar Council. The Bar Council of India carries out such activities as setting up one or more funds for the organisation of welfare programmes for poor and disabled advocates providing legal assistance and advice, as well as for establishing law libraries. Additionally, they receive gifts, donations, and benefaction.

7.8 Certificate of enrolment

Section 24 of the Act outlines the requirements required to be admitted to the Bar.

The provision also states that the person would be qualified to be admitted as an advocate on a State Roll if he meets the requirements, which include being a citizen of India, being competent over the age of 21, having obtained a law

degree, and passing the Bar Council of India exam. The individual can enrol themselves under any State Bar Council if they meet the necessary qualifications. After graduating with a single degree, the person must have completed a 5-year integrated course or a 3-year law course. The Bar Council of India must recognise the degree if it was earned from a foreign institution of higher learning. The advocate is required to pay the State Bar Council's enrollment fee. It must also satisfy any additional requirements, if any.

7.9 Rights of an advocate under the Advocate Act, 1961

In India, an advocate has the following rights:

Right to practice (Section 30) and **freedom of expression** and **speech:**

- From the perspective of the legal profession, the term 'right to practise' refers to an exclusive right granted to advocates to represent clients in court and before tribunals. There are two levels of protection for the right to practise, and they are as follows:
  1. **Protection in General:** Article 19(1)(g) of the Indian Constitution safeguards each person's right to engage in whatever practice they choose.
  2. **Specific Protection:** According to Section 30 of the Advocates Act, 1961, a person registered with a State Bar Council is entitled to practice law before any court or body in India, including the Supreme Court.
- The Central Government made it effective recently by issuing a notification. An advocate who is registered with the Bar Council of India is granted the only authority to practise law in courts.
- If an advocate is speaking during practice, no one may interrupt them unless they are violating the court's rules and regulations.
- The freedom of speech and expression is guaranteed by Article 19(1)(a) of the Indian Constitution. All Indian citizens are entitled to this fundamental right. Even in a court of law, an advocate has the freedom to speak and express oneself.

7.9.1 Pre-audience rights:

A court of law must provide an advocate with the opportunity to speak first, according to Section 23 of the Advocates Act. Advocates have the right not to be interrupted before their statement is completed. This provision is employed as an advocate's privilege as well as a right to pre-audience rule. The right to be heard comes first and foremost. The person in the top position in the hierarchy is given the right to advocacy by the law. In India, the following is the hierarchy of advocates as under:

1. Attorney General
2. Solicitor General
3. Additional Solicitor General
4. The Second Additional Solicitor General
5. Advocate General of the State
6. Senior advocates
7. Other advocates

This is the hierarchy of advocacy used in India. In the absence of another advocate, the attorney general has the right to represent himself in court. In accordance with this rule, an advocate is also permitted to speak in front of the courtroom audience and to represent his client in front of a judge.

7.9.2 Right of opposition to arrest:

All advocates are guaranteed under Section 135 of Civil Procedure Civil, 1908 that they won't be detained while travelling to or from a tribunal or court on another subject, with the exception of cases involving criminal charges and contempt of court. In certain situations, the police are not allowed to detain a civil advocate. An advocate is referred to as an officer of the court.

7.9.3 Right to appear in any court:

All advocates are permitted to practise in any Indian court or tribunal, according to Section 30 of the Act. They have the right to enter the court or tribunal even if they haven't registered with that particular tribunal or court. No matter if they are representing a client or not, an advocate may

enter the courtroom and take any seat to watch the proceedings. An advocate may also enter the Supreme Court and observe the proceedings.

7.9.4 Right to see an accused person in jail:

There is no restriction on how often an advocate can visit a client who is being held in jail. Advocates are even permitted to see their clients every day in jail. According to the law, a person is deemed innocent unless proven guilty. As a result, it is essential for an advocate to fully understand the case by meeting with his client—even while they are in custody—to discuss the important details and related documents so that they can effectively argue the case in court.

7.9.5 Right to professional communication:

Communication between an advocate and his client must be regarded as professional communication under Section 126 of the Indian Evidence Act,1872. Such communication shall not be disclosed.

7.9.6 The right to protect the secrecy of communications:

An advocate has exclusive rights under Section 129 of the Indian Evidence Act of 1872. The advocate has the right to protect the confidentiality of his client's communications. The advocate is not required to disclose to anybody the conversation he and his client had on the matter. According to Section 129 of the Indian Evidence Act of 1872, no one is allowed to pressure an advocate into disclosing the conversations he has with his client.

7.9.7 Right to pay a fee:

According to Rule 11 of Chapter 2 of Part VI of the Rules of the Bar Council of India, an advocate is entitled to get payment when he provides or renders services to a client. According to his position at the bar, he can exercise this right.

7.9.8 Right with respect to vakalatnama:

The advocate has the right to solely represent his client in that particular matter after a vakalatnama is signed in his name. An advocate also has the authority to support the public prosecutor in court and submit a note of appearance on behalf of a defendant for whom he is not counsel.

7.9.9 Right to refuse a case:

An attorney has the authority to decline to represent a client in a lawsuit involving illegal activity.

7.10 Duties of an advocate

An advocate must perform the following duties:

7.10.1 An advocate's obligations to the client:

1. An advocate's obligation is to take client briefs and to charge a fee that is comparable to that of other attorneys at the same bar and appropriate to the circumstances of the case. The advocate may provide an explanation for why a specific brief was rejected.
2. An advocate has a duty to decline cases or briefs where he would testify as a witness. Similarly, if the advocate has notice of testifying as a witness throughout the course of events, he should not proceed with the case.
3. Once the client has consented to have the advocate represent them, the advocate has an obligation to do so. In order to withdraw a case, he must provide the clients with a good explanation and adequate notice. He will refund the customer for a portion of the fee that was not collected.
4. The responsibility of an advocate is to deliver the best advice to the best of his abilities.
5. It is crucial that the advocate provides the client with complete and honest disclosures of the parties and their interest in the controversy.

6. When handling a client's case, an advocate needs to be cautious.
7. When a party has received legal advice from an advocate, the advocate should not participate in the lawsuit since he is now the party's opponent. An advocate must either withdraw the case or transfer it to another counsel in such a situation.
8. An advocate is expected to maintain track of any client funds entrusted to him and provide a copy of that record upon request.
9. An advocate is required to uphold the confidentiality clause and not reveal the client's private information.

7.10.2 An advocate's obligations to the court

1. An advocate must always treat the legal system and courts with respect.
2. An advocate must maintain his or her dignity and self-respect.
3. It is the duty of an advocate to refrain from using any unlawful or inappropriate measures to influence the court's judgement and to allow it to be made without bias.
4. Advocate has a responsibility to present themselves in court in the appropriate attire. Except in the courtroom, he or she is not authorised to dress in a band and gown.
5. Advocates are not permitted to represent a close relative as a member of their family in court or before a tribunal.
6. Advocates must not conduct a prosecution in such a way that an innocent person is knowingly convicted.

7.11 Punishments provided under the Advocate Act, 1961

Punishment of advocates in case of misconduct (Section 35):

Section 35 of the Act specifies the penalties for misconduct by advocates.

1. It specifies that when a complaint is received or a State Bar Council has grounds to suspect that any advocate listed on its register has engaged in professional or other misconduct, it must send the matter to its disciplinary committee for resolution.

2. The State Bar Council's disciplinary committee would be required to set a hearing date, as well as arrange for notice to be sent to the State's advocate general and the involved attorney.
3. The disciplinary committee shall provide the advocate and the advocate general an opportunity to be heard and shall make any instructions from the following categories:
4. The complaint or procedures filed at the instance of the State Bar Council where the complaint was submitted must be dismissed; the committee may also reprimand the advocate.
5. The committee has the authority to bar an advocate from practising for as long it sees suitable and to have their name removed from the state list of attorneys.
6. An advocate whose licence to practice law has been suspended is not permitted to appear before any Indian court, government agency, or person during the suspension period.



ATTORNEY GENERAL AND SOLICITOR GENERAL IN INDIA

8

8.1 Attorney General of India

The Attorney General for India is the chief legal advisor of the Government of India. The attorney general is appointed by the President of India at the instance of the Union Cabinet under Article 76(1) of the Constitution and hold office during the pleasure of the President. The Attorney General must meet the qualifications necessary for an appointment as a Judge of the Supreme Court. Therefore, the Attorney General should have served as a judge in a high court for a minimum of five years, or as an advocate in a high court for at least ten years. Alternatively, the President may consider an individual as eligible for the role if they are deemed an eminent jurist.

8.2 Powers, duties, and functions of Attorney General of India

The attorney general is necessary for advising the Government of India on legal matters referred to them. The attorney general also perform other legal duties assigned to by the President. Article 88 of the Constitution confers on the attorney general has the right of

audience in all Courts in India as well as the right to participate in the proceedings of the Parliament, though not to vote. The attorney general appears on behalf of Government of India in all cases (including suits, appeals and other proceedings) in the Supreme Court in which Government of India is concerned. The attorney general also represent the Government of India in any reference made by the President to the Supreme Court under Article 143 of the Constitution.

Unlike the Attorney General of the United States, the Attorney General of India has no executive authority. Those functions are performed by the Law Minister of India. Also, the AG is not a government servant and is not debarred from private legal practice.

The Attorney General is permitted to receive briefs; however, they are precluded from advocating against the government. Moreover, the Attorney General is restricted from representing an accused party in criminal proceedings and assuming a directorial role in a company without the explicit consent of the government.

The attorney general is assisted a Solicitor General and Additional Solicitor Generals. The attorney general is to be consulted only in legal matters of real importance and only after the Ministry of Law has been consulted. All references to the attorney general are made by the Law Ministry.

8.3 Fee and allowances payable

Fee and allowances payable to the law officers (including Attorney General for India, Solicitor General of India and the Additional Solicitors General) of the Government of India are as under:

S.No.	Nomenclature of the item of work	Rates of fees payable for appearance and other work.
(1)	Suits, writ petitions, appeals, and references under article 143	₹16,000/- per case per day

(2)	Special leave petitions and other applications	₹5,000/- per case per day
(3)	Settling pleadings (including affidavits)	₹5,000/- per pleading
(4)	Settling Statement of Case	₹6,000/- per case
(5)	For giving opinions in statements of cases sent by the Ministry of Law	₹10,000/- per case
(6)	For written submission before the Supreme Court, High Court, and Commissions of Inquiry or Tribunals and the like	₹10,000/- per case
(7)	Appearance in Courts outside Delhi	₹40,000/- per day per case

In addition to the above fee payable for cases, a retainer fee is paid to the attorney general for India, Solicitor General of India and the Additional Solicitors General at the rate of ₹50,000, ₹40,000, and ₹30,000 per month, respectively. Moreover, the attorney general for India is also paid a sumptuary allowance of Rs. 4,000 per month, except during the period of his leave.

8.4 Solicitor General of India (SGI)

The Solicitor General of India (SGI) is subordinate to the Attorney General for India. The SGI is the second-highest law officer of the country, assists the Attorney General, and is assisted by Additional Solicitors General of India (Addl. SGIs). The SGI and the Addl. SGIs advise the Government and appear on behalf of the Union of India in terms of the Law Officers (Conditions of Service) Rules, 1972. However, unlike the post of Attorney General for India, which is a Constitutional post under Article 76 of the Constitution of India, the posts of the Solicitor General and the Additional Solicitors General are merely statutory.

The Appointments Committee of the Cabinet (ACC) recommends the appointment and officially appoints the Solicitor General. The proposal for appointment of Solicitor General, Additional Solicitor General is generally moved at the level of Joint secretary (or Law Secretary) in the Department of Legal Affairs and after obtaining

the approval of the Minister of Law & Justice, the proposal goes to the ACC and then to the president.

8.5 Duties of Solicitor General

The Solicitor General works under the Attorney General of India. The duties of the Solicitor General are laid out in Law Officers (Conditions of Service) Rules, 1987:

1. to give advice to the Government of India upon such legal matters, and to perform such other duties of a legal character, as may from time to time, be referred or assigned to him by the Government of India.
2. to appear, whenever required, in the Supreme Court or in any High Court on behalf of the Government of India in cases (including suits, writ petitions, appeal and other proceedings) in which the Government of India is concerned as a party or is otherwise interested.
3. to represent the Government of India in any reference made by the President to the Supreme Court under Article 143 of the Constitution; and
4. to discharge such other functions as are conferred on a Law Officer by or under the Constitution or any other Law for the time being in force.

8.6 Restrictions of private practice

As law officers representing the Government of India, SGIs are bound by certain restrictions concerning private practice. A law officer is not allowed to:

1. hold briefs in any court for any party, except the Government of India or the government of a State or any University, Government School or College, local authority, Public Service Commission, Port Trust, Port

Commissioners, Government aided or Government managed hospitals, a government company, any Corporation owned or controlled by the State, anybody or institution in which the Government has a preponderating interest.

2. advice any party against the Government of India or a Public Sector Undertaking, or in cases in which he is likely to be called upon to advise, or appear for, the Government of India or a Public Sector Undertaking.
3. defend an accused person in a criminal prosecution, without the permission of the Government of India; or
4. accept appointment to any office in any company or corporation without the permission of the Government of India.
5. advise any Ministry or Department of Government of India or any statutory organisation or any Public Sector Undertaking unless the proposal or a reference in this regard is received through the Ministry of Law and Justice, Department of Legal Affairs.

8.7 Fee and allowances payable

Fee and allowances payable to the law officers (including Attorney General of India, Solicitor General of India and the Additional Solicitors General) of the Government of India are as under:

S.No.	Nomenclature of the item of work	Rates of fees payable for appearance and other work
(1)	Suits, writ petitions, appeals, and references under article 143	Rs. 16,000/- per case per day
(2)	Special leave petitions and other applications	Rs. 10,000/- per case per day
(3)	Settling pleadings (including affidavits)	Rs. 5,000/- per pleading
(4)	Settling Statement of Case	Rs. 6,000/- per case

(5)	For giving opinions in statements of cases sent by the Ministry of Law	Rs. 10,000/- per case
(6)	For written submission before the Supreme Court, High Court, and Commissions of Inquiry or Tribunals and the like	Rs. 10,000/- per case
(7)	Appearance in Courts outside Delhi	Rs. 40,000/- per day per case

In addition to the above fee payable for cases, a retainer fee is paid to the Solicitor General and the Addl. Solicitors General at the rate of Rs. 40,000, and Rs. 30,000 per month, respectively.



Allahabad-High-Court

HOW TO FILE A CIVIL SUIT IN INDIA

9

Civil cases involve a conflict between people or institutions, generally over money. A civil suit begins when a legal person claims that he has been harmed by the actions of another person or business and asks the court for relief by filing a "complaint". Most of the civil suits are guided by the well settled principles of the Code of Civil Procedure.

9.1 Stages of a Civil Case

Generally, there are six main stages involved in a civil lawsuit. These stages are listed below:

- **Pre-Filing:** The pre filing stage is when the dispute arises and the parties make demands, try to negotiate the matter between them without taking a legal recourse. However, if they fail to reach a resolution then the parties prepare for the possibility of a court action.
- **Initial Pleading:** At this stage, one party files papers/documents i.e., a complaint to start the court action, and the other party files their response to such complaint i.e., a motion or an answer.
- **Discovery:** At this stage, both the parties exchange documents and responses filed by them in court and learn about the strengths and weaknesses of the other side's case.

- **Pre-Trial:** At this stage, both the parties start preparing for trial, they get their evidence and witnesses in order. Even at this stage they might engage in some out of court settlement conference, after such an attempt the parties may file motions with the court to resolve the case or to limit the issues for trial.
- **Trial:** At this stage, the case is actually heard by the judge or a jury (which may last for a couple of hours or a couple of months, depending on the complexity of the case), witnesses are examined, evidence is presented, and the case is eventually decided, and a judgement is pronounced.
- **Post Trial:** At this stage, one or both of the parties might file an appeal challenging the judgement passed.

However not every civil case follows these stages. Some cases like summary suits, have unique procedures that are set out in the Code of Civil Procedure.

9.2 Procedure for Filing a Civil case in India.

There is a detailed process laid down in Code of Civil Procedure, for filing a civil case. However, if the process is not followed, then the "registry" has a right to dismiss the suit. **"Registry here means an office which every court have which provides the information about any court matter and court forms".**

The procedure for filing a civil suit is as follows:

9.3 Filing of Suit/Plaint

The first step to initiate a suit is to file a plaint. A plaint is a written complaint or allegation. The party who files it is known as "plaintiff" and the party against whom it is filed is known as "Defendant". A Plaint contains as under:

- Name of the Court
- Name and Addresses of the parties between whom the dispute arose.
- Subject (a brief statement talking about the sections and orders under which the jurisdiction of the court is evoked)
- Main Content or submissions made by plaintiff.
- Verification from plaintiff stating that the contents of the plaint are true and correct.

9.4 Vakalatnama

Vakalatnama is a written document, by which the party to the suit authorises an Advocate to represent them before the Hon'ble Court. However, if the party is personally representing its own case, then they need not file a Vakalatnama.

9.5 Filing of Plaint

Next step is filing of the plaint before Chief Ministerial Officer (Sherestedar) at the filing counter, along with appropriate court fee and process fee (For different types of documents, a person has to pay different amount of Court fees.)

9.6 Court Fees

Court fees is a nominal percentage of the total value of the claim or the value of the suit. The requisite amount of Court fees and stamp duty is different for every suit, and the same is mentioned in the "Court Fees Stamp Act".

Some of them are as follows:

In case of plaint/written statement – Rs. 10 if the value of the suit exceed Rs. 5,000/- up to 10,000/-
In case of plaint filed in a suit for possession – Rs. 5
On a copy of a Decree or order – 50 paise

Court fees as per value of the Suit

If the value of the suit exceeds Rs. 1,50,000-1,55,000 – Rs. 1700/-
If the value of the suit exceeds Rs. 3,00,000-3,05,000 – Rs. 2450/-
If the value of the suit exceeds Rs. 4,00,000-4,05,000 – Rs. 2950/-

9.7 How proceedings are conducted?

9.7.1 Hearing

If on the first day of hearing, the court thinks that there is merit in the case, it will issue a notice to the opposite party, calling upon him to submit their arguments on a date fixed by the court.

After the notice is issued, the plaintiff is required to do the following:

1. File requisite amount of procedure-fee in the court.

2. File 2 copies of plaint for each defendant in the court
3. Of the 2 copies filed for each defendant, one copy shall be sent by Speed post/Courier/Regd. A.D. and the other copy shall be sent by Ordinary Post.
4. Such filing should be done within a period of seven days from the date of order/notice.

9.7.2 Written Statement by Defendant

1. Once the notice has been issued to the defendant, he is required to appear on the date mentioned in the notice. However, before appearing on the date, the defendant is required to file his "written statement" i.e., his defence against the allegation raised by the plaintiff.
2. The written statement should be filed within 30 days from the date of service of notice, or within such time as given by the court.
3. The maximum period that can be extended for filing of Written Statement is 90 days, after seeking permission of the court.
4. The written statement should specifically deny the allegations, which according to defendant is wrong and false. Any allegation, not specifically denied, is deemed to be admitted.
5. The written statement should also contain a verification from the Defendant, stating that, the content of the Written Statement is true and correct.

9.7.3 Replication by Plaintiff

The next step for plaintiff, once the Written Statement is filed by the Defendant, is to file a replication. Replication is a reply against the written statement, filed by the Plaintiff. The defences made by the Defendant in written statement is to be specifically denied by the Plaintiff in Replication. Anything which is not denied is deemed to be accepted.

Once the Replication is filed, the pleadings are stated to be complete.

9.7.4 Filing of Other Documents

After pleadings are completed and both the parties have filed their submissions, both the parties are given an opportunity to produce

and file documents that are substantial to their claims. The procedure for filing other documents are as follows:

1. There may be a situation where documents filed by one party is admitted by the opposite party.
2. There can be another situation where the documents filed are denied by the opposite party. In that case it can be admitted by the witness produced by the party whose documents are denied.
3. Once the documents are admitted, it shall be taken on record and all the details of suit shall be inscribed on the document as per Order 13 Rule 49 of Code of Civil Procedure.
4. It is mandatory that any document which is filed by the parties must be "original" and a copy of such document shall be provided to the opposite party.
5. Any document which is not filed or produced cannot be relied on during final arguments.

9.7.5 Framing of Issues

1. The next stage in a civil proceeding is Framing of Issues. Issues are framed by the court on the basis of which arguments and examination of witnesses takes place.
2. Issues are framed, keeping in view the disputes in the suit, and the parties are not allowed to go outside the purview of 'Issues".
3. Issues framed may be of Fact or of Law.
4. At the time of passing final order, the court will deal with each issue separately, and will pass judgements on each issue.

9.7.6 List of Witness/Cross Examination

1. All the witnesses that the parties wish to produce, and examined, have to be presented before the court within 15 days from the date on which issues are framed or within such other period as the court may fix.
2. Both the parties to the suit have to file a list of witnesses.
3. The parties may either call the witnesses by themselves, or the court can ask the same by sending summons to witnesses.
4. In case summons are issued by the court, then the party who asked for such presence of a witness, has to deposit money with the court for their expenses. This money deposited is known as "Diet Money".
5. On the date of hearing, the witnesses produced before the court will be examined by both the parties and once the cross examination is over at this stage the court will fix a date for final hearing.

9.7.7 Final Hearing

- On the day of final hearing, the arguments take place which should be strictly confined to the issues framed.
- After hearing the final arguments of both the parties, the court shall pass a "final order", either on the day of final hearing itself or on some other day fixed by the Court.
- However, before the final arguments, the parties to the suit can amend their pleadings with the permission of the court.

9.8 Appeal, Reference, and Review

When an order is passed against a party, such party can further initiate the proceedings by way of:

- Appeal
- Reference, or
- Review

However, there are certain technicalities in filing an appeal, these are stated as follows:

- In case the value of the suit does not exceed Rs. 10,000, an appeal can only be filed on the question of law
- In case a decree is passed against the Defendant as "Ex-Parte" no appeal is allowed

9.9 Procedure for Appeal

1. The appeal has to be filed in the prescribed form, signed by the appellant, along with a certified copy of the order.
2. If the appeal filed is against a decree for payment of money, the court may order the petitioner to deposit the disputed amount.
3. Any issue which was not taken up by the appellant, in lower court, cannot be subsequently taken up in the appeal filed. The appeal lies only against those points which have been decided by the lower court, whether they were correct or not.

OATHS ACT 1969

10

We have to attach an oath letter on many occasions, such as exchange of money, buying of property, in any judicial activity or judicial proceeding. This work is very simple nowadays. You must have heard about the word 'stamp' in your local area during the time of any rental agreement, drop certificate, etc. What is 'stamp'? This is another way to take an oath.

We should know related to the oath in judicial proceedings. You must have seen the Court scenes of any movie, in which witness takes the oath by putting a hand on the religious book during the judicial proceedings. Have you ever given a thought about whether it really happens in actual judicial proceedings or not? The answer is 'no'. There are no such types of oaths taken by any witnesses during actual judicial proceedings. There are different ways to take an oath that is conducted during the judicial proceedings which we will be discussing in further contents. There is a separate law regarding oath during judicial proceedings named The Oath Act, 1969.

In this Act, all the provisions, liabilities, course of action and other things related to oath during judicial proceedings are given.

10.1 Why the Witness has to take an oath?

There are two ways by which witnesses can register a statement in a judicial proceeding.

First, is 'on oath' and second, is 'on affidavit'. In a judicial proceeding, the witness is liable to speak the truth only after taking an oath. If any witness lies in a judicial proceeding after taking an oath for speaking the truth, then it is itself an offense under the Indian Penal Code, 1872. Section 193 of the IPC deals with punishment for giving or fabricating false evidence. But it applies only after taking an oath.

Section 193 of the IPC

According to Section 193 of the Indian Penal Code, 1860, the person shall be punished with simple or rigorous imprisonment for a term extending up to seven years, and shall also be liable to fine who:

- gives false evidence in any moment of judicial proceeding intentionally, or
- fabricates false evidence intentionally for the purpose of the same being used in any moment of a judicial proceeding.

Giving false evidence: Any person who states something in judicial proceedings, knowing that the statement is false.

Fabricating false evidence: Any person who manipulates any statements and facts of the case in order to establish liability on another person, knowingly that the person is innocent.

10.2 History of Oath

In Mughal's period, when a king used to act as a Judge to resolve any issue then witness was bound to take an oath by putting a hand on his religious book. For example, a Hindu used to place his/her hand on Gita or a Muslim place his/her hand on the Quran while

stating anything in the proceedings, etc. Earlier, it was believed that society is extremely loyal towards God and their religion. So, they will only speak the truth while taking an oath of their religious book. But this custom was struck down by the British Government in 1873 by the introduction of the uniform system (Indian Oath Act 1873). Notwithstanding, Indian Oath Act 1873, Bombay High Court continued this custom till 1957. Now, an issue was raised by the 28th law commission reports that people who do not believe in God can lie even after taking an oath to religious books. By considering this issue, The Oath Act of 1969 came into existence.

10.3 The Oaths Act, 1969

This Act does not state anyone to take an oath by putting a hand on the religious book. After the introduction of this act, the custom which was continuing from the past was completely stopped in the judicial proceedings. The Oaths Act, 1969 (Act No. 44 of 1969) dated 26th December 1969 is the Act of Parliament which was enacted to consolidate and amend the 'Judicial Oath' and for other relevant purposes. This Act extends to the whole of India.

According to Section 2 of this Act, it does not apply to proceedings before courts-martial or to oaths, affirmations, or declarations by the Central Government for members of the Armed Forces of the Union.

10.4 Power to administer oaths.

According to Section 3 of the Oath Act, 1969, Courts and individuals will have the power to administer oaths:

1. By themselves, or
2. subject to the provisions of subsection (2) of Section 6, or
3. by an official empowered by them in this name, oaths, and affirmations in the fulfilment of the duties imposed or in the exercise of the powers conferred on them by law.

Power to administer oaths-

1. All Courts and persons who have by law or consent of the parties, the authority to receive evidence.
2. the officer in command of any naval station or military or ship occupied by the Union Armed Forces provided that the affirmation or oath is administered within the scope of the station.

10.5 Oaths and affirmations to be made by witnesses, interpreter, and jurors.

According to Section 4 of the Oath Act, 1969, oaths or affirmations shall be made by the following people, namely:

1. All witnesses or all the persons who may lawfully be examined or give (or needed to give) evidence before any court or person having authority to examine such persons or to receive evidence.
2. interpreters of questions and evidence given by witnesses; and
3. jurors.

The preceding provisions of this article do not apply to witness when the witness is a child under the age of twelve years and the court or the person authorized to inspect that witness is of the opinion that, while the witness understands the duty, to tell the truth, he does not understand the nature of an oath or affirmation.

But in such a case, the absence of an oath or affirmation will not disqualify the evidence provided by this witness or affect the witness's duty, to tell the truth.

Nothing in this section will make it possible to manage in a criminal proceeding, an oath or affirmation to the accused person unless it is inspected as a witness of the defence. It is important to administer it to the official interpreter of any Court after he has entered in the

execution of the duties of his office, an oath or affirmation that he will faithfully satisfy those duties.

10.6 Forms of Oaths and affirmations

According to Section 6 of the Oath Act, 1969 all oaths and statements made under section 4 shall be administered in accordance with a predetermined format as appropriate to the circumstances of the case.

Provided that if a witness in any judicial proceeding wishes to give evidence:

1. Under oath or solemn affirmation in any common way among the persons of the class to which he belongs, or
2. That he keeps them bound, and that he does not repudiate justice or decency, and
3. If it is not intended to affect any third party, then the court may allow it to present evidence of such oath or affirmation.

All such oaths and affirmations shall, in the case of all courts other than the High Courts and the Supreme Court, be administered by the presiding officer of the Court himself, or, in the case of a Magistrates or other Judges, by anyone of the Magistrates or Judges, as the case may be.

- **For Witnesses:**
  I do swear in the name of God that whatever I shall state shall be the truth, the whole truth and solemnly affirm nothing but the truth.
- **For Jurors:**
  I do swear in the name of God that I will well and truly try and true deliverance make between the solemnly affirm State and the prisoner(s) at the bar, whom I shall have in charge, and a correct verdict give according to the evidence.
- **For Interpreters:**
  I do swear in the name of God that I will well and truly interpret and explain all questions put to solemnly affirm and evidence given by witnesses and translate correctly and accurately all the documents given to me for translation.

- **For Affidavits:**
  I do swear in the name of God that this is my signature (or mark) and name and that the contents of this my affidavit are true.

Proceedings and evidence not invalidated by the omission of oath or irregularity.

According to Section 7 of the Oath Act, 1969, no omission:

1. To take an oath, or
2. Make any claim, and
3. Not to replace any with any of them, and
4. Any irregularity in the administration of any oath or affirmation or in the form in which it is administered will invalidate any procedure or render any evidence inadmissible, with respect to which such omission, substitution or irregularity occurred, or that affects the obligation of a witness, to tell the truth.

10.7 Persons giving evidence bound to state the truth.

According to Section 8 of the Oath Act, 1969, any person who presents evidence on any subject before any court or person authorized to administer oaths and statements shall be required to declare the truth on said subject. After taking an oath, the witnesses are bound to state only the truth, nothing but the truth.

According to Section 5 of the Oath Act, 1969, a witness, interpreter or juror may, instead of taking an oath, make a statement.



EVIDENCE ACT 1872

11

The **Indian Evidence Act,** originally passed in India by the Imperial Legislative Council in 1872, during the British Raj, contains a set of rules and allied issues governing admissibility of evidence in the Indian courts of law.

As of February 2024, the India Evidence Act was replaced by the **Bharatiya Sakshya Adhiniyam**.

The enactment and adoption of the Indian Evidence Act was a path-breaking judicial measure introduced in India, which changed the entire system of concepts pertaining to admissibility of evidences in the Indian courts of law. Until then, the rules of evidences were based on the traditional legal systems of different social groups and communities of India and were different for different people depending on caste, community, faith and social position. The Indian Evidence Act introduced a standard set of law applicable to all Indians.

The law is mainly based upon the framework by Sir James Fitzjames Stephen, who could be called the founding father of this comprehensive piece of legislation.

11.1 The Act

The Indian Evidence Act, identified as Act no. 1 of 1872, and called the Indian Evidence Act, 1872, has eleven chapters and 167 sections, and came into force 1 September 1872. At that time, India was a part of the British Empire. Over a period of more than 150 years since its enactment, the Indian Evidence Act has basically retained its original form except certain amendments from time to time.

Amendments: The Criminal Law Amendment Act, 2005 The Criminal Law (Amendment) Act, 2018 (22 of 2018) The Jammu & Kashmir Reorganization Act, 2019.

11.2 Applicability

When India gained independence on 15 August 1947, the Act continued to be in force throughout the Republic of India and Pakistan, Since the independence of Bangladesh though some necessary amendments have been made. After 1947, the Act continues in forces in India, but it was repealed in Pakistan in 1984 by the Evidence order 1984 (also known as the: Qanun-e-Shahadat"). It also applies to all judicial proceedings in the court, including the court martial. However, it does not apply on affidavits and arbitration.

11.3 Contents

This Act is divided into three parts and there are 11 chapters in total under this Act.

Part 1

Part 1 deals with relevancy of the facts. There are two chapters under this part: the first chapter is a preliminary

chapter which introduces to the Evidence Act and the second chapter specifically deals with the relevancy of the facts.

Part 2

Part 2 consists of chapters from 3 to 6. Chapter 3 deals with facts which need not be proved, chapter 4 deals with oral evidence, chapter 5 deals with documentary evidence and chapter 6 deals with circumstances when documentary evidence has been given preference over the oral evidence.

Part 3

The last part, that is part 3, consists of chapter 7 to chapter 11. Chapter 7 talks about the burden of proof. Chapter 8 talks about estoppel, chapter 9 talks about witnesses, chapter 10 talks about examination of witnesses, and last chapter which is chapter 11 talks about improper admission and rejection of evidence.

11.4 Indian Evidence Act Classic Classification

In the Evidence Act All the Provisions can be divided into two Categories (1) Taking the Evidence (By Court) (2) Evaluation

Taking Evidence: Parties to a proceeding before a court of law can adduce only admissible evidence. Admissible evidence are either "Fact in issue" or "Relevant Facts"[11] which are not excluded from being adduced by any other provisions of Indian Evidence Act, 1872. Section 3 of the Act defined Fact, Fact in issue and Relevant Facts.

According to section 59 and 60, facts can be proved by two ways, one is Orally and Second is Documentary (includes Electronic Documents), Oral Evidence mostly suggest the Verbal deposition before the Court (and not otherwise), and Which includes oral statement regarding materials too, Documentary Evidence suggest the Documents. So, The Evidence Regarding Matter which have number of Facts, for which Evidence by way of oral or

Documentary produced before the court for its Evaluation for either one fact or facts. Court by going through those Documentary Evidence and Oral Evidence decide that particular fact and all facts are proved or not, or whether the fact or facts can be presumed to be proved?

In Evaluation as above said by looking into the Oral and Documentary Evidence Court decide whether particular fact is proved or not, or facts are proved or not, In Evaluation there are two concepts to prove facts; One is Prove (Prove, Disprove or Not prove) and Other is Presumption (that fact is proved) (may Presume, Shall presume and Conclusive proof) After going to Oral and Documentary Evidence Court see that whether any fact or facts are proved by looking to such evidence or not. If at all no evidence is given or enough evidence is given for the fact it's said fact is 'Not proved'; The second Concept for evaluation is "Presumption" In Evidence many Section suggest these presumptions, Where there is said Facts 'may presume', Court is extremely free to believe it or not and may ask to prove the fact, According to section 4 in 'shall presume' court has no discretion and should consider the fact as proved unless it is disproved, Where in any provision it is said that particular fact, or particular fact in particular circumstances must be concluded as "conclusive proof" Court has to regard it as proved and shall not allow parties to adduce evidence to rebut it.

THE CONTEMPT OF COURTS AND HOW TO RESPOND

12

According to the Oxford Dictionary, contempt is the state of being despised or dishonoured, disgrace. Any conduct that tends to bring the authority and administration of law into disrespect or disregard or to interfere with or prejudice parties or their witness during litigation is considered to be contempt of court, says Oswald. Contempt is defined by Halsbury, as consisting of words spoken or written which obstruct or tends to obstruct the administration of justice.

The Indian legislature does not provide with a concrete definition of contempt, however section 2(a) of The Contempt of Courts,1971 says 'contempt of court means civil contempt or criminal contempt'. Section 2(b) & section 2(c) of the above Act defines civil and criminal contempt. Although the legislature has not defined what amounts to contempt, it has defined civil and criminal contempt. Thus, contempt cannot be confine to four walls of a definition. Therefore, what would offend the court's

dignity and what would lower the court's prestige is thus a matter which can be decided by the court itself and it's for the court to deal with each case of contempt under the facts and circumstances of that case.

12.1 Contempt of Court and Indian Constitution

Article 129:

As per this Article, the Supreme Court is provided the power to punish for contempt of itself. It states that-

> *"Supreme Court to be a 'court of record' The Supreme Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself."*

Article 142(2):

Grants power to the Supreme Court of India to investigate as well as punish any individual for its contempt, subject to any other law. It states that-

> *"Subject to the provisions of any law made in this behalf by Parliament, the Supreme Court shall, as respects the whole of the territory of India, have all and every power to make any order for the purpose of securing the attendance of any person, the discovery or production of any documents, or the investigation or punishment of any contempt of itself."*

Article 215:

Power is granted to all the High Courts of India to punish for contempt of itself. It states that-

> *"High Courts to be 'courts of record' Every High Court shall be a court of record and shall have*

all the powers of such a court including the power to punish for contempt of itself."

12.2 Essentials

Following are the certain essentials of Contempt of court:

1. There must be a valid court order and the same should be in the knowledge of the respondent.
2. The action of contempt should clearly disregard the order of the court.
3. In the case of criminal contempt, the publication is the most important thing that can be either written or spoken or by signs or by visible representation or by words.
4. In the case of civil contempt, disobedience should be done willfully to any court proceedings, its judgment, decree, order, etc.

12.3 Kinds of Contempt

Contempt of court are classified under three broad categories, according to Lord Hardwick:

1. Scandalizing the court itself.
2. Abusing parties who are concerned in the cause, in the presence of court.
3. Prejudicing the public before the cause is heard.

However, in India, contempt is classified under two major categories:

1. Civil contempt
2. Criminal contempt

1. Civil Contempt

Civil contempt of court happens when someone disobeys or ignores or fails to follow the court's order which further results in injury to

the rights of the private party. According to section 2(b) of the Contempt of Courts Act, 1971 civil contempt means wilful disobedience to any judgement, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court.

Thus, from the above-mentioned definition it can be ascertained that there are two important essentials to constitute civil contempt:

1. Disobedience of any judgement, decree, direction, order, writ or other process of a court or an undertaking given to the court.

There should be disobedience of a valid order to constitute contempt of court. An order includes all kinds of judgements, orders-final, preliminary, ex-parte, contempt order. Disobedience of a decree, direction, writ or other process of a court, or an undertaking given to the court, will also amount to contempt of court. It was held by the Supreme Court, in the case of H.Puninder v. K. K. Sethi, that in absence of the stay order in appeal or revision of higher court, the order appealed against should be complied with, subject to any order passed at later stage, otherwise it is open for the contempt court to proceed further on merit of the contempt case.

A different view was upheld by the Supreme Court in case of interim relief/stay order. The Supreme Court, in the case of State of Jammu and Kashmir v. Mohammad Yakub Khan, held that where stay vacation application has been promptly filed by the respondent against whom the stay order has been passed and the same is pending for disposal the court shouldn't proceed in the contempt case unless and until the stay vacation application has been decided.

So far as the breach of undertaking as contempt of court is concerned, the basis behind this is that the contempt obtains a

beneficial order for himself from the court, by giving an undertaking and if he fails to honour the undertaking at a later stage, he plays a serious fraud on the court and thereby interferes with the administration of justice by bringing the court into disrespect.

An undertaking can be given to the court in two ways:

- By moving an application or filing an affidavit before the court clearly stating the terms of the undertaking.
- By giving clear and express oral undertaking which is incorporated by the court in the order.

A wilful breach of an undertaking, given according to the abovementioned ways, would amount to contempt of court.

2. The Disobedience or breach must be wilful, deliberate, and intentional.

Mere disobedience or breach of the court's order by the person is not sufficient to constitute civil contempt. Such a disobedience or breach must be wilful, deliberate, and intentional. In order to exercise its power to punish the contemnor the court has to be satisfied beyond reasonable doubt that the contemnor has willfully, deliberately and intentionally violated the court's order.

No court including contempt court is entitled to take trivialities and technicalities into account while finding fault with the conduct of the person against whom contempt proceeding is taken.

Where the order has been substantially complied with and a reasonable explanation has been provided for the delay in

compliance with the order, the contempt will not lie as the violation is not willfull and deliberate.

2. Criminal Contempt

Criminal contempt of court is defined efficiently in Section 2 (c) of the Contempt of Court Act of 1971. It states that criminal contempt is the publication of any matter by words, spoken or written, or by signs, or by visible representation or by gesture or doing of any act which includes as under

1. lowers or tends to lower, scandalize, or tends to scandalize the court's authority (any court)
2. interfere or tends to interfere, obstructs, or tends to obstruct in any manner with the administration of justice or
3. biasness interferes or tends to interfere with the due course of judicial proceedings (any type of proceeding). Through this, it can be determined that the Court is not only entrusted with the power to protect itself against insult or injury, but it also protects the right of the public so that the administration of justice is not obstructed, prejudiced, perverted, or interfered with.

1. Publication of any matter.

The word publication has been given a very wide meaning so far as contempt of court is concerned. It includes words (spoken/written), signs and visible representation. It also includes the publication of any material in the newspaper and magazines, the broadcasting of any material on the radio and exhibition of anything in cinemas, theaters and television.

If these materials contain anything which scandalizes or lowers or tends to scandalize or lower the authority of any court, prejudices, or interferes with the due course of any judicial proceeding or interferes or tends to interfere with administration of justice, it will amount to criminal contempt of the court.

2. Scandalizing or lowering the authority of the court.

Scandalizing might manifest itself in various ways but in substance, it is an attack on individual judges in particular or the court as a whole, with or

without reference to a particular case, by casting unwarranted and defamatory aspersions upon the character or the ability of the judges. Such conduct is punished as criminal contempt for the reason that it tends to create distrust in the minds of common people and thereby shatters confidence of the people in the judiciary.

The Supreme Court made it clear, in the case of Arundhati Roy, that criticism which undermines the dignity of the court can't be said to be fair criticism and does not fall under the ambit of freedom of speech and expression as is guaranteed by Article 19 (1)(a) of Constitution of India. Thus, prosecution of persons for scandalizing the court is not prohibited by constitutional right of freedom of speech and expression under Article 19 (1)(a).

Writing/drafting in pleading or petition by which defamatory allegations have been levelled against a judge in particular or court as a whole, would amount to criminal contempt, held the Supreme Court.

In case of U.P Residential Employee Cooperative Society v. New Okhla Industrial Development Authority, the Supreme Court held that filing a false affidavit in the court with a view to mislead the court will amount to criminal contempt.

3. Prejudice or interference with the due course of any judicial proceeding.

Any publication which prejudices or interferes with the due course of any judicial proceeding would amount to criminal contempt of court. Media trial or trial by newspaper is not considered proper because it effects the fairness of trial and is likely to cause interference with the administration of justice.

The knowledge of pendency of the case and reasonable grounds to believe that the case in pending is sufficient to make out criminal contempt and the intention and motive of the publisher behind the content of publication is not relevant for the purpose of criminal contempt. If it lowers the authority of the court and causes interference with the due course of judicial proceeding it would amount to criminal contempt.

In civil cases, the pendency starts with the filing of the plaint and in criminal cases, with the filing of a charge sheet or the issuance of summons or warrants. The pendency continues till the case is decided. In case an appeal/revision is filed, pendency continues till the appeal or revision is decided. If appeal/revision is not filed, pendency continues till the period of limitation for filing the same has not expired. Once it expires, pendency is over.

4. Interference/Obstruction with the administration of justice in any other manner.

The publication or doing of any act which interferes or obstructs or tend to interfere and obstruct in the administration of justice in any other manner, would amount to criminal contempt of court. This clause is a residuary clause, covering those cases of criminal contempt which are not expressly covered by section 2(c) of the Contempt of Court Act.

The term 'administration of justice' is much wider than the term 'course of judicial proceedings'. Every person in India is entitled to approach the court in order to secure justice and for the redressal of his grievances and the court has to decide dispute between the parties as per law and equity.

Any conduct which tends to prevent or actually prevents a party to approach the court, amounts to criminal contempt of court, for e.g. writing a threatening letter to litigating party or his counsel preventing him from attending the court, writing a letter to the judge or approaching him in order to influence his judicial conscience or approaching a counsel for undue favour are all examples of interference with administration of justice and are contempt of court.

An advocate is an officer of the court and undue interference with the advocate in the discharge of his professional functions amounts to contempt of court. Casting aspersions on counsel or approaching him for not defending a particular person amounts to criminal contempt of court.

It was held by the Supreme Court in case of J. R Parashar v. Prashant Bhushan, that holding a dharma or resorting to strike by itself may not amount to contempt of court but if in doing so the presiding officer of the court, its staff, the police personnel and the litigating parties are prevented

from approaching the court, it will amount to interference in the administration of justice and will be criminal contempt of the court.

12.4 Punishment Under the Contempt of Court Act

Section 12 of the act deals with the punishment for contempt of court. It provides as follows-

Punishment for contempt of court. -

(1) Save as otherwise expressly provided in this Act or in any other law, a contempt of court may be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both: -(1) Save as otherwise expressly provided in this Act or in any other law, a contempt of court may be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both\:" Provided that the accused may be discharged or the punishment awarded may be remitted on apology being made to the satisfaction of the court. Explanation. -An apology shall not be rejected merely on the ground that it is qualified or conditional if the accused makes it bona fide.

(2) Notwithstanding anything contained in any other law for the time being in force, no court shall impose a sentence in excess of that specified in sub-section (1) for any contempt either in respect of itself or of a court subordinate to it.

(3) Notwithstanding anything contained in this section, where a person is found guilty of a civil contempt, the court, if it considers that a fine will not meet the ends of justice and that a sentence of imprisonment is necessary shall, instead of sentencing him to simple imprisonment, direct that he be detained in a civil prison for such period not exceeding six months as it may think fit.

(4) Where the person found guilty of contempt of court in respect of any undertaking given to a court is a company, every person who, at the time the contempt was committed, was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the

contempt and the punishment may be enforced, with the leave of the court, by the detention in civil prison of each such person: Provided that nothing contained in this sub-section shall render any such person liable to such punishment if he proves that the contempt was committed without his knowledge or that he exercised all due diligence to prevent its commission.

(5) Notwithstanding anything contained in sub-section (4), where the contempt of court referred to therein has been committed by a company and it is proved that the contempt has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contempt and the punishment may be enforced, with the leave of the court, by the detention in civil prison of such director, manager, secretary or other officer. **Explanation. -** For the purposes of sub-sections (4) and (5), -

(a) "company" means anybody corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

Provided that, nothing contained in this sub-section shall render any such person liable to punishment, if he proves that the contempt was committed without his knowledge or that he exercised all due diligence to prevent its commission.

12.5 Period of Limitation

Section 20 deals with period of limitation for initiating contempt proceeding. Section 20 provides that no court shall initiate contempt proceedings either on its own notions or otherwise after the expiry of one year from the date on which contempt is alleged to have been committed. The period of limitation is applicable both in civil as well as criminal contempt. Contempt proceedings can be initiated either by filing an application or by the court itself suo moto. In both

the cases, contempt proceedings must be initiated within one year from the date on which contempt is alleged to have been committed.

In criminal contempt, contempt is alleged to have been committed the moment scandalization of court or interference with the administration of justice takes place. Consequently, the period of limitation immediately starts running. But, in case of civil contempt the period of limitation does not start from the date of the order. It starts running after expiry of period mentioned in the order after service of certified copy of the order upon the other side. If no time limit is mentioned in the order, the order should be complied within a reasonable period. The term "reasonable period" has been interpreted to be a period of three months from the date of service of certified copy.

12.6 Defences in Civil Contempt

A person charged with civil contempt of court can take the following defences-

1. **No knowledge of order**
   The general principle is that a person cannot be held guilty of contempt in respect of an order of which he claims to be unaware. Law casts a duty upon a successful party to serve the certified copy of the order on the other side either personally or by registered speed post. Notwithstanding the fact that the order has been passed in presence of both the parties and their counsels.
   So, it can be successfully pleaded in defense that the certified copy of the order was not formally served on the alleged contemnor.
2. **Disobedience or breach was not willful**
   It can be pleaded that although disobedience or breach of the order has taken place, but it was due to accidental, administrative, or other reasons beyond the control of the party concerned. This plea can be successful only when the order has been complied with and a reasonable explanation has been given for non- compliance thereof.

The Court may assess the intention of the party from the act done in the same way as a reasonable prudent man would assess in the given circumstances.

3. Order disobeyed is vague or ambiguous.

If the order passed by court is vague or ambiguous or its not specific or complete, it would be a defense in the contempt or alleged contemnor can raise a plea in defense that the order whose contempt is alleged cannot be complied with as the same is impossible. In case of R.N.Ramaul vs. State of Himanchal Pradesh the Supreme Court directed the respondent corporation to restore the promotion of the petitioner in service from a particular date.

This direction was complied with by the respondent corporation by treating him as promoted from that particular date which was given in the order. But the monetary benefits for that period were not paid by the respondent corporation and as such the contempt petition was filed. Respondent Corporation took a defense that monetary benefits were not paid to the petitioner because there was no direction in the order for payment of monetary benefit and they cannot be held liable for contempt.

In case of Bharat Coking Coal Ltd. vs. State of Bihar, the Supreme Court clarified the legal position by holding that where the order is incomplete and ambiguous, the parties should approach the original court and get the order clarified by getting the ambiguity removed.

4. Order involves more than on reasonable interpretation.

If the order whose contempt is alleged involves more than one reasonable and rational interpretation and the respondent adopts one of them and acts in accordance with one such interpretation, he cannot be held liable for contempt of court. However, this defense is available only when a bonafide question of interpretation arises. The intention of bonafide interpretation can be gathered from the fact that the order has been complied with by adopting one such interpretation. In case of T.M.A. Pai Foundation vs. State of Karnataka it was held that this defense won't be allowed if a doubt about the order has been deliberately created when actually there is no doubt at all.

5. Compliance of the order is impossible.

In proceedings for civil contempt, it would be a valid defense that the compliance of the order is impossible. However, the cases of impossibility must be distinguished from the cases of mere difficulty. In case of Amar Singh v. K.P.Geetakrishnan, the court granted certain pensioner benefits to a large number of retired employees with effect from a particular back date. The plea of impossibility was taken on the ground that the implementation of the order would result in heavy financial burden on the exchequer. However, the plea of impossibility was rejected by the court with the observation that although it's difficult to comply with the order but it's not impossible to comply and therefore, it should be complied with.

6. The order has been passed without jurisdiction.

If the order whose contempt is alleged, has been passed by a court which had no jurisdiction to pass it, the disobedience or violation would not amount to contempt of court for the reason that the order passed without jurisdiction is a void order and binds nobody. In case of Krishna Devi Malchand V. Bombay Environmental Action Group, the Supreme Court clarified the legal position and held that if the order is void, it cannot be ignored by the party aggrieved by it. The litigating party cannot assume the role of Appellate or Provisional authority in order to say that the order is not binding upon them. Consequently, if any party feels that the order has been passed by a court which had no jurisdiction to pass it, he should approach the same court for seeking such declaration by moving an application for recall of the order. If the application is rejected, the Appellate Court can be approached for such declaration. In case of State of Jammu and Kashmir vs. Mohd. Yaqub Khan, the Supreme Court has held that where stay petition application is pending, the Contempt Court should not proceed with the contempt case till the stay vacation application is decided. So, in case of interim order having been passed by a court which has no jurisdiction, a stay vacation application can be promptly file, raising the plea of lack of jurisdiction.

In Dr. H. Puninder Singh vs. K.K. Sethi, the Supreme Court has held that if there is any stay order passed by the Appellate Court, the contempt court cannot proceed. However, if no interim order application is passed by the

Appellate Court, the court can proceed, and the order of the original court should be complied with subject to any order passed by the Appellate Court at the final stage.

12.7 Defences Against Criminal Contempt

1. **Innocent publication and distribution of matter.**
   Section 3 deals with this defense. If a criminal contempt is initiated against a person on the ground that he is responsible for publication or for distribution of publication which prejudices or interferes with the pending proceedings, the contemptner may take the following steps:

   (a) he may plead under Sections 3(1) that at the time of publication, he had no reasonable ground for believing that the proceeding was pending.
   (b) he may plead under Sections 3(2) that at the time of publication, no such proceeding was pending.
   (c) he may plead under Sections 3(3) that at the time of distribution of publication, he had no reasonable ground for believing that the matter (published or distributed by him) contained or was likely to contain any material which interfered or obstructed the pending proceeding or administration of justice.

2. **Fair and accurate report of judicial proceedings**
   Sections 4 of the Act provides that a person should not be held guilty of Contempt of Court for publishing a fair and accurate report of any judicial proceedings or any stage thereof. Sections 7 of the Act provides Exception to the general principle that justice should be administered in public. Sub-sections (1) and (2) of Sections 7 provide that a person shall not be guilty of Contempt of Court for publishing the text or for publishing fair and accurate summary of the whole or any part of the order made by the court in camera (in Chamber) unless the court has expressly prohibited the publication of the proceedings on the grounds of:
   a) Public Policy
   b) Public Order
   c) Security of the State
   d) Information relating to a secret process, discovery, or invention, or, in exercise of the power vested in it.

3. Fair criticism of judicial act

Sections 5 provides that a person shall not be guilty of criminal contempt for publishing any fair comment on the merits of any case which has been finally decided. A defense can be taken that the statement complained of (in respect of publication of which criminal contempt has been initiated) must be in respect of a case which has been finally decided and not in respect of pending proceedings. Moreover, the statement should come from the mouth of a knowledgeable person in the field of law and not from a litigating party which has lost the case. In short, fair criticism means that criticism which while criticizing the act of a Judge does not impute any ulterior motive to him. In case of Arundhati Roy, the Supreme Court has held that judicial criticism cannot be invoked under the garb of Freedom of Speech and Expression under Article 19(1)(a) of the Constitution of India.

The Supreme Court further clarified that fair criticism of the judiciary as a whole or the conduct of a Judge in particular may not amount to contempt if it is made in good faith and in public interest. To ascertain the 'good faith' and 'public interest' the Courts have to take into consideration all the surrounding circumstances including the person's knowledge in the field of law, the intention behind the comment and the purpose sought to be achieved. A common citizen cannot be permitted to comment upon the Courts in the name of criticism by seeking the help of Freedom of speech and expression for the reason that if it is not checked, it would destroy the judicial institution itself.

In the present case, Arundhati Roy was not found to have knowledge or study regarding the working of the Supreme Court or judiciary of the country and so the defense of fair comment in good faith and public interest taken by her was rejected and she was punished for criminal contempt.

4. Bonafide complain against the presiding officer of a subordinate court.

Sections 6 provides that a person shall not be guilty of contempt of court in respect of any statement made by him by way of complaint in good faith concerning the presiding officer of any sub-ordinate court to the High Court or to the Court to which he is sub-ordinate. The protection of this section

will be available only when it is proved that the complaint was made in good faith.

In ascertaining the 'good faith' the intention and the purpose sought to be achieved by complaint will be taken into consideration and it would be ensured that the same was not made with ulterior motive.

5. **No substantial interference with due course of justice.**
By the Contempt of Courts (Amendment) Act, 2006, a new Section 13 has been substituted in place of existing Section 13. This new Section 13 provides that "notwithstanding anything contained in any law for the time being in force, no Court should impose a sentence for Contempt of Court unless it is satisfied that the Contempt is of such a nature that it substantially interferes or tends to interfere with the due course of justice."

6. **Justification by truth.**
The amended Sections 13(2) provides that the Court may permit justification by truth as a valid defense in any proceeding for criminal contempt if it is satisfied that it is in public interest. Thus, truth is now a defense if it is in the public interest and bonafide.

7. **The statement complained of is open to different interpretations.**
If the words complained of are open to two different interpretations and one of them indicates contempt while the other does not, the contemptner cannot be punished for non-compliance of one interpretation. But, in order to succeed in this defense, it is necessary to prove that the order was complied with in respect of one interpretation. If the order is not complied with at all, it cannot be proved that there was a reasonable doubt as to the interpretation of the order. On the other hand, it will be presumed that a doubt is deliberately sought to be created so as to avoid the compliance of the order.

8. **Defamation of the judge personally**.
If the publication or other act is merely a defamatory attack on the judge and is not intended to interfere with the administration of justice, it will not be taken as contempt of court.

The publication or other Act amounts to Contempt of Court only when it has nexus with the functioning of a judge. The statement complained of may amount to Contempt of Court only when it is made against a judge in his judicial capacity in the exercise of his judicial functions. However, in such a situation a judge is not remediless, and he has the same remedies available which are available to a common man. A defamatory attack on a judge may be Libel or Slander and he has a discretion to proceed for Defamation in civil, criminal, or simultaneous proceedings against the person concerned but he cannot be punished summarily under criminal contempt of court. The object of Contempt law is to protect the confidence of the people in the administration of justice and its object is not to prevent attacks upon the personal reputation of any individual judge. So, any personal attack upon the judge unconnected with the office he holds, is dealt with under the ordinary rules of Libel and Slander.

12.8 Remedy Against the Order of Punishment

Following remedies are available against the punishment order under Contempt of Court Act:

1. Apology
2. Appeal

1. Apology:

The contemner may under apology to the court and the court may remit the punishment awarded for contempt, if the court is satisfied that the apology has been made with real sense of repentance.

In case of A.K.Pandey, the Supreme Court made it clear that the court is not bound to accept the apology unless there is a feeling of repentance in the contemner. In case of M.C.Mehta vs. Union of India, the Supreme Court further clarified that apology should not be used as a weapon of defense in case of contempt. The apology must be tendered at the earliest opportunity. An apology will not be treated as an apology if tendered at a time when court is going to impose a punishment. However, along with apology the defense taken by contemner can be pleaded. Explanations to section 12(1) has enabled the contemner to put forward his defense while pleading apology as this explanation has provided that apology should not

be rejected on the ground that its qualified or conditional if the accused makes it bonafide. Apology will help the contemner if his explanation has been rejected.

In case of Haridas V. Smt. Usharani the apology tendered by contemner was not found to be genuine as the contemner repeatedly tried to assert that whatever he said was correct and he would prove it. And at the same time, he tenders apology. His apology was not found to be genuine, and he was punished for contempt.

2. **Appeal:**
Contempt of court Act, 1971 has provided for the statutory right of appeal against the orders of High Court passed in the exercise of its jurisdiction to punish for the contempt of the court. Prior to this act there was no statutory right of appeal but even at that point of time the person punished under the Contempt of Court Act was not remediless. The High Court itself could grant the certificate under Article 134 of the Indian Constitution and where the High Court refused to grant such certificate, the Supreme Court could entertain the appeal by granting special leave under Article 136 of the Constitution of India.

So, the right of appeal prior to 1971 was dependent on the discretion of the court and it was not by the way of right. Section 19(1) of the act provides right of only one appeal. It provides that an appeal shall lie as of right from any order or decision of the High Court in the exercise of its jurisdiction to punish for contempt. If the order of punishment has been passed by single judge of High Court, there is right of appeal to the division bench of not less than two judges of High Court. If the order of punishment is passed by a division on bench, then appeal will lie in Supreme Court.

However, in case of punishment order passed by single judge, the right of appeal gets exhausted once the appeal is filed before the division bench and there is no further right of appeal under the Contempt of Court Act.

However, the remedy under Article 136 of Constitution will still be available and the Supreme Court may grant leave to appeal under Article 136. Section 19(4) provides for the period of limitation for preferring an appeal.

It provides that an appeal under Article 19(1) shall be filed within thirty days to the division bench of High Court and in case the order of punishment has been passed by division bench of High Court then within sixty days to the Supreme Court from the date of the order appealed against. Section 19(2) deals with the power of Appellate Court during the pendency of appeal. It provides that during the pendency of the appeal the Appellate Court may pass the following orders:

1. The execution of the punishment order shall remain suspended.
2. If appellant is under confinement imprisonment, he may be released on bail.
3. The appeal may be heard notwithstanding that the appellant has not perched his contempt.

Section 19(3) provided that an appeal under section 19 will lie at the instance of the person aggrieved. A proceeding for contempt is between the court and the contemner. A person who moves the application for initiating contempt proceeding does not come within the category of person aggrieved and therefore he has no locus to file an appeal, if his contention for initiating the contempt proceeding is rejected. If a person is found guilty of contempt of court, an appeal will lie under section 19 that the instance of person who is found guilty and is consequently punished. But if a person is not found guilty of contempt proceedings and proceedings for contempt is either dismissed or dropped against him then the

informant or person who has moved the application for initiating the contempt will have no right of appeal under section 19 of the Act. In case of Varda Kant Mishra vs. State of Orissa, it was clarified by Supreme Court that the order or the decision of High Court refusing to initiate contempt proceedings or dropping the contempt proceedings or acquitting the contemner (even if initiated the contempt proceedings) cannot be challenged by way of appeal under Section 19. It is only the order of punishment which can be challenged by way of appeal under section 19 of the act.

12.9 Procedure to be Adopted in Contempt Proceedings

Section 14 of the contempt of court act deals with the procedure of contempt in the face of the court of record whereas section 15 deals with the procedure in cases other than in the face of court of record. This is also known as constructive contempt. Article 129 provides that the Supreme Court and article 215 provides that every High Court shall be a court of record and shall have all the powers of such court including to punish for its contempt. These court of records have inherent power to punish for contempt and therefore these court of records can deal with such matter summarily and can adopt their own procedure.

The only case to be observed by the courts of record while exercising the contempt jurisdiction is that the procedure adopted must be fair and reasonable in which full opportunity should be given to the alleged contemner to defend himself. No person should be punished for the contempt unless a specific charge against him is distinctly stated, and he is given a reasonable opportunity to answer it and to defend himself against such charge.

The contempt proceedings are neither civil proceedings nor criminal. They are sui generis. Consequently, contempt proceedings will neither be governed by Civil Procedure Code nor by Code of Criminal Procedure. Even the provisions of Indian Evidence Act will not be attracted in the contempt proceedings. The contempt of court including the criminal contempt is not an offence within the meaning of Code of Criminal Procedure and therefore a procedure prescribed by Code of Criminal Procedure for investigation, enquiry and trial of the offence is not required to be followed in contempt proceedings.

The contempt of court and the power of the Supreme Court and High Courts to initiate proceedings for contempt and pass punishment orders, is a special jurisdiction which is inherent in all the courts of record. Section 5 of the Code of Criminal Procedure expressly excludes special jurisdiction from the scope of Code of Criminal Procedure.

12.10 Procedure to be Adopted in Cases of Contempt in the Face of the Court

Section 14 deals with contempt in the face of the Supreme Court and High Courts and it provides that whenever it appears to the Supreme Court and the High Courts that a person appears to have committed contempt in its presence or hearing the court may cause such person to be detained in custody.

And shall at any time before the rising of the court on the same day or as early as possible, thereafter:

1. Cause him to be informed in writing of the contempt with which he is charged.

2. Afford him an opportunity to make his defense in respect of the charge.
3. After taking such evidence as may be offered by such person and after hearing him proceed either forthwith or after adjournment to determine the matter of the charge.
4. Make such order for the punishment or discharge of such person as may be necessary.

Where the person charged with contempt under this section applies whether orally or in writing to have the charge against him, tried by some judge other than the judge or judges in whose presence or hearing the contempt is alleged to have been committed and the court is of the opinion that it is necessary in the interest of justice that the application should be allowed, it shall cause the matter to be placed before the Chief Justice with the statement of facts of the case for transfer before such judge as the Chief Justice may think fit and proper under the circumstances of the case.

However, it shall not be necessary for the judge or Judges in whose presence or hearing the contempt is alleged to have been committed to appear as a witness before the Court where the matter has been referred. The statement of facts of the case written by the judge or Judges while referring the matter to the Chief Justice shall be treated as evidence in the case.

In Sukhdev Singh vs. Teja Singh, the Supreme Court observed that if the judge has been personally attacked, he should not, as far as possible, hear the contempt matter and should refer the matter to Chief Justice for nomination of some other Court, or, on the application of the person aggrieved. This is necessary keeping in view the principle of law that no one should be a judge in his own

cause, and secondly justice should not only be done, but it must appear to have been done.

In those cases, where the Contemnor has been detained in custody, during the pendency of the Contempt case, he may be released on Bail or on furnishing bond with or without sureties, that he shall continue to attend the Court proceedings.

12.11 Procedure of Criminal Contempt Committed Outside the Court

Criminal Contempt committed outside the Court, in other words, other than in the face of the Court, is known as Constitutive Contempt. Section 15(1) deals with cognizance of criminal contempt by courts of record whereas Section 15(2) deals with criminal contempt of sub-ordinate courts.

Section 15(1) provides that cognizance for criminal contempt can be taken by the Supreme Court and High Courts in the following manner:

a. On its own motion
b. On the motion of the Advocate General
c. On the motion of any other person, with the consent, in writing, of the Advocate General.
d. On the motion of such law officer in relation to the High Court for the Union Territory of Delhi as the central government may notify.

Section 15(2) provides that in case of criminal contempt of a sub-ordinate court, the concerned High Court may take action in the following manner:

e. On the reference made to it by the sub-ordinate court.

f. On the motion made by the Advocate General.
g. On the motion made by such law officer in relation to a Union Territory as the Central Government may specify.

Section 15(3) provides that every motion or reference shall specify the contempt of which the person charged is alleged to be guilty.

The expression "advocate general" in this section means the following:

1. in relation to the Supreme Court, the Attorney General or the solicitor general.
2. In relation to a High Court, the Advocate General of the states for which High Court has been established.
3. In relation to the court of judicial commissioner, such law officer as the central government may specify.

12.12 Bar on Private Persons

Section 15 bars the private individuals to file without consent of the Advocate General. The purpose of barring a private person from filing contempt procedure without the consent of Attorney General is to save the court's time from being wasted in frivolous complaints.

In Hari Kishan vs. Narutham Das Shashtri, the SC held that the purpose of barring private person from filing criminal contempt is to prevent the courts from being flooded with frivolous motions in order to serve personal interest or grudge.

Once the matter is scrutinized by advocate general only such motions which have substance will receive the court's attention.

In case of Biman Basu V A.G Thakurta, the SC held that any petition of criminal contempt filed by any private person without the consent of the Advocate General will not be maintainable and will be dismissed on this ground alone.

In cases of contempt committed outside the court, the contempter isn't present in the court and therefore a notice is to be served on him section 17 deals with this procedure. It provides that notice of every proceeding under section 15 shall be served personally on the person charged unless the court for reasons to be recorded, directs otherwise.

The notice shall be accompanied:

1. In case of proceedings commenced on a motion, by the copy of the motion along with affidavit and material on which such motion is founded.
2. In case of proceedings on a reference by a subordinate court, by a copy of the reference.

If the court is of the opinion that the person charged under section 15 is likely to abscond or is likely to avoid the service of notice, the court may order the attachment of the property of such person. However, the court may release the property from attachment if the person appears and satisfies the court that he did not abscond or avoid the court's notice.

Any person charged with contempt under section 15 may file an affidavit in support of his defence and the court may decide the charge of contempt on the basis of his affidavit or after taking such evidence as may be necessary.

12.13 Role of ethics in the contempt of court and analysis of criminal contempt of the courts

As stated earlier, the determination of what constitutes criminal contempt is very subjective and overly broad. Law is said to be overly broad when its language is such that it restricts even speech that is and should be constitutionally protected like free speech,

legitimate criticism. There are no specific rules or circumstances which could justify criminal contempt.

According to Fali S Nariman *"Criminal contempt has fallen into disuse in most of the civilised countries around the world, but not in India".*

The legal profession is a noble profession, and advocates are considered as officers of the court and the nobility of the legal profession is ensured by complying with the code of conduct laid down by the Advocate's Act.

Chapter 2 Part V of the Bar Council of India rules provides the code of ethics which is to be followed by advocates. A part of the rules deals with the Advocate's duty towards the court. For the purpose of this article rules which are important include:

- Advocate has to keep in mind the dignity of the judge.
- It is the duty of the advocate to perform his function in such a manner that due to his acts the honour and integrity of the court are not affected.

According to Chief Justice Marshall*, "the fundamental aim of Legal ethics is to maintain the honour and dignity of the law profession."*

However, what acts constitute to mar the dignity of courts and judges is not specified and this has been criticized by many imminent lawyers. A fundamental question arises, whether criticizing the judge in his personal capacity amounts to an act, which is against the ethics of the legal profession and scandalizes the authority of the court.

Criticism of judges according to eminent jurists around the globe ought not to be considered as a violation of ethics towards the court. As the former Chief Justice Gajendragadkar said:

> "We ought never to forget that power to punish for contempt, large as it is must always be exercised cautiously, wisely and with circumspection. Frequent and indiscriminate use of this power, in anger, would not help to sustain the dignity or status of the court, but may sometimes affect it adversely".

It must be kept in mind that justice is not a cloistered (closed) virtue, and it must be allowed to suffer scrutiny since this is the essence of democracy. Criticizing judges or even the court as an institution is the essence of democracy and suppressing it under the garb of contempt casts a chilling effect on the free speech of an advocate. Higher judiciary has unbridled power in deciding what constitutes criminal contempt. The initiation of contempt proceeding against Advocate Prashant Bhushan has been criticised not just by his fellow advocates but also retired judges and free speech activists.

To criticize a judge is a necessary right. Justice Markendey Katju said in a 2007 lecture on Law of contempt.

> "If a person calls me a fool, whether inside the court or outside court, I for one would not take action as it does not prevent me from functioning."

Further, if any comment is made against an individual judge, it must be ascertained whether it interferes with the administration of justice or impairs a judge in the adjudication process. This is because under section 13 of Contempt of Courts Act,1971 a person cannot be punished for Contempt unless the act "substantially interferes with the due course of Justice". In P.N. Duda vs. V. P. Shiv Shankar & Ors. (1988), the court stated that criticism of the court that does not hamper the administration of justice cannot be punished as contempt. The Supreme Court has repeatedly held that

when a court exercises the power of criminal contempt, it does not do so to vindicate the dignity and honour of the individual judge who is personally attacked or scandalised but to uphold the majesty of the law and the administration of justice.

In the context of Contempt proceedings against Advocate Prashant Bhushan, prof. Faizan Mustafa says that "Public confidence in the judiciary is strengthened not by resort to contempt powers but by orders and judgement". Lack of clarity on what constitutes as scandalous and lowering the dignity of court and discretion of Judges over it can curb legitimate criticism. The focus must be on dealing with Civil contempt. According to Indian Judiciary Report (2016-17), The High Courts have 96,310 Civil Contempt cases, compared to Criminal Contempt which was 586.

12.14 Punishment for contempt of court

Article 129 and 215 empower the Supreme court and the High courts to punish its contempt.

Accordingly, Section 12 of the Contempt of Courts Act, 1971 provides for punishment for contempt of court. It incorporates the type and extent of punishment which the courts can give for contempt.

According to section 12 contempt may be punished either by simple imprisonment of 6 months or a fine of Rs. 2000 or both. The further section makes it clear that the punishment for contempt cannot exceed the 6-month imprisonment and fine of Rs 2000. Thus, this is the maximum punishment which the courts can give for contempt.

Further section 12 also states that imprisonment should only be imposed if it is necessary to do in the interest of justice. In Smt. Pushpaben and another vs. Narandas V. Badiani and another3 the supreme court said that the Contempt of Courts Act, 1971 confers

special power on the court to impose imprisonment and the court must give a special reason with a proper application of mind while giving a sentence of imprisonment. It further said that the Sentence of a fine is the rule while imprisonment is an exception.

In the Supreme Court bar association v. Union of India said that for imposing imprisonment, the contempt has to be serious enough and that it must consider the likelihood of interference with the administration of justice. Culpability of the offender and that the intention for the act of contempt is a crucial factor while considering imprisonment as punishment for contempt.

Further according to section 10 of the Contempt of Courts Act, 1971, the High courts have the jurisdiction and authority to punish for the contempt of courts subordinate to it as well.

12.15 Scope of punishment for contempt of courts

The Supreme Court in Supreme court bar association v. Union of India (1998) discussed the power of courts to punish for contempt. It said that although parliament or state legislature has the power to make law in contempt of court, such legislation cannot denude, abrogate, or nullify the power of the supreme court to punish under article 129 or vest that power in some other court. This, it said because the Supreme Court is a court of record and being a court of record it has an inherent power to punish, and no law can take away this inherent jurisdiction (power) of a court of record. In simple words, it means that the Supreme Court and the High Court being courts of record, no law can take away the inherent jurisdiction.

It further differentiated between the power of the High court and that of the Supreme Court to punish for contempt. It said that 1971 does not deal with the power of the Supreme Court to punish for contempt of itself and only article 142(2) and 129 deals with it. This is because in the definitions clause of the Contempt of Courts Act, 1971 there is no mention of the Supreme Court and as the Supreme

Court said that section 15 only deals with the procedure by which the Supreme Court can take cognizance of an act of contempt. Thus, it said that the nature of punishment under Contempt of Courts Act, 1971 may act as a guide for the supreme court but the extent (quantum) of punishment under the act can apply only to the High courts. This is because according to the court, the1971 act ipso facto does not deal with the contempt jurisdiction of the supreme court.

Court supported this ratio by relying on another judgement Sukhdev Singh v. Hon'ble C.J.S. Teja Singh & Ors (1954)**.** In which it said that maximum punishment which can be imposed on a contemnor must be construed as dealing with the powers of the High court only and not the Supreme Court. Thus, the scope of power to punish for contempt of Supreme court is not limited by the Contempt of courts act, 1971.

12.16 Punishments that can be given to an advocate under the Advocates Act, 1961 for professional misconduct.

In Re: Vinay Chandra Mishra**,** the Supreme Court suspended the licence of a senior advocate on grounds of contempt of court. This decision was challenged in the Supreme court bar association v. Union of India and was overruled**.** It held that punishment for an established contempt of court committed by an advocate could not include punishment to debar him from practice by suspending his licence, which can only be done by the concerned State Bar Council and the Bar Council of India, under the Advocates Act, 1961.

12.17 Punishment for professional misconduct under the Advocates Act

Section 35 of the Advocates Act deals with professional misconduct. According to it, when the State Bar Council of India receives a complaint about professional misconduct, it shall transfer the disciplinary committee of the concerned state bar council.

However, Bar Council can transfer the case to the disciplinary committee of any other State Bar council as well.

The disciplinary committee after the receipt of the complaint will give a chance of hearing to the advocated, after that it may either:

- Dismiss the complaint, or if the proceedings were initiated at the instance of the State Bar Council, directs those proceedings be filed; or
- Reprimand the advocate i.e. warn the advocate; or
- Suspend the advocate from practice for such a period as it deems fit; or
- Remove the name of an advocate from the state roll of advocates.

Again, it must be noted that only the Disciplinary committee has the power to suspend the advocate from practice or remove him from the State roll of advocate and the High court and Supreme Court cannot exercise its power to punish for contempt to suspend or remove the advocate.

The Supreme Court states that the power of the Supreme court to punish for contempt of court though wide is limited and cannot be expanded to include whether an advocate is guilty of professional misconduct.

****

THE CONTEMPT OF COURTS ACT, 1971

ARRANGEMENT OF SECTIONS

THE CONTEMPT OF COURTS ACT, 1971
ACT NO. 70 OF 1971

[24th December 1971.]

An Act to define and limit the powers of certain courts in punishing contempt's of courts and to regulate their procedure in relation thereto.

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

1. Short title and extent. —

(1) This Act may be called the Contempt of Courts Act, 1971.

(2) It extends to the whole of India:

2. Definitions. —In this Act, unless the context otherwise requires, —

a) "Contempt of court" means civil contempt or criminal contempt.

b) "Civil contempt" means wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court.

c) "Criminal contempt" means the publication (whether by words, spoken or written, or by signs, or by visible representations, or otherwise) of any matter or the doing of any other act whatsoever which—

i) scandalises or tends to scandalise, or lowers or tends to lower the authority of, any court; or

ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or

iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner.

d) "High Court" means the High Court for a State or a Union territory and includes the court of the Judicial Commissioner in any Union territory.

3. Innocent publication and distribution of matter not contempt. —

1) A person shall not be guilty of contempt of court on the ground that he has published (whether by words, spoken or written, or by signs, or by visible representations, or otherwise) any matter which interferes or tends to interfere with, or obstructs or tends to obstruct, the course of justice in connection with any civil or criminal proceeding pending at that time of publication, if at that time he had no reasonable grounds for believing that the proceeding was pending.

2) Notwithstanding anything to the contrary contained in this Act or any other law for the time being in force, the publication of any such matter as is mentioned

in sub-section (1) in connection with any civil or criminal proceeding which is not pending at the time of publication shall not be deemed to constitute contempt of court.

3) A person shall not be guilty of contempt of court on the ground that he has distributed a publication containing any such matter as is mentioned in sub-section (1), if at the time of distribution, he had no reasonable grounds for believing that it contained or was likely to contain any such matter as aforesaid: Provided that this sub-section shall not apply in respect of the distribution of—

i) any publication which is a book or paper printed or published otherwise than in conformity with the rules contained in section 3 of the Press and Registration of Books Act, 1867 (25 of 1867).

ii) any publication which is a newspaper published otherwise than in conformity with the rules contained in section 5 of the said Act.

Explanation. — For the purposes of this section, a judicial proceeding—

a) is said to be pending—

A) in the case of a civil proceeding, when it is instituted by the filing of a plaint or otherwise,

B) in the case of a criminal proceeding under the Code of Criminal Procedure, 1898 (5 of 1898), or any other law—

i) where it relates to the commission of an offence, when the charge-sheet or challan is filed, or when the court issues summons or warrant, as the case may be, against the accused, and

ii) in any other case, when the court takes cognizance of the matter to which the proceeding relates, and

in the case of a civil or criminal proceeding, shall be deemed to continue to be pending until it is heard and finally decided, that is to say, in a case where an appeal or revision is competent, until the appeal or revision is heard and finally decided or, where no appeal or revision is preferred, until the period of limitation prescribed for such appeal or revision has expired;

b) which has been heard and finally decided shall not be deemed to be pending merely by reason of the fact that proceedings for the execution of the decree, order or sentence passed therein are pending.

4. Fair and accurate report of judicial proceeding not contempt. — Subject to the provisions contained in section 7, a person shall not be guilty of contempt of court for publishing a fair and accurate report of a judicial proceeding or any stage thereof.

5. Fair criticism of judicial act not contempt. — A person shall not be guilty of contempt of court for publishing any fair comment on the merits of any case which has been heard and finally decided.

6. Complaint against presiding officers of subordinate courts when not contempt. — A person shall not be guilty of contempt of court in respect of any statement made by him in good faith concerning the presiding officer of any subordinate court to—

a) any other subordinate court, or

b) the High Court, to which it is subordinate.

Explanation. — In this section, "subordinate court" means any court subordinate to a High Court.

7. Publication of information relating to proceedings in chambers or in camera not contempt except in certain cases. —

1) Notwithstanding anything contained in this Act, a person shall not be guilty of contempt of court for publishing a fair and accurate report of a judicial proceeding before any court sitting in chambers or in camera except in the following cases, that is to say, —

a) where the publication is contrary to the provisions of any enactment for the time being in force.

b) where the court, on grounds of public policy or in exercise of any power vested in it, expressly prohibits the publication of all information relating to the proceeding or of information of the description which is published.

c) where the court sits in chambers or in camera for reasons connected with public order or the security of the State, the publication of information relating to those proceedings.

d) where the information relates to a secret process, discovery or invention which is an issue in proceedings.

2) Without prejudice to the provisions contained in sub-section (1), a person shall not be guilty of contempt of court for publishing the text or a fair and accurate summary of the whole, or any part, of an order made by a court sitting in chambers or in camera, unless the court has expressly prohibited the publication thereof on grounds of public policy, or for reasons connected with public order or the security of the State, or on the ground that it contains information relating to a secret process, discovery or invention, or in exercise of any power vested in it.

8. Other defences not affected. —Nothing contained in this Act shall be construed as implying that any other defence which would have been a valid defence in any

proceedings for contempt of court has ceased to be available merely by reason of the provisions of this Act.

9. Act not to imply enlargement of scope of contempt. —Nothing contained in this Act shall be construed as implying that any disobedience, breach, publication, or other act is punishable as contempt of court which would not be so punishable apart from this Act.

10. Power of High Court to punish contempts of subordinate courts.—Every High Court shall have and exercise the same jurisdiction, powers and authority, in accordance with the same procedure and practice, in respect of contempts of courts subordinate to it as it has and exercises in respect of contempts of itself: Provided that no High Court shall take cognizance of a contempt alleged to have been committed in respect of a court subordinate to it where such contempt is an offence punishable under the Indian Penal Code (45 of 1860).

11. Power of High Court to try offences committed or offenders found outside jurisdiction. — A High Court shall have jurisdiction to inquire into or try a contempt of itself or of any court subordinate to it, whether the contempt is alleged to have been committed within or outside the local limits of its jurisdiction, and whether the person alleged to be guilty of contempt is within or outside such limits.

12. Punishment for contempt of court. —

(1) Save as otherwise expressly provided in this Act or in any other law, a contempt of court may be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both:

Provided that the accused may be discharged, or the punishment awarded may be remitted on apology being made to the satisfaction of the Court.

Explanation. — An apology shall not be rejected merely on the ground that it is qualified or conditional if the accused makes it bona fide.

(2) Notwithstanding anything contained in any law for the time being in force, no court shall impose a sentence in excess of that specified in sub-section (1) for any contempt either in respect of itself or of a court subordinate to it.

(3) Notwithstanding anything contained in this section, where a person is found guilty of a civil contempt, the court, if it considers that a fine will not meet the ends of justice and that a sentence of imprisonment is necessary shall, instead of sentencing him to simple imprisonment, direct that he be detained in a civil prison for such period not exceeding six months as it may think fit.

(4) Where the person found guilty of contempt of court in respect of any undertaking given to a court is a company, every person who, at the time the contempt was committed, was in charge of, and was responsible to, the

company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the contempt and the punishment may be enforced, with the leave of the court, by the detention in civil prison of each such person:

Provided that nothing contained in this sub-section shall render any such person liable to such punishment if he proves that the contempt was committed without his knowledge or that he exercised all due diligence to prevent its commission.

(5) Notwithstanding anything contained in sub-section (4), where the contempt of court referred to therein has been committed by a company and it is proved that the contempt has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contempt and the punishment may be enforced, with the leave of the court, by the detention in civil prison of such director, manager, secretary or other officer.

Explanation. — For the purpose of sub-sections (4) and (5), —

a) **"company"** means anybody corporate and includes a firm or other association of individuals; and

b) **"director",** in relation to a firm, means a partner in the firm.

13. Contempt's not punishable in certain cases. — Notwithstanding anything contained in any law for the time being in force, —

a) no court shall impose a sentence under this Act for a contempt of court unless it is satisfied that the contempt is of such a nature that it substantially interferes or tends substantially to interfere with the due course of justice.

b) the court may permit, in any proceeding for contempt of court, justification by truth as a valid defence if it is satisfied that it is in public interest and the request for invoking the said defence is bona fide.

14. Procedure where contempt is in the face of the Supreme Court or a High Court. —

(1) When it is alleged, or appears to the Supreme Court or the High Court upon its own view, that a person has been guilty of contempt committed in its presence or hearing, the Court may cause such person to be detained in custody, and, at any time before the rising of the Court, on the same day, or as early as possible thereafter, shall—

a) cause him to be informed in writing of the contempt with which he is charged.

b) afford him an opportunity to make his defence to the charge.

c) after taking such evidence as may be necessary or as may be offered by such person and after hearing him, proceed, either forthwith or after adjournment, to determine the matter of the charge; and

d) make such order for the punishment or discharge of such person as may be just.

(2) Notwithstanding anything contained in sub-section (1), where a person charged with contempt under that sub-section applies, whether orally or in writing, to have the charge against him tried by some judge other than the Judge or Judges in whose presence or hearing the offence is alleged to have been committed, and the Court is of opinion that it is practicable to do so and that in the interests of proper administration of justice the application should be allowed, it shall cause the matter to be placed, together with a statement of the facts of the case, before the Chief Justice for such directions as he may think fit to issue as respects the trial thereof.

(3) Notwithstanding anything contained in any other law, in any trial of a person charged with contempt under sub-section (1) which is held, in pursuance of a direction given under sub-section (2), by a Judge other than the Judge or Judges in whose presence or hearing the offence is alleged to have been committed, it shall not be necessary for the Judge or Judges in whose presence or hearing the offence is alleged to have been committed to appear as a witness and the statement placed before the Chief Justice under sub-section (2) shall be treated as evidence in the case.

(4) Pending the determination of the charge, the Court may direct that a person charged with contempt under this section shall be detained in such custody as it may specify:

Provided that he shall be released on bail, if a bond for such sum of money as the Court thinks sufficient is executed with or without sureties conditioned that the person charged shall attend at the time and place mentioned in the bond and shall continue to so attend until otherwise directed by the Court:

Provided further that the Court may, if it thinks fit, instead of taking bail from such person, discharge him on his executing a bond without sureties for his attendance as aforesaid.

15. Cognizance of criminal contempt in other cases. —

(1) In the case of a criminal contempt, other than a contempt referred to in section 14, the Supreme Court or the High Court may take action on its own motion or on a motion made by—

a) the Advocate-General, or

b) any other person, with the consent in writing of the Advocate-General, [or]

c) in relation to the High Court for the Union territory of Delhi, such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf, or any other person, with the consent in writing of such Law Officer.

(2) In the case of any criminal contempt of a subordinate court, the High Court may take action on a reference made to it by the subordinate court or on a motion made by the Advocate-General or, in relation to a Union territory, by such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf.

(3) Every motion or reference made under this section shall specify the contempt of which the person charged is alleged to be guilty. Explanation. — In this section, the expression "Advocate-General" means, —

a) in relation to the Supreme Court, the Attorney-General or the Solicitor-General.

b) in relation to the High Court, the Advocate-General of the State or any of the States for which the High Court has been established.

c) in relation to the court of a Judicial Commissioner, such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf.

16. Contempt by judge, magistrate or another person acting judicially. —

(1) Subject to the provisions of any law for the time being in force, a judge, magistrate, or other person acting judicially shall also be liable for contempt of his own court or of any other court in the same manner as any other individual is liable and the provisions of this Act shall, so far as may be, apply accordingly.

(2) Nothing in this section shall apply to any observations or remarks made by a judge, magistrate or other person acting judicially, regarding a subordinate court in an appeal or revision pending before such judge, magistrate or other person against the order or judgment of the subordinate court.

17. Procedure after cognizance. —

(1) Notice of every proceeding under section l5 shall be served personally on the person charged unless the Court for reasons to be recorded directs otherwise.

(2) The notice shall be accompanied, —

a) in the case of proceedings commenced on a motion, by a copy of the motion as also copies of the affidavits, if any, on which such motion is founded; and

b) in case of proceedings commenced on a reference by a subordinate court, by a copy of the reference.

(3) The Court may, if it is satisfied that a person charged under section 15 is likely to abscond or keep out of the way to avoid service of the notice, order the attachment of his property of such value or amount as it may deem reasonable.

(4) Every attachment under sub-section (3) shall be effected in the manner provided in the Code of Civil Procedure, 1908 (5 of 1908), for the attachment of property in execution of a decree for payment of money, and if, after such attachment, the person charged appears and shows to the satisfaction of the Court that he did not abscond or keep out of the way to avoid service of the notice, the Court shall order the release of his property from attachment upon such terms as to costs or otherwise as it may think fit.

(5) Any person charged with contempt under section 15 may file an affidavit in support of his defence, and the Court may determine the matter of the charge either on the affidavits filed or after taking such further evidence as may be necessary and pass such order as the justice of the case requires.

18. Hearing of cases of criminal contempt to be by Benches. —

(1) Every case of criminal contempt under section 15 shall be heard and determined by a Bench of not less than two judges.

(2) Sub-section (1) shall not apply to the Court of a Judicial Commissioner.

19. Appeals. —

(1) An appeal shall lie as of right from any order or decision of the High Court in the exercise of its jurisdiction to punish for contempt—

a) where the order or decision is that of a single judge, to a Bench of not less than two judges of the Court.

b) where the order or decision is that of a Bench, to the Supreme Court: Provided that where the order or decision is that of the Court of the Judicial Commissioner in any Union territory, such appeal shall lie to the Supreme Court.

(2) Pending any appeal, the appellate Court may order that—

a) the execution of the punishment or order appealed against be suspended.

b) if the appellant is in confinement, he be released on bail; and

c) the appeal be heard notwithstanding that the appellant has not purged his contempt.

(3) Where any person aggrieved by any order against which an appeal may be filed satisfies the High Court that he intends to prefer an appeal, the High Court may also exercise all or any of the powers conferred by sub-section (2).

(4) An appeal under sub-section (1) shall be filed—

a) in the case of an appeal to a Bench of the High Court, within thirty days.

b) in the case of an appeal to the Supreme Court, within sixty days, from the date of the order appealed against.

20. Limitation for actions for contempt. — No court shall initiate any proceedings of contempt, either on its own motion or otherwise, after the expiry of a period of one year from the date on which the contempt is alleged to have been committed.

21. Act not to apply to Nyaya Panchayats or other village courts. — Nothing contained in this Act shall apply in relation to contempt of Nyaya Panchayats or other village courts, by whatever name known, for the administration of justice, established under any law.

22. Act to be in addition to, and not in derogation of, other laws relating to contempt. — The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law relating to contempt of courts.

23. Power of Supreme Court and High Courts to make rules. — The Supreme Court or, as the case may be, any High Court, may make rules, not inconsistent with the provisions of this Act, providing for any matter relating to its procedure.

24. Repeal. — The Contempt of Courts Act, 1952 (32 of 1952), is hereby repealed.



CAVEAT PETITION, ITS BENEFIT AND HOW TO FILE IT

13

Civil proceedings include numerous procedures and require a variety of legal documents. The caveat petition is one of the legal documents that a person files under the provisions of the Code of Civil Procedure, 1908. Before proceeding further, it is important to understand the meaning of the term 'caveat.'

The caveat is a Latin term that means *"let a person be aware"* and dates back to the mid-16th century. A caveat petition follows the rule of Audi Alteram Partem and can be filed by anyone who believes that civil litigation has been filed or is about to be filed against him. **A caveat is a precautionary measure taken by a person who is worried that someone will file a case against that person in court.** As a result, it is a notice that notifies a person when the court is about to take legal action against that person. It is filed only in civil matters.

13.1 Caveat Petition

A caveat petition is commonly referred to as a 'caveat'. The caveat petition gives a person the right to be heard before any decision is made against him. No court can make a decision or issue an order against a person without hearing his or her side.

13.2 Meaning and definition of caveat.

No Code define the word "Caveat." However, the Court defined the word caveat in the case of Nirmal Chand v. Girindra Narayan, wherein it stated that "The term 'caveat' is very common in testamentary proceedings. A caveat is a caution or warning giving notice to the Court not to issue any grant or take any step without notice being given to the party lodging the caveat. It is a precautionary measure taken against the grant of probate or letters of administration, as the case may be, by the person lodging the caveat".

Example: Assume A owns the land. He builds a house on his land. However, A's neighbour, Z, claims that he owns a portion of that land. A now anticipated that Z might file an application. As a result, A files a caveat against Z, requesting that the court notify him if Z files any such application.

13.3 Legislative history of caveat

A person in India has the right to file a caveat petition under Section 148A of the Code of Civil Procedure, 1908. Originally, a provision for lodging a caveat was used in testamentary proceedings under the scope of the Indian Succession Act 1925, which was only made available for all civil suits in 1976. Prior to 1976, a caveat petition could be filed in the Supreme Court by anyone with knowledge of a suit about to be instituted or already instituted that he could contest. The petition was only valid for 90 days, and the court had no authority to extend it, as is now provided by the CPC. The caveator had to use the postal service to give notice of the caveat and on service of notice for this petition.

Following that, a copy of the application filed by the caveatee and all supplementary documents must be provided to him at his expense. Because of this practice, even if the individual was acting in his best interests, his presence was deemed premature, and he lacked locus standi. As a result, the 54th Law Commission Report recommended that this provision be added to the CPC, allowing a caveat petition to be filed in all lower courts, allowing the individual to contest and appear even at the initial stage of the suit or matter. As a result, Section 148 A was added as part of the 1976 amendment to the code.

13.4 Objective and scope of section 148 A

The main objective of Section 148 A is to safeguard and protect the interests of the person filing the caveat because he is concerned about a potential case. This is done to avoid any ex parte decision being made against him. The caveator hopes that by filing a caveat, he will be given a fair chance to be heard. This is in accordance with one of the principles of natural justice, Audi Alteram Partem. This is also done to avoid the multiplicity of cases and to save the courts' expenses and inconvenience.

In G.C Siddalingappa v. G.C Veeranna, the Karnataka High Court highlighted the objective of including this provision in the Code, which is to "give any person who will be affected by an interim order issued on an application that is expected to be made or has been made in a suit or proceeding instituted or about to be instituted in a court a chance to be heard. As a result, under sub-section (1) of Section 148-A of the Civil Procedure Code, any person who claims a right to be heard before passing an interim order in any suit or proceeding instituted or about to be instituted in a Court has the right to lodge a caveat in respect of such suit or proceeding".

13.5 Advantages of filing a caveat

1. It protects the caveator's basic right to be heard.
2. An ex parte order can be issued against the caveat or from the time he files a caveat petition.
3. It avoids the multiplicity of cases, as well as the inconvenience to the courts.

4. If the interim order is issued ex parte, it is unenforceable.

13.6 Can a Caveat be Filed Against a Criminal Case?

No, it was stated in Deepak Khosla v. Union of India & Ors that Section 148A of the Code applies only to civil proceedings and that a caveat cannot be made against petitions filed under the Criminal Procedure Code or petitions filed under Article 226 of the Indian Constitution.

13.7 Who can lodge a caveat petition?

Section 148 A specifies who is eligible to file a caveat petition. This is provided under clause 1 of Section 148 A, which states that a person who claims to have a right to appear in court may file a caveat petition in the following circumstances:

1. Where there is the apprehension of application.
2. Where an application has already been submitted.
3. In a suit that is expected to be filed against him.
4. In an already instituted suit.

In the case of Kattil Vayalil Parkkum Koiloth v. Mannil Paadikayil Kadeesa Umma, the court made it clear that a third party or complete stranger, someone who has no interest in the matter, cannot file a caveat application.

13.8 Rights and duties as per Section 148 A

Section 148-A specifies the rights and duties of the following:

1. Of caveator
2. Of the court
3. Of the applicant

1. Of caveator

A caveator is a person who files the caveat petition. He is required by law to perform certain duties, as specified in clause 2 of Section 148 A of the Code. The caveator must send a notice of the caveat petition to the opposite party (applicant). The opposite party is the person who has filed or may file an application for an interim order against the caveator.

It was observed in K. Rajasekaran v. K. Sakunthala that once a caveat is lodged, the caveator is required to serve a notice of the caveat on his

adversary who is expected to file an application or who has already filed an application. This is a mandatory provision that must be followed by the caveator. Once it is established that the adversary was not served with a notice of the caveat, the adversary may petition the Court to revoke the order passed behind his back. A caveator who did not comply with the mandatory provision cannot legally seek to keep the ad interim injunction granted to him.

2. **Of the court**
   This section imposes duties on the court as well, as stated in clause 3. It states that if an application is filed after a caveat has been lodged under clause 1, the court shall serve notice of the application on the caveator.
3. **Of the applicant**
   Clause 4 of the provision specifies the applicant's duties. It states that if the applicant receives notice of any caveat, he is required to provide, at the expense of the caveator.
   1. A copy of his application.
   2. Copies of any documents or papers he has filed in support of his application.
   3. Copies of papers and documents that he may file in support of his application.

13.9 The time limit for the caveat

According to clause (5), a caveat shall be valid for not more than 90 days from the date of filing. After the 90-day period has passed, a fresh caveat may be filed.

13.10 Implication of non-serving of notice by the court

The consequence of a situation in which notice was not served by the court was explained in the case of C Seethaiah v. Government of A.P. it was decided that an order issued by the court without giving notice to the caveator is illegal, but not null and void. The legislature's intent is clear in the provision requiring the caveator to be provided with copies of petitions and documents filed by the opposing party and to be heard before the court issues any order. The legislature imposes a duty on both the court and the applicant for this purpose in subsections (3) and (4). Unless the condition

precedent (notifying the caveator) is met, the Court cannot issue the interim order, which may affect the caveator.

In the landmark case of Reserve Bank of India Employees Association and Another v. The Reserve Bank of India and Others, the court was asked to determine whether an order of stay that is made without hearing the caveator is unenforceable or is a nullity. It was observed by the court that an order that was issued without giving the caveator adequate notice cannot be deemed invalid. It was argued that the legislator could have done so directly rather than indirectly if their intention had been to restrict the ordinary powers of a civil court. A remote implication cannot change, weaken, or even restrict the authority of a Civil Court. In this instance, it was decided that even if the caveator was not informed of the date of the matter's hearing, the mere filing of a caveat petition would not limit the court's authority. The caveat is merely the person's right to be notified, but this cannot prevent the court from making an interim order on the merits of the case.

13.11 Where can a caveat petition be filed?

When the caveator expects legal proceedings to be filed against him in the future, he can file a caveat petition in any Civil Court of original jurisdiction, Appellate Court, High Court, or Supreme Court. Civil Courts include Small Causes Courts, Tribunals, Forums, and Commissions.

13.12 How to file a caveat petition.

A prescribed form has been created for the filing of a caveat petition, which consists of

1. The name of the court where the caveat petition has been filed.
2. If a suit, petition, or appeal has been filed, the number of that appeal or suit.
3. Name and address of the person filing the caveat petition.
4. The name and address of the opposing party.

5. A complete description of the matter on which the caveat petition is filed.
6. If a caveat petition is filed in the case of an appeal or writ petition, the person should also attach a copy of the decision against which he believes the opposing party can file an appeal or writ petition.
7. The caveat application also includes one copy of a Vakalatnama.
8. After filing the caveat petition in court, the caveator must serve the caveat notice to the opposing party through the registered post.
9. Although the court costs for filing a caveat differ from one court to another, they are generally less than INR 100.

CAVEAT PETITION IV
FORM [See Rule 22] Memorandum of Caveat
Before the Appellate Tribunal for Electricity (Caveat No. of 200)
CAUSE TITLE

Between

AB……Caveat or

And

CD ……Expected Appellant/Petitioner

1. Set out details of the order against which appeal/application/petition is expected, in the matter of dispute between AB and CD.
2. **a)** Address for service on the caveator
   b) Address for service on the Counsel for the caveator
3. Specify the authority who passed the order with reference number and date (enclose copy of order appealed against).
4. Set out the details of expected Appellant (s)/Petitioner (s)
   With address (i)
   (ii)
   (iii)
5. Prayer: Let no orders be passed in the appeal expected to be filed or any interlocutory application that may be preferred by the expected Appellant/Petitioner without service of notice on the caveator.

The caveator undertakes to accept service of appeal or petition or application and appear before this Tribunal on the date and time at which the appeal/petition/application is moved by Respondent/expected appellant/petitioner.

Dated at New Delhi ……. Day ……. of (Month) 200

Counsel for Caveator

Verification

The caveator above named state and verify that the contents of this caveat lodged are true and correct.

Verified at New Delhi on

This……. day of…….200

Caveator

SPECIAL LEAVE PETITIONS (SLPs)- WHAT, HOW AND WHEN TO BE FILED

14

In any legal system, there is a hierarchy of courts and tribunals at different levels. After a judgment has been passed by a court lower in a hierarchy, any party, unsatisfied or aggrieved by the outcome may go in for an appeal in the appellate court, which in India is generally a High Court. However, if any of the parties is unsatisfied by the appellate court's decision, a further appeal can be made to the Supreme Court of India. Such appeals are called Special Leave Petitions and filed to the Supreme Court directly. The guidelines for these appeal processes are provided by the Articles 132 to 136.

This special class of appeals, which may not follow the general hierarchy of the courts and tribunals. Article 136 of the Indian Constitution, allows the Supreme Court to grant special leave to appeal against any judgment or order in any matter or case, made by any court or tribunal in the country. The Supreme Court is vested with the absolute power of interpretation of the constitution being the ultimate guardian of it.

14.1 The circumstances, when an SLP be made to supreme court.

The appeal can be made in a case where a substantial question of law is involved or where gross injustice has been observed. The judgment, decree, or order against which the appeal is being made must have the character of judicial adjudication. This implies that purely administrative or executive order or ruling cannot be a matter of appeal and further, it is also important that the authority whose judgment or order is being appealed against must fall under the definition of a court or a tribunal.

The Special Leave Petition shall not apply to any judgment or order handed down by any court or tribunal involving the armed forces. This is the only exclusion as is given in the clause 2 of Article 136.

14.2 What is "special" about SLP?

What is so special about article 136 that distinguishes it from the general appeals listed in 132-135 are as follows. First, it is not just restricted to appeals against judgments, decrees, and final orders of the High court but it can also be granted against the judgments of lower courts. The second thing to note is that article 136 is fluid and flexible compared to articles 132-135 which deals with appeals. What is basically meant is that the judgments, decrees, or orders do not have to be final in nature and appeals are allowed even against interlocutory and interim judgments and they may be from cases or matters of either criminal or civil nature or otherwise. However, in the normal course, it is generally expected that the appellant has exhausted all other recourses the law provides. Moreover, there may not be any law which limits the jurisdiction of the Supreme Court when it comes to article 136.

14.3 The Rules about Special Leave Petition

In leading case laws, the following rules have been established. By virtue of this article, we can grant special leave in cases of civil, criminal, Income tax related cases, cases from various tribunals and any variety of other cases. SLP can also be filed when a High Court does not approve fitness for appeal to Supreme Court. Ordinarily, a private party other than the complainant should not be permitted to appeal.

14.4 How can a SLP be filed?

The petition has to contain all the facts which are important for the Supreme Court (SC) to decide whether an SLP may be admitted or not. This petition has to be duly signed by the Advocate on record and should also be inclusive of the petitioner's statement that no other petition has been filed in the HC. The same should also have a copy of the judgment the SLP is sought against, along with a verifying affidavit and all relevant documents.

After the petition is filed, the court hears the case and depending on the merits of the case allows the opponent party to state their views in a counter affidavit. Thereafter, the court decides if special leave can be granted or not. If leave is granted, the SC will exercise its appellate jurisdiction. Subsequent decisions of the SC are binding on both the parties.

In the case of Kunhayammed v State of Kerala, AIR 2000 SC 2587, the discussion was about the exercise of the jurisdiction under article 136 and if it consisted of granting of the SLP and subsequently hearing the appeal. The court has a choice to grant the SLP and if the court decides to not grant it on its findings, then the appellate jurisdiction of the court does not come into existence. However, mere dismissal of the SLP petition does not mean that there is res judicata, it merely means that the case was not fit for the

grant of SLP, and it is open to the aggrieved party to approach the concerned court for review under article 226.

14.5 The Time Frame for SLP

SLP can be filed against any judgement of High Court within 90 days from the date of the judgement. However, there is flexibility at the discretion of the SC. Or it can be filed within 60 days against the order of the HC refusing to grant the certificate of fitness for appeal to SC.

14.6 The Scope of Article 136

Article 136 bestows the Supreme Court discretion to entertain appeals in suitable situations, not otherwise provided for in the Constitution. The SC may exercise this discretionary power to grant special leave to appeal any judgment or decree or may refuse to grant the leave since this is not a matter of right. An aggrieved party can approach the Supreme Court, for clarification of any constitutional or legal issue involved in any civil, criminal or other type cases, through article 136. Thus, the nature of this power of the SC is of residuary nature and its definition is not limited. A study of the SLPs, however, shows that the SC grants leave only in case of exceptional situations and follows well-established judicial procedures in exercising the discretionary power.

The SC found this totally unwarranted. The SC actually explained how the discretionary powers will be exercised in granting special leave to appeal. This has actually gone on to define SLP. The appeal was subsequently dismissed.

In normal circumstances, the SC does not interfere with an order of acquittal by the High Court as has been exemplified in the case of State of AP v the P Anjaneyulu (AIR 1982, SC 1184). In exceptional situation only, the SC allows an appellant to raise fresh pleas under special leave. For example, in the case of CCE v National Tobacco Co of India Ltd. (AIR 1972 SC 2563), where the authority does not

have any jurisdiction under the rules to issue the impugned notice the SC allowed a special leave. However, a new plea requiring investigations of facts is not generally permitted at this level. Once again, in a situation, where an interpretation of a statute is the basis of a new plea, leave petition may be permitted. In the case of Laxmi & Co. v Anand R Deshpande, (AIR 1973, SC 171), it was held that **"the court takes notice of subsequent events while hearing appeals under Article 136 to shorten litigation, to preserve the rights of both the parties and to subserve the ends of justice".**

The Supreme Court holds that as the court of last resort it has an inherent power to correct its own previous decisions which may be in violation of the law or the constitution or fundamental rights causing gross injustice to any party. Such ruling arrived at the Antulay v RS Naik (AIR 1984, SC 684) case, where the petitioner sought to invalidate decisions from an earlier case involving the same parties and issues in the apex court.

14.7 A few case studies in brief

1. **Sanwat Singh v. the State of Rajasthan[G12], AIR 1961, SC 715**
   There was a riot between two rival factions of resulting in injuries to many and death of two farmers. The Sessions court acquitted the convicts, but on appeal, the High Court found some accused guilty and sentenced them to various terms of imprisonment. One of the convicts applied for a special leave against the conviction and sentence by the High Court. The counsel for the appellants argued that the High Court has interfered with the findings of the Sessions court, and this was a departure from the principles of the Privy Council, which was referred. The SC ruled that Article 136 vests discretionary power which cannot be exhaustively defined but does not permit interference unless substantial and grave injustice has been done and the conscience of the court is shocked. The appeal was dismissed.

2. **Jaswant Sugar Mills Ltd. v. Laxmichand, AIR 1963 SC 677**

   The workers of the Jaswant Sugar Mills Ltd. Company resorted to agitation for enforcing their demands for a bonus, leave etc. The company wanted the agitating workers to be dismissed. Since a dispute between the company

and its workers was already pending before the Industrial Tribunal the workers could not be discharged without the permission of the Conciliation Officer. The Officer granted permission in respect of only a few workers. The company made an appeal to the Labour Appellate Tribunal, but it was dismissed as incompetent on the ground that the Conciliation Officer was not an authority as per the Industrial disputes (Appellate Tribunal) Act, 1950. The company then obtained special leave to appeal to the Supreme Court against the direction of the Conciliation Officer and also against the order of the Labour Appellate Tribunal.

SC agreed that the Conciliation Officer is not a tribunal or court. The right to appeal under Article 136 is only against awards or decisions, and a Conciliatory officer's job is not to award or deliver any definitive judgment affecting rights of parties. The Labour Appellate tribunal also upheld this position. Therefore, both the appeals were dismissed.

3. Kunhayammed v State of Kerala, AIR 2000 SC 2587

In this particular case, the subject of discussion was the exercise of the jurisdiction under article 136 and whether it consisted of the granting of the SLP and subsequently hearing the appeal. The court has a choice to grant the SLP and if the court decides to not allow this on its findings, then the appellate jurisdiction of the court does not come into existence. However mere dismissal of the SLP petition does not mean that there is res judicata, it merely means that the case was not fit for the grant of SLP, and it is open to the aggrieved party to approach the concerned court for review under article 226.

Finally, if a special leave is not granted, the parties must abide by the decisions given by the courts. Article 141 of the Constitution lays down that the law declared by the SC is binding on all courts.

PROTECTION OF CIVIL SERVANTS UNDER CONSTITUTION AND DOCTRINE OF PLEASURE IN INDIA

15

15.1 Who are Actually Civil Servants?

The Article 311 is applied only on the Civil Servants in India and is not available as a remedy to any other person or employee than a civil servant, even if he is associated with the Government of Union, State, or any Corporation.

Neither in Article 310, 311 or under any specific act the meaning of **Civil Post**, is defined or described, it must widely be understood with the inferences and interpretations of the Judicial Pronouncements in India. Firstly, it has been laid down regarding the Defence Employees that they are not covered under the purview and ambit of Civil Post.

In the famous case of **V.K. Nambudri v. Union of India** it has been laid down by Hon'ble High Court of Kerala that the defences and safeguards ensured to the Civil Servants in India are not available to the Defence Personnel or any associated civil employee from them, as article 311 is strictly applied and available only for the Civil Servants.

As the Defence Personnel are governed by the Army Act, 1951 an Ors. therefore, they are not covered and safeguarded by this provision and can be dismissed without assigning any reason looking to the National

Security and National Interest, the Courts cannot interfere with their domain.

The Landmark Case which defined and adjudged the meaning of Civil Post and the persons covered under its ambit was **State of U.P. v A.N. Singh** in which Hon'ble Supreme Court of India held the three tests which determines that weather a person is a civil servant or not, they were:

- **Existence of Master:**

Servant Relationship with that of State- If there is a relationship of Master and Servant being in existence between the State and the Person that he may be looking and considering the other circumstances and factors be regarded as a civil servant.

- **State must be the Selecting and Appointing Authority:**

The Selecting and Appointing Authority of the particular individual must be state that power must be freely exercised by the State Government otherwise it must not be called a free authority, and the person also cannot be regarded as a civil servant, as the State is not having freeness in appointing and selecting the person of his choice.

- **Payment must be released from the State Treasury:**

The Payment made to the Civil Servant, or the salary paid, or the wage paid must have its source from the State Fund or Treasury, which must establish a direct nexus between the post of the person and authority of the State over it.

Likewise, if a person qualifies these tests, then he must be regarded as the civil servant and is having all the Constitutional Protections are widely been available to him under the provisions of the Indian Constitution.

The Constitutional Remedies available to such above aforesaid Civil Servants under the Statutory Provisions of Article 311 are as follows:

1. **Reasonable Opportunity of being Heard:**
   Even the Principles of Natural Justice, Indian Evidence Act, 1872 and various Provisions of Code of Criminal Procedure, 1973 ensures

that an accused or the alleged must get an reasonable opportunity of being heard and to clarify that why a particular punishment must not be inflicted on a particular civil servant who is charged for a crime or irregularity.

Article 311 (2) of the Indian Constitution expressly states that a civil servant cannot be dis-missed or reduced in rank until an unbiased and fair enquiry has been conducted and investigation is properly executed in this reference and a reasonable opportunity had been given to such a person to defend him in front of the Disciplinary Authority or the Competent Court of Law.

What is meant by a Reasonable Opportunity?

The ambit and purview of Reasonable Opportunity is so vast and uncertain; therefore, it cannot be confined into a particular Act or Statute, but it has to be considered having regard to the circumstances and situations. In the most Landmark Case of **Khem Chand v. Union of India** Hon'ble Supreme Court of India answered this Question, in which a Government Servant was dismissed from his service on the basis of the Report of the Enquiry Officer, in which serious charges were framed against him.

The Defendant challenged the validity of the dis-missal on the ground that the Copy of the Enquiry Officer's Report is not have been given to the Defendant, and therefore he was not aware about the charges framed against him and the findings of the Enquiry Officer in his Report, which is violation of the Provisions of Article 311. It was held that it was obligatory on the Competent Authority who passed the Order of Dis-missal to provide a copy of the Report to the Defendant and must give him a reasonable opportunity to prove his innocence and reason that why he must not be punished.

Therefore, even after the recommendation and findings of the Enquiry Officer the dis-missal of the Government Servant was held as in-validated. Similar contention was adopted in the Case of Managing Director, **ECIL v. B. Karunakar** in which Five Judges Bench of Hon'ble Supreme Court of India held that until the Enquiry

Officer is not the Disciplinary Authority it is obligatory on their part, to provide the Copy of the Report to the alleged civil servant, even if it is contrary to the provisions of any law, as non-compliance of the aforesaid is violation of the Principles of Natural Justice, and the Act or Law denying the aforesaid is unconstitutional to that extent.

2. Termination or Reduction in Rank must lead to Punishment:

It is clear from the above provisions of Article 311, that this remedy is available only when the Civil Servant is reduced in rank or dismissed or has been terminated by the way of punishment, if it is in Formal Course of Administrative Procedure or otherwise in Public Interest or due to In-efficiency or Mis-conduct on the part of the Civil Servant than under such circumstances this remedy cannot be availed by such civil servants.

Like in the most famous case of **Parshottam Lal Dhingra v. Union of India** the Appellant was appointed to officiate a Higher Post. After some time, he was reverted back to his previous place due to in-efficiency and dis-satisfaction in his workings, but it neither in any way had affected his salary, previous rank or future chances of promotion.

Hon'ble Supreme Court of India ruled that in order to avail the remedy as constituted under Article 311, the termination or reduction of rank must result into punishment i.e. when the person is entitled to hold a particular post and is removed erroneously and arbitrarily or had not been given any reasonable opportunity of being heard, here in the instant case:

1. Firstly, the Appellant was merely officiating the Post, therefore he was not having legal or constitutional right as such to hold the post, and from the situation itself it is impliedly agreeable and reasonably force-able that the post was terminable after giving a reasonable notice by the Government, and
2. Secondly and Most significantly the civil servant was neither reduced in rank as he was just officiating the post and neither he was

terminated, dis-missed or removed from his post as a punishment so therefore the aforesaid remedy was not available to him under the Provisions of Article 311.

Similarly, it has been held in various Judicial Pronouncements by Hon'ble Supreme Court of India, that Suspension does not amount to punishment. Suspension is a enabling provision under law and can be used by Government according to it's discretion and when any of the civil servant is suspended he cannot claim the Right of a Reasonable Opportunity, however he entitled to receive the minimum subsistence allowance in accordance with the provisions of law, from which he cannot be deprived off, and appeal can be made on the basis of irregularities or dis-satisfaction in the Procedure of Enquiry but after getting a final order from the Enquiry Commission or other Competent Authority and not otherwise.

3. Compulsory Retirement must lead to Punishment:

As also referred above that in order to avail the remedy under the statutory provisions of Article 311, even in the case of compulsory retirement, it must lead to punishment, only and only than the civil servant can avail the remedy of the said provision.

However, premature retirement of any civil servant after completing the certain years of Government Service or attaining a particular age in accordance with the Rules of Service of that particular State or otherwise doesn't attract the liability under this Article. The power to compulsorily retire a government servant is vested in the Government by virtue of the Doctrine of Pleasure widely incorporated by the provisions of Article 310 of the Indian Constitution.

However, the main purpose of granting such compulsory retirement is to weed out the old dead wood and to provide opportunity to new and fresh blood in order to maintain the efficiency and initiative skills in the administration of law and order and justice at large.

The Service Rules widely provide for the condition regarding the Compulsory Retirement of a civil servant after attaining a particular age or completing a prescribed yeas in Governmental Service, but while

doing so the review of the Confidential Report of the Civil Servant is minutely scrutinised in order to investigate the Mis-conduct or In-efficiency on his part which is the most common decisive factors for the Compulsory Retirement of any Civil Servant.

However, in contrary to it the Civil Servant may use any other remedy as prescribed in his subjected Service rules but he is not at all entitled to avail the aforesaid remedy under the said provision. The major guidelines regarding the Compulsory Retirement of a Civil Servant has been laid down in the most famous case of **State of Gujarat v. Umedbhai M. Patel** by Hon'ble Supreme Court of India are as follows:

1. If the Public servant is no longer useful as an efficient personnel to the administration, than such officers may be compulsorily retired from their services.
2. If it is necessary in the public interest or any other genuine reason to retire such officer from his services, than such decision might be taken.
3. The Order must not be passed in a haphazard manner, ignoring the procedural requirements in this reference if is it necessary to do so like the Departmental Enquiry or the Recommendation of the Review Committee if desirable, must be done.
4. Compulsory Retirement under such circumstances will not lead to Punishment and will not at all attract any provisions of the Article 311, however remedy under the concerned Service Rules will be available to the said civil servant.
5. Any adverse entries in the Confidential Report or any Inquiry pending against the such civil servant for any corruption charges or mis- conduct will be given consideration and due weightage while passing such Orders.
6. If the Officer is given any promotion or prominent place in the administration despite of pending investigation against him or adverse entries in the CR, than it will be regarded as a undue favour to the civil servant.
7. Any private complaint or any un-communicated entries which might not be lodged in the Confidential Report of the Civil Servant may be taken into consideration while

reviewing the Compulsory Retirement of the Civil Servant.

8. The Compulsory Retirement must not under any circumstance forfeit any right of the Civil Servant like Pension, Gratuity and other benefits, neither in any way must impose any monetary punishment or penalty on him.

It is widely regarded that with reference to the above said Guidelines the Civil Servant may be given compulsory retirement if the Authorities or the than Government thinks fit to do so, acting in the periphery of the Guidelines, Procedures, Service Rules and Discretionary Powers vested in the Government, which must lead to punishment in any way as contrary to it will attract the provisions of Article 311.

15.2 Origin of doctrine of pleasure in England

The origin of the doctrine of pleasure can be traced back to England to the Latin phrase "*durante bene placito* (during pleasure)". It is a common law rule having special prerogative of the British crown. In England, a servant of the crown holds office during the pleasure of the crown, and he can be dismissed from the service of the crown at pleasure. The tenure of the office of a civil servant can be terminated at any time without assigning any cause. Even if there exists any special contract between the crown and the civil servant concerned, the crown is not bound by it.

The civil servant is liable to be dismissed without notice and he/she can't claim damages for wrongful dismissal or immature termination of service except where it is otherwise provided by a statute. The justification for the rule is that the crown shouldn't be-

1. Bound to continue the public service of any person whose conduct is not satisfactory.
2. Shackle its future executive action by entering into an agreement in matters concerning the welfare of the country.

The doctrine of pleasure is based on public policy. Its operation, however, can be modified by an act of Parliament.

15.3 Doctrine of Pleasure

The Doctrine of Pleasure plays a very major role in the consistency and on the administrative life of a civil servant. We must have learnt that England, the Civil Servant which is duly appointed by the assent of the Crown can be removed from his post or terminated without assigning any reason to him.

Even if the Contract of Employment doesn't bound the Crown in any manner. This is known as **Absolute Pleasure**, i.e. solely the destiny of the Civil Servant depends upon the Pleasure of the Crown, however in actual practice the public policy is kept in mind before ascertaining any action against any Civil Servant in England, and if it seems vital and in furtherance of Justice than only the person is removed from his post, and not otherwise.

In India Article 310 of the Indian Constitution describes widely the pleasure exercised by the President of India, on appointment and dis-missal of the Civil servant.

The article widely states that the Persons who are:

1. Members of Defence Services of India
2. Members of Union Public Service Commission of India
3. Members of State Public Service Commission of India
4. All India Services of India

Holds their offices during the Pleasure of the President of India, and in the State concerned on the whims and pleasure of the Governor of the State. However, it must actively be noted and minded that this pleasure constituted and mentioned in the Constitution is not an

Absolute Pleasure as was in England but is graced with certain restrictions on its execution.

Like it was held in **State of Bihar v. Abdul Majid** that a Civil Servant could always sue the State for his entitled salary, and which is even his legal and fundamental right from which he can't be deprived off.

The Article 310 expressly says and uses the words **Except** and **Provided by the Constitution** states that the Civil Servant could be removed or action against him could be ensured but it must be accordance with Constitution and Statutes being enacted in this reference. Further Article 311 of the Constitution itself places a restriction on the arbitrary removal of the State or Authorities concerned and places a pre-condition of the necessary procedure to be implemented before the same, which makes it quite clear that even the Civil Servant are being given an immunity against the Arbitrary and Un-reasonable Actions of the State Authorities or any other Authorities concerned as the case may be.

However, it must be noted that under the Fundamental Rules 56 (b) and Rule 48 of Central Civil Services Pension Rules 1972 the Government can grant or give compulsory retirement to the Civil Servant not as a punishment but as a Constitutionally enabling provisions subject to the integrity and public policy. Even under the Fundamental Rules 56 (c) the Civil Servant is having a indispensable right to voluntary retire from his post, giving a Three Months' Notice to the Government.

The Article 310 of the Indian Constitution even provides an enabling provision and power in the hands of the Government to abolish a post in the Centre or the State as the case may be however such abolition or action is always subject and is in purview of Judicial Review.

15.4 Doctrine of pleasure in India

In India, the doctrine of pleasure has not been completely adhered to, rather it has been modified to suit the needs of the country. This doctrine has been incorporated in Article 310 of the Constitution of India. Article 310(1) reads as follows:

> "Except as expressly provided by the Constitution, every person, who is a member of defence service or of a civil service of the Union or of an All-India Service or holds any post connected with defence or any civil post under the Union, holds office during the pleasure of the President, the state holds office during the pleasure of the Governor of the State."

In constitutional set-up, when an office is held during the pleasure of the President, it means that the officer can be removed by the authority on whose pleasure he holds office, **without assigning any reason.** The authority is not obliged to assign any reason or disclose any cause for the removal. Article 310 also makes it clear that though a person serves the Union or a State during the pleasure of the President/Governor, the power of removal at pleasure is subjected to the other express provisions of the Constitution.

Pleasure under Article 310 is not required to be exercised by the President or the Governor personally. It may be exercised by the President or the Governor acting on the advice of the Council of Ministers. In another case, it was decided that the pleasure of the President or the Governor under Article 310 is not subject to any contract and cannot be fettered by contract, ordinary legislation, or the rules made under Article 309.

15.5 What is the implication of the doctrine of pleasure?

The Supreme Court has justified the pleasure doctrine on the basis of 'public policy', 'public interest' and 'public good' insofar as inefficient, dishonest or corrupt persons, or those who have become a security risk, should not continue in service.

Under Article 310, the government has the authority to penalize any of its servants for misconduct committed not only in the course of official duties but even for that committed by him in private life. The government has the right to expect that each of its servants will abide by certain values of decency and morality in his private life. If the government were not able to do so, there would be an appalling fall in the moral prestige of the administration. Thus, disciplinary action can be taken against a police constable (for example) for behaving crudely and improperly with a member of the public in his private life.

15.6 Exceptions of Doctrine of Pleasure

The term except as expressly provided by the Constitution provided in Article 310(1) clearly states that the Doctrine of pleasure is subjected to other express provisions of the Constitution. Article 310(1) will not apply where the constitution expressly provides for secured tenure different from that provided in Article 310 and hence those servants shall be excluded from it.

As referred above that in India, the Pleasure of the President, Governor or Government of India or the State as the case may be does not have right to exercise an absolute pleasure, and the Pleasure exercised by them have certain restriction being imposed on them by our Constitution of India, they are:

1. The foremost restriction on removal or dis-missal of any civil servant is laid down under Article 311 which states that all the field covered and listed under it are excluded from the exercise of Doctrine of Pleasure. Even it provides a concrete immunity

to the civil servants, as they can sue the State or the Union against an arbitrary removal or dismissal and for the entitled salary of the Civil Servant.

It expressly places the restrictions on arbitrary actions of the Government and laid downs the proper procedure for conducting inquiries and investigation before removing any civil servant from his post or dismissing him or reducing his rank.

The Posts in accordance with Article 311 which are excluded from the exercise of Doctrine of Pleasure by the President of India or Governors of the States are as follows:

1. Judges of Supreme Court of India- Article 124
2. Judges of High Courts of the States- Article 218
3. Auditor- General of India- Article 148 (2)
4. The Chief Election Commissioner of India- Article 324

Chairman or Members of Public Service Commission- Article 317

The doctrine of pleasure does not apply to the holders of these offices. However, they can be removed from the office on the grounds of 'proved misbehaviour' or 'incapacity' by following the procedure provided by the constitution.

15.7 Other offices subject to the doctrine of pleasure

The President and the Governor of the State have been vested with the administrative power of the Union and of a state concerned respectively. The President and the Governor have a fixed term of five years since the President is the executive head of the country while the governor is the executive head of the state. However, the difference that lies in the tenure of the governor is that he can be removed from his office earlier because he holds his office during the pleasure of the President. This doctrine of pleasure has no protection and in a number of scenarios, the Governors have been

dismissed by the President indiscriminately. There are no safeguards presented to him. Similarly, the union ministers and various state ministers have real executive power and hold office during the pleasure of the President or a Governor as the case may be.

Likewise, the Council of Ministers of the National Capital Territory of Delhi holds office during the pleasure of the President though it is accountable to the Legislative Council. The Attorney General of India and the Advocate General of each state also hold office during the pleasure of the President or the Governor as the case may be.

15.8 Comparative analysis of the doctrine of pleasure under Article 310 and Common Law

1. In Britain, the doctrine of pleasure is a Common Law doctrine. It can be altered by Parliament by law. In India, it is a constitutional doctrine and cannot be transformed by ordinary legislation.
2. In Britain, a civil servant has no right to bring suit against the Crown for arrears of salary. The assumption underlying this rule is that the only claim of the civil servants is on the bounty of the Crown and not for a contractual debt.

The Supreme Court of India refused to abide by the above-mentioned rule in the case of the *State of Bihar vs Abdul Majid*. A sub-inspector of Police was dismissed from the service on the grounds of cowardice and later he was reinstated in service, but the government contested his claim for arrears of salary for the period of his dismissal. The Supreme Court upheld his claim for arrears of salary on the ground of contract or *quantum meruit*, i.e. for the value of the service rendered.

The Supreme Court again reiterated the above ruling in the case of *Om Prakash v State of Uttar Pradesh* where it was held that when the dismissal of a civil servant was found to be unlawful, he

was entitled to get his salary from the date of dismissal to the date when his dismissal was declared unlawful.

In India, therefore, a civil servant will get his arrears of salary if his dismissal is found to be unlawful.

15.9 Civil servants and the doctrine of pleasure

The legislature has constituted commissions at the Central and state levels (UPSC/SPSC) to regulate the employment and working conditions of civil servants, supervise appointments and promotions and endorse the value of public service. It is an independent constitutional body in the sense that it has been directly created by the constitution. Articles 315 to 323 in Part XIV of the Constitution contain elaborate provisions regarding the composition, appointment, and removal of members along with the independence, powers, and functions of UPSC. Under the provisions of Article 309, Parliament is authorized to regulate the prerequisite conditions of service of persons appointed to public service and posts in connection with the affairs of the Union. Similarly, State Legislatures are parallelly given the same powers to regulate recruitment and conditions of service of persons appointed to public service or posts in connection with affairs of the State.

The term 'civil servant' includes members of a civil service of the centre or a state, or of all India service, or all those who hold civil posts under the Centre or a State. A 'civil post' means an appointment or office on the civil side and includes all personnel employed in the administration of the union and the states.

The origin of Indian civil services can be traced back to England when it was officially known as Imperial civil service in the late 18th century to early 19th century. It was considered to be an exam for the elite class who, after passing the exam, would be appointed

under the crown under Section XXXII of the Government of India Act, 1858, enacted by the Parliament of the UK. It was headed by the Secretary of State for India, a British member cabinet. Thereby, they shall work under the crown's pleasure. The inkling to establish a Public Service Commission for the recruitment of Public Services in the country was first expressed in the memorandum presented to the Committee on the division of functions by the Government of India in 1919. The Royal Commission on Public Services (Lee Commission) in 1924, emphasised the requirement for establishing without delay a Public Service Commission under the Government of India Act, 1919. They planned to allot to the Commission four different purposes; First, the enrollment of employees for public services; Second, proper standardization of qualifications for admission to the services; Third, punitive control and protection of services and finally, advisory roles in regard to the overall service complications.

The Government of India Act, 1935 in Section 264 included that, "there shall be a Public Service Commission for the Federation and a Public Service Commission for each Province". India attained its Independence in 1947 and framed a constitution according to the ideals of the country. The Constituent Assembly, trusted with this responsibility, did not fail to appreciate the need of a Public Service Commission both for Union and for the Units for purposes of recruitment to the Civil Services as well as for the protection of the interests of the civil servants.

15.10 Independence of civil services

The independence of the civil service in giving advice in policymaking and in performing field responsibilities is an important issue that has affected the functioning of the civil services in recent years. In the Constituent Assembly of India, on 10th October 1949, Sardar Vallabh Bhai Patel said:

> "If you want an efficient all-India service, I advise you to allow the service to open their mouth freely. If you are a Premier, it would be your duty to allow your secretary, or Chief Secretary, or other services working under you, to express their opinion without fear or favour. But I see a tendency today that in several provinces, the services are set upon and told, "No, you, are servicemen, you must carry out our orders." The Union will go, you will not have a united India if you do not have a good all- India service that has the independence to speak out its mind, which has a sense of security that you will stand by your word and that after all, there is the Parliament, of which we can be proud, where their rights and privileges are secure. If you do not adopt this course, then do not follow the present Constitution."

In the early years of independence, the nexus between the political executive and civil service was of trust and non-partisan operatives of the civil service. The trust has finally caved into the segmentation of civil servants and their politicisation in many cases. Two emerging areas of relationship occurred, the first in those, where civil servants tried to preserve their integrity and moral behaviour, and in the second where civil servants would favour the political executive and cater to their needs irrespective of the service rules, good behaviour, or ethical conduct to get favourable assignments, allocations, transfers, and other departmental benefits.

The Second Administrative Reforms Commission (10th report on personnel administration, 2008) had observed, "Often systematic rigidities, needless complexities and over-centralization make public servants ineffective and helpless in achieving positive

outcomes and on the other hand, the negative power of abuse of authority through flagrant violation of law, petty tyranny and nuisance value is virtually unchecked."

The Hota Committee and the Santhanam committee have recognized that much of the deterioration in the standards of probity and accountability within the Civil services can be traced to the practice of issuing and acting on verbal instructions or oral orders which are not recorded. At present, the scheme of handovers, placements, elevations, disciplinary and other non-personnel matters relating to the higher civil services are ad-hoc and non-transparent. Transfers are often used as instruments of reward and punishment, with officials being frequently transferred on the whims and caprices, as well as the personal needs of local politicians and other vested interests. Officers, especially those in the All-India services serving in the state governments have no stability or security of tenure, the arena of transfer is backed by entrenched and powerful vested interests, as frequent transfers generate huge amounts of black money for corrupt officials and politicians, both directly and indirectly.

All commissions and committees dealing with administrative reforms have stressed the need for transfers at all levels to be handled in a non-political, non-partisan, open and transparent manner. The Hota Committee had identified the absence of a fixed tenure for officials as one of the most important reasons for tardy implementation of government policies and programs, lack of accountability, waste of public money and large-scale corruption. "Good administration is not possible without continuity and intelligent administration is not possible without local knowledge."

15.11 What are the constitutional provisions and safeguards to civil servants?

The Civil Services holds the most prominent place in the progress of the country. A Country's efficiency, democratic value and development widely is adjudged and determined by the Administrative Team and Civil Machinery of that Nation.

The Constitution details the Independence of Judiciary and Doctrine of Separation of Power, which ultimately aims at reducing or eliminating the political influence over the Executive Organ in order to ensure peace, efficiency and justice as a means to ensure better Administration of the Country, as seen in USA. Independence of Judiciary highlights the Principle of Judicial Review, and Concept of Checks and Balances over the constitutionality of the legislative enactments and administrative actions.

For a period of time, the efficiency of the Executive of Missionary came down hampering growth and development which lead to redtapism' so there were calls in media to review legal constitutional protection to the civil servant. But to provide safeguard against the misuse of law and procedures against civil servant while discharging their duties, to operate in the peaceful and efficient manner, the constitutional provisions under Articles 309, 310 and 311 are necessary.

Article 311 provides a procedural safeguard. This safeguard has existed since the commencement of administrative services in India in the form of rules, but the safeguard was elevated to constitutional status in 1935.

All civil servants hold office during the pleasure of the Crown and are liable to be dismissed without any reason assigned to them at the time of dismissal under the English Common Law. The Secretary of State for the implementation of the doctrine of pleasure, though, outlined rules which, according to the Judicial

Committee, were envisioned to serve as a solemn pledge to the services that the rule of pleasure shall not be used in a whimsical and capricious manner. The nature of the rules under the Government of India Act, 1935, were executive instructions and it merely had the force of law. However, in 1919, Section 96-B was introduced by the British Parliament which reiterated the rule of pleasure, subjecting it to certain conditions and was given statutory force to the provision. In later years, after certain modifications, it culminated as Article 311(1) and Article 311(2) in our constitution.

Article 311(1)

According to this constitutional provision, no civil servant is to be dismissed or removed by an authority 'subordinate' to the authority by which he was appointed. Dismissal or removal of a civil servant by an authority subordinate to the appointing authority is invalid.

This requirement doesn't mean that the removal/dismissal must be by the appointing authority himself or his direct superior. It is enough if the removing authority is of the same/coordinated rank or grade as the appointing authority. The dismissal of a civil servant must comply with the procedure laid down in Article 311. The object of the safeguard is that the government servants are entitled to the judgment of the authority by which they were appointed or some authority superior to that authority and that they should not be dismissed or removed by a lesser authority in whose judgment they may not have the same faith. The underlying idea is that a provision like this will ensure to them a certain amount of security of tenure.

Article 311(2)

This safeguard was introduced for the first time in the 1935 Act under (Sec. 240 (3)) and its scope was interpreted in I.M. Lai's case. Both the provisions apply to a person who is a member of the civil service of the Union, All-India Services, the civil services of a state or holds a civil post under the Union or a state. The most significant limitation imposed on the doctrine of pleasure is by Article 311(2). According to this provision, no civil servant can be dismissed, removed, or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. The concept of 'reasonable opportunity' being a constitutional limitation on the doctrine of 'tenure at pleasure', Parliament or a state legislature can enact a law defining the content of 'reasonable opportunity' and prescribing the procedure for affording the said opportunity to the accused government servant. Pending legislation, rules can be made by the executive for the purpose under Article 309. The concept of 'reasonable opportunity to show cause' is synonymous with natural justice. According to the Supreme Court, Article 311(2) gives a constitutional mandate to the principles of natural justice.

15.12 Summary

The purpose for which Articles 310 and 311 were introduced in the Constitution is still relevant in the light of natural justice principles. In course of time, a feeling developed that Article 311 as interpreted

by courts, had come to impose elaborate procedural formalities before a delinquent civil servant could be punished. Fulfilment of these formalities appeared to consume too much time and cause undue delay in meting out punishment to guilty officials which resulted in lowering the standards of employee discipline in government establishments. It was thus thought desirable to keep the doctrine of pleasure enshrined in our constitution to cut down some procedural formalities to expedite disciplinary proceedings against civil servants. It must be borne in mind that civil servants can't scoff off the law if they are guilty and it is precisely for that reason, that the continued use of the doctrine of pleasure is required in India.

15.13 Exceptions of Article 311 Of the Indian Constitution:

The Article 311(2) provides immunity and protection to the civil servants from extraneous and excessive punishment, but on the same hand they are having some exceptions being attached to it, under which the provisions and remedies as stated in the Article 311 are not available to the concerned Civil Servant, neither he can avail it, they are:

1. **Conviction on a Criminal Charge:**

   If a Civil Servant is dis-missed or reduced in rank or is terminated on the ground of his conviction held under any Criminal Charge, then under such circumstances he cannot avail the remedy of reasonable opportunity as stated in the provisions of Article 311.

   As the readers might be knowing that there is Doctrine that for availing a remedy or seek redressal under Court of Law He must come with clean hands. Therefore, if the particular civil servant himself is not bonafide and justified on his part that he cannot seek remedy under at-least this provision due to his

wrongful conduct and involvement in the conduct of Moral Turpitude.

It was held in the famous case of **K. Venkateshwarlu v. State of A.P.** that were under a trial if a Civil Servant is convicted by the Court, than under such circumstances it is obvious that the Disciplinary Proceedings are bound to follow him, but even if he is held as acquitted than also Departmental Enquiry can be conducted against him, if his acquittal is other than honourable.

2. Where it is not practicable to hold Inquiry:

If the concerned authority is satisfied or thinks fir that in National Security or in Public Interest it is necessary to dismiss or remove a civil servant from his post, then under such circumstances the concerned must record that particular thing in writing and after that it is not reasonably necessary or required to hold such inquiry.

Like in the case of **Jaswant Singh v. State of Punjab** Hon'ble Supreme Court of India ruled that making baseless considerations and claims that the appellant would cause harm and injury to the witnesses or will cause problems in the Departmental Enquiry, in the absence of any concrete evidences are baseless and un-acceptable. Therefore, the Dismissal Order against the Appellant was set aside, and he was re-instated on his post with all the necessary allowances and due salaries from the date of dis-missal.

Even the Article 311 expressly provides some exceptions in its provisions where the Doctrine of **Audi Alteram Partem** i.e. Principles of Natural Justice doesn't applies, like when the appropriate authority like the President or Governor of the State is satisfied that it is feasible to remove the Civil Servant from his post due to Public Interest, Public Good or Public Policy

than this remedy is not available under such circumstances. Like when a Civil servant was convicted by the Court for causing injury to his superior under such circumstances giving a chance to the civil servant is not reasonably practicable as his misconduct is clearly visible.

It was contended that even after such misconduct the remedy is not available to the concerned civil servant under the provisions of Article 311, but even than two more remedies are available to them apart from these, they are:

1. The Civil Servant can make an Appeal before his Department to a superior or Principal Secretary of the Department, as he is having wide statutory powers been vested in him for granting relaxation to the aggrieved civil servant under such circumstances.
2. he doors of Judiciary is always open for such person, but not under Article 311, but under Article 32 or Article 226 in the form of Judicial Review, now the Court will decide that weather the punishment imposed was arbitrary or excessive or weather the procedure adopted was rightful or is merely hypothetical and un-warranted by facts and required evidence.

3. Proceedings beyond proof of reasonable doubt is not applicable:

In the Disciplinary Proceedings being instituted against any civil servant the proof beyond a reasonable doubt will not apply. It must follow a sense of reasonableness and must not be hypothetical and too remote to be exercised or happened. Even what could a prudent man have done in reasonable circumstances must be considered before reaching on any conclusion, there must be active evidences against the concerned officers otherwise the investigation cannot be regarded as valid and justified.

4. Quantum of Punishment must be Reasonable and Acceptable:

It is a noted fact that, the punishment being awarded to the Civil Servant for his mis-conduct or wrongful deed rests with the concerned Investigating Officer or the Disciplinary Authority, however the Judiciary has clearly told that the punishment must not be excessive and un-reasonable to the ratio of the crime committed otherwise the validity and acceptability of the said order is supposed to be challenged under the Court of Law for extraneous punishment which is totally un-warranted.

From all of the above exceptions, the remedy stated under this Article is available to the concerned civil servant, on the condition that his dismissal or reduction in rank must lead to punishment.

15.14 Recruitment and Regulations in The Conditions of Service of Civil Servants:

Under Article 309 of the Indian Constitution, it empowers the Parliament of India and respective State Legislatures to regulate and provide rules and laws for the appointment and regulation of the Civil Servants in the Country for both the persons appointed under the Union and State Governments, respectively.

The provision also expressly states that until the provisions or law regarding the aforesaid is not made by the Parliament or any or all State Legislature than under such circumstances the President or the Governor of the State holds the Authority to make laws which may be temporary for regulating and operating such appointments saving the country from mal-administrative and failure.

It can widely be seen by the language and vocabulary used in the Article 309 as:

Subject to the Provisions of the Constitution one thing is clear that the rules and acts made for the appointments and postings of the Civil Servants and the Rule-making Powers of the Executive Organ, or the Administrative Officials concerned must not abrogate any provisions of the Indian Constitution, hugely including the Fundamental Rights of any individual.

Regarding the Constitutional Validity of the Right to Strike of the Civil Servants, it is quite clear despite being some Government Officials in the Government Service are having their registered trade unions neither law nor Constitution of India allows the Right to Strike it is not a Fundamental or Constitutional Right.

The question came before the Hon'ble Supreme Court of India in the most popular case of **T.R. Rangarajan v. Govt. Of India** the Two Judges Bench of Hon'ble Supreme Court of India held that a Government Servant under any circumstances has No Right to Strike, neither morally or legally, however if they felt aggrieved by any action of the Government or Legislative Organ than they must approached the appropriate Tribunal or Court for seeking remedy regarding the same.

In year 2002, the State Government of Tamil Nadu suspended 2 Lacks Government Employees under the statutory provisions of Tamil Nadu Essential Services Maintenance Act, 2002 and Tamil Nadu Ordinance, 2003 who had gone on strike for their demands.

The Petitioners challenged the Constitutional Validity of the aforesaid acts, on which the Court contended that the Government Servants have no Right to Strike, as strike is usually as a weapon which mostly have resulted in Maladministration, havoc and chaos in the State or the Country, instead they must have opted for a legal remedy for seeking redressal regarding their issue.

The Court also said that such massive strike of more than 2 Lacks Government Employees puts the Government on a grinding and unknowing halt, and ultimately the society suffers the most by virtue of such events. The Court also accepted the Reply from the State Government regarding this matter under which they contended that over the 90% of the Government Revenue being received from the direct taxes was used for the maintenance of 12 Lacks Government Employees of the State, which according to the capacity and resources of the Government was their best and justifiable.

However, the Court clearly contended that the Registered Trade Unions which are registered under the Statuary Laws have a unified and collective Right to Bargain and Compromise on behalf of its employees and members, but they doesn't have any Right to Strike under any circumstances, and even no political party or organisation has any right to paralyse the economy and workings of any State or Place ultimately doing injustice and causing in-convenience to the citizens of the Country.

Therefore, till date Right to Strike is neither a Fundamental, Legal or Constitutional Right in India.



LEGAL ASSISTANCE TO RAILWAY SERVANTS

(Master Circular No. 27, No. E (G)2019/
LL 1-1 (Master Circular), dated 22.08.2019)

16

RBE No. 134/2019: Legal Assistance

No. E (G)2019/LL 1-1 (Master Circular), dated 19.08.2019

Sub: Legal remuneration to Railway servants involved in legal proceedings.

Master Circular No.27 on "LEGAL ASSISTANCE TO RAILWAY SERVANTS INVOLVED IN LEGAL PROCEEDINGS" of compilation of instructions on the subject was last brought out and circulated vide Railway Board's letter No.E(G)90/LL 1-2 (Master Circular), dated 02.07.1991. Since then, the various provisions of instructions have undergone major changes and some new provisions have also been introduced. With the objective to bring about all the current basic instructions at one place the Master Circular has been updated by incorporating the modifications/editions to the instructions in this revised Master Circular. The revised Master Circular is as under: -

then, the various provisions of instructions have undergone major changes and some new provisions have also been introduced. With the objective to bring about all the current basic instructions at one place the Master Circular has been updated by incorporating the modifications/editions to the instructions in this revised Master Circular. The revised Master Circular is as under: -

1. Category of legal proceedings:

Railway servant may be involved in legal proceedings in the cases in which acts are done:

(a) In the execution or performance of the official duty.

(b) Not in the execution or performance of the official duty, but by virtue of or having connection with the official position; and

(c) In neither of the above capacities.

[Ref: Board's letter No. E(G)59 LL1-5, dated 21.07.1960]

3.1 Cases falling under 2(c) above:

These may be those in which a Railway servant may be guilty of bribery/ illegal gratification/corruption etc., accepted or committed not by virtue of his official position but in his private dealings. No re-imbursement of legal expenses incurred by the Railway servant in defending this position in such cases will be admissible. Also the Government will not provide any assistance to a Railway servant or reimburse the expenditure incurred by him and respect of matters not arising out of his official duties or connected with his official position, irrespective of whether the proceedings were initiated by a private party against the Railway servant or vice versa.

[Ref: Board's letter No.E(G)59 LL1-5, dated 21.07.1960)

3.2 Cases arising out of circumstances under 2(a), le. connected with the execution or performance of the official duties or 2(b). e. connected with the official position of the Railway servant:

When a lawsuit arising out of these circumstances connected with the duty of a Railway servant is brought against him by a private party, the following provisions will apply:

(a)

(i) If the Railway servant is sued by a party claiming from him/her wages or money arising out of transactions in which he is concerned only in his official capacity and bonafide action on behalf of the Govt., it will be necessary for him/her to defend the suit by pleading that the Govt. should be made the defendant as the party really interested.

(ii) If, however, the suit against the Railway servant is for damage and respect of an alleged act of the Railway servant as an employee of the Govt. i.e. a suit for wrongs, the party aggrieved may, as a general rule, bring the suit against such a Railway servant and it would be no defence for the latter to contend that he has a right to look to the party by whose act he has been aggrieved, whether he could or could not have sued that party's principal:

(iii) Weather the suit falls in category (i) or (ii) above, the Railway servant, on his failing to defend the suite or reply to the plaint in person or by a Council becomes personally responsible;

(b)

(i) If the Govt., on consideration of the facts and circumstances of the case, decides that it will be in public interest for it to undertake the defence of the Railway servant in such proceedings and if the Railway servant agrees to such a course, the Govt. should make arrangements for the conduct of proceedings, after the Railway servant makes the following written statement:

"……Description of the proceedings to be given". The Govt. of India, having been pleased to undertake

my defence in the above proceedings, I hereby agree to render such assistance to the Govt. as may be required for my defence and further agree that I shall not hold the Govt. in any way responsible, if the proceedings end in a decision adverse to me. Signature of the Govt. servant dated.

(ii) Where, in a civil suit, a Railway servant is sought to be made liable for damages for acts or negligence in the discharge of his official duties of civil nature and Govt. is impleaded on the ground of vicarious liability, the Govt. should arrange for the defence of the Railway servant also, provided the defence of the Govt. and that of the Railway servant are substantially the same and there is no conflict of interest. Each case should be examined by the Law Officer before undertaking common defence. If the Railway servant's defence is arranged by the Govt., he should be required to make a written statement as given in para b(i) above.

(iii) If a Railway servant proposes to conduct the defence in such proceedings himself, the question of reimbursement of reasonable costs incurred by him may be considered, if the proceedings conclude in his favour. In determining the amount or cost to be so reimbursed, the Govt. will consider how far the court has vindicated the act of the Railway servant. The conclusion of the proceedings in favour of the Railway servant will not by itself justify reimbursement.

(iv) To enable the Railway servant to meet the expenses for his defence, the Government may sanction, at its discretion, an interest free advance not exceeding Rs.500 or his substantive pay for three months whichever is greater after obtaining from him a bond in the form given below.

BOND

By the bond. I …… (name & other participation of the Railway servant including the post held to be given) having taken and advance of Rs……... (Rupees .....only) from the President of India (hereinafter called the Government), promise to pay to the Government, the said sum of Rupees…… in equal monthly installments of (mention the number) Rupees…… payable by 10th of every months, commencing from……(mention the date of commencement of the installment).

And I agree, that in case, I cease to be in Governments service for any reason, whatsoever the entire balance of the amount shall become at once due and payable and that in case I fail to pay the same before the date of expiry of six months from the date on which the payment of last installment under this bond would have become due, but for my ceasing to be in Govt. service, whichever date is earlier, the Govt. without prejudice to any other right to which it shall be entitled under any law for the time being in force, shell recover the entire balance of the amount from me.
Dated this……..day of ……20…….

……..
Signature of the Railway servant

Witness to signature
(i)……
(ii)……

Accepted
Signature……
Designation…….
(To be accepted by the officer who is authorized to execute the bond)

(v) The recovery of the advance may be made in not more than twenty-four equal monthly installments, the exact number of installments being determined by the sanctioning authority, provided the advance is recovered before the date of retirement. The recovery

of the advance should commence on the first issue of pay/ leave salary/ subsistence allowance following the month in which the advance is drawn and should continue till the entire advance is repaid. At the time of reimbursement of legal expenses, the entire balance of advance outstanding against the Railway servant should be recovered from the amount that is being reimbursed to him. If the amount of reimbursement is less than the balance of advance outstanding the Railway servant the amount remaining after adjustment, should be recovered in installments as already fixed.

(c) No second advance will be admissible in respect of the same proceedings. There is, however, no objection to the grant of more than one advance, if they relate to different proceedings against a Railway servant.

[Rule 702(i)(c) of the Indian Railway Establishment Code, Vol-1-1985 Edition)

(d) Advance may be sanctioned to a Temporary Railway servant on his furnishing a security of a permanent Railway servant of equal or higher status not governed by the Payment of Wages Act. The form of surety is given as Annexure 'C' to Board's letter No.E(G)63 LL2/49, dtd. 22.10.1964.

[Rule 702(1) of the Indian Railway Establishment Code, Vol-1-1985 Edition]

4. Proceedings initiated against a Railway servant by Government:

A Railway servant involved in any legal proceedings, either civil or criminal, as a result of suit instituted against him by the State in respect of mattress arising out of or connected with his official duties for his official position will not be eligible for assistance from the Government for his defence. If, however, the proceedings conclude in his favour, his claim for reimbursement will be considered by the Government. If it is satisfied from the facts and circumstances of the case, that the Railway servant was subject to the strain of the proceedings without proper justification. While considering the

claim, the Govt. will decide the extent of reimbursement i.e. whether the whole or a reasonable proportion of the expenses incurred by the Railway servant for his defence should be reimbursed.

[Rule 702(2) of the Indian Railway Establishment Code, Vol-1-1985 Edition]

5. Proceedings initiated by Railway servant on his being required by the Govt. to vindicate his official conduct:

A Railway servant may be required by the Govt. to vindicate his conduct in a Court of Law, when specific allegations are made in the Press against him as an individual Public Officer. In such cases, the question of reimbursement of cost incurred by the Railway servant and the extent of reimbursement will be considered by the Govt. in the light of the result of the proceedings. The Railway servant may, however, avail of an interest free advance not exceeding Rs.500 or servant may, however, avail of an interest free advance not exceeding Rs.500 or his substantive pay for three months, whichever is greater in each case on executing a bond as given in para 3(b)(iv) above. While considering the question of reimbursement, the Govt. will take into account the extent to which the Court has vindicated the acts of the Railway servant in the proceedings. Conclusion of the proceedings in favour of the Railway servant will not by itself justify the reimbursement.

[Rule 702(3) of the Indian Railway Establishment Code, Vol-1-1985 Edition]

6. Proceedings instituted by a Railway Servant with the previous sanction of the Govt. to vindicate his conduct arising out of or connected with his official duties or position:

In a case, where Railway servant resorts to a Court of Law with the previous sanction of the Govt, to vindicate his conduct arising out of or connected with his official position or duties, though not required to do so by defence will not be ordinarily admissible even if the Railway servant succeeds in the proceedings. In deserving cases the

Govt. may sanction interest free advance in the manner mentioned in para 5 above.

[Rule 702(4) of the Indian Railway Establishment Code, Vol-1-1985 Edition]

7. Proceedings instituted against a Railway servant by another Railway servant in respect of matters connected with the former's official position or duties:

On the basis of facts and circumstances of the case, where it is considered that it would be in public interest to defend a Railway servant in a case filed against him by another Railway servant in respect of matters connected with former's official duties or position, the latter Railway servant who has filed the case would be treated as a private party and assistance/reimbursement of cost will be given to the defending Railway servant as explained in para 3(b). Assistance will not. however, be admissible in cases in which Railway servant has been impleaded as a co-respondent by other Railway servant in suits against the Government or service matters such as seniority etc.

[Authority: Railway Board's letter No.E(G)78 LL-1/6, dated 27.12.1978]

8. Enhancement of the powers of the General Manager for providing legal assistance to Railway servants in cases where suits or criminal charges are brought against them, as a result of circumstances connected with their official duty:

(a) It has been decided to enhance the powers of the General Manager for providing legal assistance from the present limit of Rs. 10000 to Rs.50000 for providing legal assistance to Railway servants in cases where suits or criminal charges are brought against them, as a result of circumstances connected with their official duty.

[Authority: Railway Board's letter No.E(G)2010/LL-2/4, dated 24.11.2010 (RBE No. 167/2010)

(b) Lawsuits or criminal charges are brought against Railway servants arising out of circumstances connected with their duty,

the General Manager is empowered to arrange for their defence by employing such legal assistance as may be considered necessary. Where the charges in any particular case is expected to exceed Rs.50000, prior sanction of the President should be obtained to the expenditure being incurred. Any costs awarded by the Court to the Railway cannot be set off against the expenditure for the purpose of the limit prescribed.

[Rule 702(7)(ii) of the Indian Railway Establishment Code, Vol-1-1985 Edition]

9.1 General:

(a) Claims from the Railway servants for reimbursement should be filed immediately after the proceedings have been concluded in their favour finally and all cases for reimbursement should be referred by the Railways to the Railway Board, supported by the necessary documents within a maximum period of six months. The documents to accompany the proposal are:

(i) Copies of Court judgments:
(ii) Copies of order sheets of all the Courts, which heard the case.
(iii) Stamped receipts of Lawyer's fee.
(iv) Copy of Law Officer's recommendation indicating clearly the amount considered reasonable for reimbursement on each item and the reasons for the recommendation, together with a brief note on the merits of the case.
(v) Claims submitted by the Railway servant for reimbursement in original.
(vi) Views of FA&CAO and the recommendations of the General Manager, and
(vii) Any other document connected with the case such as Charge report etc.

[Authority: Board's letter No.E(G)60 LL1-27, dated 09.01.1961 and 12/13.03.1962]

(b) Consultation with the Union Public Service Commission is necessary in respect of cases falling under Para 2(a) under

Article 320(3)(d) of the Constitution of any claim for reimbursement of costs incurred by the Railway servant in his defence of the legal proceedings instituted against him for acts done or purported to be done by him in the execution of his official duty. The proposal should, therefore, be accompanied by information in the proforma prescribed by the UPSC duly signed by the competent authority. In other cases. consultation with Union Public Service Commission is not obligatory, but it will be open to the Government to seek the Commission's advise, if considered necessary.

[Authority: Board's letter No.E (G)59 LL1/5, dated 21.07.1960 and E(G)73 LL1/13, dated 16.01.1974]

(c) The question whether a case falls under Article 320(3)(d) of the Constitution so as to require consultation with Union Public Service Commission may, at times be difficult to decide. It may be stated generally that consultation is obligatory in a case where a reasonable connection exists between the act of the Railway servant and the discharge of his official duties. The action of the Railway servant must bear such relation to his official duties that he could lay a reasonable claim but not a pretended or a fanciful claim that he did in the course of his official duties.

[Authority: Board's letter No.E (G)59 LL1/5, dated 21.07.1960]

(d) Where are Railway servant conducts his own defence in a law suit arising out of circumstances connected with the performance of his official duties or position and claims reimbursement of the costs, the reasonableness of the amount to be reimbursed will be determined on a number of considerations and the merits of the case, in consultation with the Ministry of Law/ UPSC. wherever necessary. Claim for reimbursement is not a legal right of the Railway servant and no appeal lies against the decision of the Government. The Railway should not, therefore, forward any appeal against the decision of the Govt. on reimbursement, unless

a substantial point, having a bearing on the decision of the Govt. which had not been brought out in the proposal earlier, has been made out in the appeal.

[Authority: Board's letter No.E (G)68 LL1. dated 05.03.1968]

(e) Normally reimbursement of fee of only one Council will be considered. The fees should comprise professional charges only excluding other charges such as travelling allowance.

[Rule 701(3) of the IREC-Vol-1-1985 Edition]

(f) in a clarification issued to SECR vide letter No. 2013/E(GR)II/1/15, dated 10.06.2019. it has been stated that the Contract Medical Practitioners (CMPs) and Contract Para Medical Staff cannot be provided legal assistance as per provision 702(1) (%) of IREC, Vol-1.

9.2 Retired Govt. servant involvement in legal proceedings - Provision of legal and financial assistance:

(a) If the Government, on consideration of the fact and circumstance of the case consider that it will be in the public interest that Government should themselves undertake the defence of the retired Railway servant in such proceedings and if retired Railway servant agree to such a case, the retired Railway servant should be required to make the statement in writing as Annexure 'A' below and thereafter Government should make arrangement for the conduct of the proceedings as if the proceedings had been instituted against Government.

(b) If the retired Railway servant proposes to conduct is defence, in such proceedings the Railway servants, that question of reimbursement of reasonable cost incurred by him for his defence may be considered in the case the proceedings were in his favour. In determining the amount of cost to be so reimbursed government will consider how

far the Court has vindicated the act of the retired Railway servant. The conclusion of the proceedings in favour of the retired Railway servant will not by itself justify reimbursement. To enable the retired Railway servant to meet the expenses of his defence. Government may sanction at their discretion an interest free advance not exceeding Rs.500 after obtaining a bond from the retired Railway servants as per Annexure 'B' below.

[Authority: Board's letter No.E(G)77 LL1/3, dated 12.05.1977]

(c) Annexure 'A'

(Here enter the description of the proceedings)

The Government of India having been pleased to undertake my defence in the above proceedings. I hereby agree to render such assistance to Government as may be required for my defence and further agree that I shall not hold Government in any way responsible if the proceedings end in a decision adverse to me.

Date……

Signature of retired Govt. servant ……

(d) Annexure - B

1. By this bond I …….. (*)…….. a retired Government servant and present residing at…….. having taken an advance of Rs…….(Rupees…….only) from the President of India (hereinafter called the "Government") Propose and undertake to refund and pay to the Government the said sum of Rs. …… in ……. (%) ……..equal monthly installments of Rs…… payable by the 10th of every month commencing from ……..(@)……..

2. And I agree that in case I fail to pay any of the above mentioned installment on due date, the entire balance of the amount then remaining

due shell at once become due and payable by me to the Government and if I fail to pay the same within six months from the date on which the balance of the amount thus becomes due for payment, the Government shall have the right to recover the same from me by due process of law.

Dated this ……day of.....20……..

(Signature of the retired Govt. servant)

Witness to signature.

1……..

2……..

Accepted

(Signature)……

(Designation)……

For and on behalf of the President of India

(*) Here give the name other particulars of retired Government servant including the post held by him before retirement.

(%) Here mention the number of installments.

(@) Hee mention the date of commencement of the first installment.

(z) Here mention the designation of the other who is authorized to execute the bond under Article 299(i) of the Constitution.

10.1 In exercise of the powers conferred except as respect things done or omitted to be done before such supersession, the Central Government hereby appoints:

(a) The officers mentioned in the Schedule annexed hereto as persons by whom plaints and written statements in suits in any Court of Civil jurisdiction by or against the Central Government in respect of the Railway Administration shall be signed:

(b) Those of the officers referred to in clause (a) who are acquainted with the facts of the case, as persons by whom such plaints and written statement shall be verified.

SCHEDULE

(I) Ministry of Railways (Railway Board)

1. Secretary
2. Joint Secretary
3. Deputy Secretary
4. Under Secretary
5. Executive Director
6. Director
7. Joint Director
8. Deputy Director

(II) In all establishments of the Railways including Production Units etc. as per list mentioned in original circular.

[Authority: Railway Board's letter No.E(G)82 LL2-2(A), dated 4th June, 1992]

(III) Senior Personnel Officer & Divisional Commercial Manager who have also been included in the schedule contained in above referred Board's letter vide Item No.88 & 89 respectively.

[Authority: Railway Board's letter No.E(G)82 LL2-2(A), dated 20.04.2001]

10.2 Appointment of officers for signing and verifying plaints and written statements and to act for and on behalf of the Central Government in respect of any judicial proceedings relating to the Railway Administration.

The Railway Ministry desire that though powers stand delegated to the officers vide Railway Board's letter No.E(G)82 LL2-2, dt. 04.06.1992, the drafts of SLPs to be filed in the Supreme Court should be got vetted by a SA grade officer.

[Authority, Railway Board's letter No. E(G)82 LL2-2, dated 15.06.1992]

1. Conduct of cases before the CAT/ Course in which Chairman/ Secretary/ Railway Board has been impleaded as one of the respondents - Instructions to be followed in such cases.

(i) The GM is the in-charge of Railway Administration and the Railway Board, as such may exercise certain limited powers over the entire system of Indian Railways.

(ii) In terms of Section 80 of CPC, in the case of a suit where it relates to a Railway, General Manager alone is to be issued a notice regarding the proposal to file a suit.

(iii) In terms of the procedure prescribed for filing cases before Courts/ Tribunals, only necessary parties are required to be impleaded as respondents/defendants. If a person impleades a party who has nothing to do with the case, the application/petition is liable to be dismissed on the ground of mis-joinder parties. In this connection, provisions of Order I of the 1st Schedule to the CPC may be referred to.

(iv) As it is not possible for the Railway Board to make appearance in such cases, it has been decided that in all such matters as soon as a copy of the petition/application is received from the Court/Tribunal, immediate necessary action should be taken through an appropriate application before the Court/ Tribunal to delete the names of Chairman/Secretary, Railway Board. This would avoid unnecessary further litigation in connection with the implementation of the order that may be passed in such matters.

[Authority: Railway Board's letter No.97/LC/Misc/37, dated 15.10.1997]

(v) It is, imperative that Board's instructions No.97/LC/Misc/37, dated 15.10.1997 are strictly followed and timely action is taken in getting the names of Chairman/

Secretary, Railway Board deleted in such cases, in consultation with the Railway Advocate concerned.

[Authority: Railway Board's letter No.2001/LC/Misc.11, dated 17.10.2001]

(vi) Instructions were issued vide Board's letter No.97/LC/Misc/37, dated 15.10.1997 and No.2001/LC/Misc. 11, dated 17.10.2001, that in all such cases immediate necessary action should be taken through an appropriate application before the Court/ Tribunal to get the name of Chairman/Board Members and Secretary, Railway Board, deleted as respondents. Timely action should be taken for getting the names of Chairman, Board Members and Secretary, Railway Board deleted from the list of respondents, in consultation with Railway Advocate concerned.

[Authority: Railway Board's letter No.2001/LC/Misc.11, dated 03.08.2010]

(vii) (i)The Railway Administration should ensure that no occasion should arise where a contempt case arises. The Court/ CAT case should be dealt properly at the judgment stage itself. Moreover, if in an extreme situation, a contempt case has arisen, it should be dealt with expeditiously. At the same time, action should be taken against the concerned Railway officials for delay.

(ii) In all Court/ CAT cases where CRB is a party, personnel monitoring should be done at the level of GM, with CPO & a concerned CHOD or PHOD assisting the GM in ensuring smooth working of the monitoring system.

[Authority: Railway Board's letter No.2010/LC/Misc/01, dated 11th March, 2010]

(viii) The issue as to whether in various litigations including contempt matters, Chairman/Members/Secretary of Railway Board, may be impleaded or not, has been considered and an opinion laying down in detail the law and procedure on this subject has since been given on 05.02.2004, a copy of which was enclosed for information of all concerned.

[Authority: Railway Board's letter No.2012/LC/Misc/02, dated 01.04.2014]

12. Operationalization of new zones - handling of CAT cases:

It has been decided that the new cases and cases pertaining to the new zones. in which judgments have been delivered, and pending implementation, will have to be dealt with by the new Zones. The Other cases will continue to be handled by the parent Railways.

[Authority: Railway Board's letter No.E(G)2003 LL1/4, dated 19.11.2003]

1. Provision for engagement of suitable Criminal Lawyer for attending criminal cases against Vigilance Officials arising out of checks etc.

(a) The dispensation for engaging criminal lawyers outside the approved panel cannot be granted to Zonal Railways because approval for engaging the non-panel Advocate(s) has to be obtained from the Ministry of Law. Further, General Managers of the Zonal Railways have the power to form the panel for District Level Courts.

(b) General Managers may consider including sufficient number of Criminal Advocates in the Railway Panel for engaging them for defending the criminal cases registered against Vigilance officials during the due discharge of their official duties.

[Authority: Railway Board's letter No.2008/VP/1/2, dated May 09, 2008]

1. **Appointment of Railway Advocates in various Courts:**
Board desires that Railway may, while forming a panel of advocates for subordinate courts, invariably include advocates specialized in various laws viz. Service Law, Consumer Laws. Labour Laws, Factory Act etc., who are also willing to work on Railways' prescribed terms and conditions including fee as applicable. In the case of existing panels, in certain emergent cases where is specialize advocates are not on the panel but are required in public interest to contest a Railway case, the General Managers may first include his name in the panel and then take his services as per prescribed schedule of fee as applicable to such empanelled advocates.

[Authority: Railway Board's letter No.E(G)2010/LL/2/5, dated 09.12.2010]

1. **Summons/Notices etc. issued by Tribunals/ Courts etc. - Procedure in Railway Board:**
   (a) Repeated instruction are taking place where bailable/ non-bailable warrants are received from various Tribunals/ Courts without any detail of the case. Such notices could be in cases relating to any matter concerning Railways be it Establishment, Civil Engineering, Mechanical, Electrical or Commercial in the absence of relevant details, it becomes extremely difficult to ascertain as to which Directorate should handle the case. This leads to avoidable embarrassment to Secretary/ Railway Board, Board Members, CRB.
   (b) With a view to streamline the procedure, it has been decided that in future whenever bailable or non-bailable warrants in the name of Secretary, Board Members and CRB are received, following procedure may be adopted:
      (i) Such summons/warrants will be received in Legal Cell and they will nominate Railway Advocate who will find out the details of the case.

(ii) Legal Cell will thereafter advice Secretary, Board Members etc. concerned as to the further course of action to be taken in the matter.

(d) In, Railway Board it will be the primary responsibility of the directorate concerned to contest the case effectively, Legal Cell will monitor all cases and extend necessary assistance to ensure that the case is effectively defended and extend necessary assistance to ensure that the case is effectively defended and no adverse order is passed by Courts by default.

[Authority: Office Order No:55 of 2014 addressed to all AMs/ Advisors/ EDs/JSS/ LA of Rly. Board only and not to Zonal Rlys.]

16.

(a) While referring to this Master Circular, the original letters/ references mentioned herein should be read for a proper appreciation. The Master Circular is only a consolidation of the existing instructions and should not be treated as a substitution to the original circulars. In case of doubt, the original instruction should be relied upon as authority:

(b) The instructions contained in the original circulars referred to have only prospective effect from the date of their issue, unless indicated otherwise.

(c) If any circular on the subject which has not been superseded has been lost sight of in the preparation of the Master Circular, the said circular which has been missed through oversight, should not be ignored, but should be treated as valid and operative.

17. The letters/references on the basis of which the Master Circular has been prepared are indicated in the annexure.

Hindi version will follow.

ANNEXURE

LIST OF IMPORTANT RAILWAY BOARD CIRCULARS ON LEAGL ASSISTANCE TO RAILWAY SERVANTS

RBE NO	Letter No.	Date
	E(G)59 LL1-5	21.07.1960
	E(G)60 LL1/27	09.01.1961
	E(G)60 LL1/27	12.03.1962
	E(G)63 LL2/49	22.03.1964
	E(G)68 LL1/1	0123.1968
	E(G)73 11/13	16.01.1974
	E(G)78 LL1/6	27.12.1978
	E(G)77 LL1/3	12.05.1977
	E(G)82 LL2-2(A)	04.06.1992
	E(G)82 LL2-2	15.06.1992
	97/LC/Misc/37	15.10.1997
	E(G)82 LL2-2(A)	20.04.2001
	2001/LC/Misc 11	17.10.2001
	E(G)2003 LL1/4	19.11.2003
	2008/V-1/VP/1/2	09.05.2008
	2010/LC/Misc/01	11.03.2010
	2001/LC/Misc.11	03.08.2010
	E(G)2010/II/2/5	09.12.2010
	E(G)2010/LL2/4	24.11.2010
	2012/LC/Misc/02	01.04.2014
	OO No.55 of 2014	

KNOWING CITIZENS RIGHTS IF THEY ARRESTED AND HOW TO OBTAIN BAIL IN INDIA

17

A person is arrested when a police officer or a citizen takes him into custody or otherwise substantially deprives him of his freedom of action so that he may be held to answer for a crime or an offence. The police in India do not have any power to detain anybody for questioning unless he is arrested with or without warrant.

17.1 Warrant of Arrest

It is a written order issued by a Court to a police officer to arrest and produce an offender or to search his premises for a particular thing. A police officer who executes the warrant shall notify the substance thereof to the person to be arrested and if he demands, shall show him the warrant. He is expected to bring the required person before the Court without unnecessary delay.

17.2 Valid Warrant

A warrant of arrest should be (i) in writing (ii) signed by the presiding officer of the Court and (iii) should bear the seal of the

Court. It should also contain the name of the accused, his address and indicate the offence with which he is charged. If any of these factors is absent, the warrant is not in order and an arrest made in execution of such a warrant is illegal. Warrants are of two kinds:

i) Bailable

ii) Non-Bailable

A bailable warrant is a Court's order which contains a direction that if the person arrested executes a bail with sufficient sureties for his attendance before the Court, he may be released from custody. In that case it shall further state the number of sureties, the amount of the bond, and the time for attending the Court. (Section 71 Cr.P.C.) In case of a non-bailable warrant the direction for bail will not be endorsed on the warrant.

17.3 Arrest without Warrant

A police officer has power to arrest a person without warrant if he is suspected of having committed a cognizable offence. Normally in non-cognizable offences a police officer cannot arrest a person without a warrant from a Magistrate.

In the first Schedule of the Criminal Procedure Code (Cr.P.C.) offences have been classified and enumerated as cognizable and non-cognizable. The more serious offences such as murder, rape, robbery, theft, waging war against the State etc. are cognizable.

17.4 When can a person be arrested without a warrant?

A person can be arrested without a warrant:

1. If he is concerned in a cognizable offence or if there is a reasonable suspicion, complaint, or information that he has committed a cognizable offence.
2. If he possesses implements of house breaking.
3. If he possesses stolen property.
4. If he is proclaimed an offender.
5. It he obstructs a police officer on duty'

6. If he escapes from a legal custody.
7. It he is a deserter from the army, navy, or air force.
8. Where he is out of India, if he commits an offence punishable under any extradition law or under the Fugitive Offenders Act.
9. If he is released convict who breaks the restrictions imposed by the Court on his movements.
10. If he is suspected of preparing to commit a cognizable offence.
11. If he is habitual criminal.
12. If he, after committing a non-cognizable offence in the presence of a police officer, refuses to give the police his name and address or has given him a false name and address.
13. If he is required by a police officer of another police station who suspects that he has committed a cognizable offence.

17.5 How is Arrest made?

Arrest is complete when there is submission to custody by word or action, and in such a case touching or confining of the body of the person arrested is not necessary, but mere surrounding of a person by the police does not amount to arrest. (Section 46).

17.6 What happens if you resist arrest?

If you forcibly resist arrest, the police officer can use all means necessary to effect the arrest. (Sec 46). He can even cause your death provided you are charged with an offence punishable with death or imprisonment. However, he is not justified in using force more than necessary to obtain the arrest (Sec.46). Therefore, unnecessary restraints or causing physical inconveniences tying of hands and feet are not permissible if there is no necessity for doing so.

17.7 What are your rights when you are arrested?

If you are arrested:

1. You must be informed of the reasons for your arrest (Fundamental Rights: Article 22 and Sec.50 Cr.P.C.)
2. You have a right to see the warrant if you are arrested under warrant (Sec.75 Cr.P.C.)
3. You have a right to consult a lawyer of your choice. (Fundamental Rights: Article 22 of the Constitution).
4. You must be produced before the nearest Magistrate within 24 hours (Fundamental Rights Article 22 of the Constitution).
5. You must be told whether you are entitled to be released on bail. (Sec.50 Cr.P.C.)

17.8 Can any person be handcuffed?

According to the latest ruling of the Supreme Court, normally an arrested person should not be handcuffed unless he is violent, or he is desperate character, or he is likely to attempt to escape or to commit suicide. Arrest is not a punishment. Hence unnecessary restraints are not permissible, if there is no necessity for doing so.

Search of a place entered by a person sought to be arrested Sec.47 of Cr.P.C. compels all persons to afford to the police facilities for search in a place for a person sought to be arrested. Police officers have power to break open any door or window to carry out a search and to liberate himself or any person who is detained inside a premises.

17.9 Search of an arrested person

A Police officer has the right to search a person only after he is arrested. After the search the police officer must keep in safe custody all the articles taken from the person and give him a receipt for the same. A search of an arrested female should be done with strict regard to decency. A woman can be searched only by another women. (Sec.51)

17.10 Examination of arrested person by medical practitioner

A Police Officer not below the rank of a sub-Inspector may require an arrested person to be medically examined if he feels that this may provide evidence to prove the offence. (Sec.53)

1. He may use reasonably necessary force to have the medical examination performed.
2. The accused person can make a request to the Magistrate that he had not committed the offence. (Sec.54)
3. A woman has a right to demand that she be examined by a woman doctor. (Sec.53 A (2)54)
4. In case of torture in police custody, this provision of law must be taken advantage of, and the victim should demand in the Court that he be medically examined to prove torture by the police.

17.11 Detention of an arrested person

Article 22 (2) of the Constitution lays down that every person who is arrested and detained in custody should be produced before the nearest Magistrate within a period of 24 hours of such arrest exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court. However, Sec.167 of the Cr.P.C. vests the power in the Magistrate to authorize the detention of the arrested person for more than 24 hours of the investigation cannot be completed within that period. In no circumstances can the accused be detained in custody for a moment more than twenty-four hours without a special order of a Magistrate who can order his detention for a term exceeding 15 days on the whole. At the end of the 15 days, he must be produced before the Magistrate. If there are adequate grounds for further detention in judicial custody (jail), he can pass an order to that effect, for a period not exceeding 15 days. But the total period of detention cannot exceed 60 days, whether the investigation of offence against him has been

completed or not. The order of a Magistrate sanctioning the detention for an indefinite period is illegal. If the accused is not able to furnish bail during the stage of investigation he may be detained in judicial custody beyond 60 days. In case of a non-bailable offence the arrested person may be kept in jail until the trial is over.

17.12 Search Warrant

A search warrant is a legal document authorizing a police officer by a judge or magistrate to arrest, search, seize property or take action relating to the administration of the justice system. The term 'search' in the context of government machinery refers to the observation of undisclosed pieces of an offence, which are hidden behind some place, area, person, object. So that the invisible things may be shown, for the sake of justice.

The search of any premises, place, person, things can be conducted only by taking consideration of law. It means that under the proper and authorized Authority the search can be done, a random search cannot be done, there must be some lawful or Authority who Direct to police officer to do the same.

Provisions: –

In Code of Criminal Procedure, 1974 CrPC, there can be two types of Search. First one is Search with Warrant, and it is contained in the sections 93, 94, 95, 97 of Cr.P.C. and second one is Search without warrant which is covered in section 103, 153, 165 of Code of Criminal Procedure, 1974.

17.12.1 Search with Warrant

Section 93(1) provide three conditions in which court may issue the Searching warrant: – First when any person is summoned by the magistrate under section 91 to produce any documents and court believe that, that person will not produce such documents in the court, magistrate can order for search warrant. Second when the court don't know that document was in possession of any person,

court can issue a warrant for that same. Third when Court feels that the inquiry, trial, other proceedings will serve by the general search in that situation as well court may issue the search warrant.

V S Kuttan Pillai Vs. Ram Krishna and others [1]

Court held that matter of Issuing of a search warrant under CrPC is a very serious by nature. It is discretionary power of Magistrate, but it cannot be arbitrary.

Section 94 talks about Search of the Places. In this section any District Magistrate, Subdivision Magistrate and Judicial Magistrate of First class may issue the search warrant. They issue a search warrant for any place if they have reason to believe that: any stolen property may be found from that particular place. Second, that any article can be found from that place which is objectionable. Third, that any article is hidden in that place, and that article which is related to any case.

Vikas Book Agency Vs. State of UP -1992

The court held that issuing a warrant is a judicial process. While issuing a warrant court must use it discretionary powers but not an arbitrary manner.

Section 95 is related to Seize any publication. State government have authority to seize any publication which is:- any publication content which is Punishable offence under section 124A(Sedition) or section 153A (attacks upon the religion, race, place of birth, residence, language etc. of any particular group or class or upon the founders and prophets of a religion) or section 153B or section 292 or section 293 (obscene or indecent advertisement) or section 295A (intended to outrage religious feelings) of Indian Penal code, 1860, State government can issue search warrant for the same.

Search warrant is issued by the Magistrate for the following purposes:

1. For the recovery of a document or thing which may not be produced in the court otherwise.

2. For search of a house suspected to contain stolen property, forged documents, etc.
3. Seizing any publication banned by the government.
4. For discovery of a person wrongfully confined.

A search warrant gives the power to the police officer to search the required place and to seize the objectionable article known as "Mudammal". Police may use force to effect a legal entry provided that they have come, demanded entry and are unreasonably refused. The police officer executing the warrant may search any person in or about such place if that person is reasonably suspected of concealing on his person any article for which search is made. If the person to be searched is a female, then the search shall be made by another woman with the strictest possible decency.

Section 103 of code of Criminal Procedure Code, talks about that any Magistrate who has the authority to issue a search warrant can direct a search of any place, any time if he thinks fit.

Section 153 of the Code of Criminal Procedure give power to officer in charge of a police station, that the officer may without warrant inspect or search any Shop any place of his locality, where the false weights and measures are carried on.

Section 165 gives power to any police officer for the purpose of investigation may inspect or search any place. It provides the power of search any place without warrant to any police officer.

State of Rajasthan Vs. Rehman

The Supreme court held that recording of reasons is an important step in the matter of search and to ignore it is to ignore the material part of the provisions governing searches. If that can be ignored it cannot be said that a search is carried out in accordance with the provisions of the code, it would

be a search made in contravention of the provisions of the code. The reason must be written in writing by the police officer.

17.13 Procedure to be followed when search is being done.

The officer making a search shall:

1. Call upon two or more respectable residents of the locality (called Panches) to attend and witness the search. Failure to attend is an offence under Sec.187 I.P.C.
2. Make the search in their presence. So, the search would be illegal if the panches: are kept outside while the search takes place inside the building.
3. Make a list of all things seized and of all places in which they are found. (The list is called the panchanama).
4. Get the list signed by the witnesses – Panchas
5. Permit the occupant of the place to attend the search and give him a copy of the list of things signed at his request.
6. Panches are not required to attend the court as witnesses unless specially summoneded by the Court.

17.14 Rights of the occupants of the premises searched.

1. The accused himself cannot be compelled to produce any document or property which is likely to involve him in any criminal charge. Hence police have to get a warrant issued by a Court of Law.
2. The police have no general power to enter or search your premises without your consent.
3. The court may specify in the warrant a particular place only to which the search will extend.
4. It is important that the warrant is read, and the directions are taken note of before the police are allowed to make inspection.
5. If the police have no legal authority to enter your premises you can refuse the entry.
6. If they have no legal authority to remain, you have a right to insist that they leave.

7. If they refuse you have the legal right to use reasonable force to remove them. (Sec.97, of I.P.C.)

17.15 Bail

India witnesses a lot of crimes on a daily basis and the police many times are successful in tracing the criminals who they believe did the crime. The trial starts after some weeks or months from their conviction. The convicted criminals may at times, not be guilty and still be required to face jail time. The only way out of this is to get a bail.

The concept of bail was only prevalent in England during 399 BC. Its first instance was when Plato tried to procure a bond in order to release Socrates. Getting inspired from that, India also, later on, introduced this concept.

Well, if you get a call and learn that your client is jailed, then let's see how to get him out of it.

17.16 The basic concept of bail

The term 'bail' means a kind of security or bond which is given to release a person from prison. It is a pro tem release of a criminal before his trial begins. The term 'bail' is not defined anywhere in the Criminal Procedure Code, 1973, however, the terms 'bailable offense' and 'non-bailable offense' are defined in Section 2(a) of Cr.P.C.

17.17 Evolution of the concept of bail

As mentioned earlier, the concept was first introduced in England. The judges in England used to travel from place to place to hear the cases which took place from session to session. During this, the prisoners would face a hard time because of the unhygienic prison conditions. So, the system of bail was introduced to release the prisoners awaiting trial.

Later on, the Charter of Rights, the Magna Carta was introduced in the year 1215, which gave the right to the citizens, which stated

that a man cannot be convicted until he has faced the trial. The offenses were divided into bailable and non-bailable, back in 1275 by the statute of Westminster.

The Habeas Corpus Act came in the year 1679, according to which the magistrate can release the prisoners by taking some sort of surety. The English Bill of Rights introduced in the year 1689 provided a shield against the excessively high amount of bail. Currently, the Bail Act of 1976 has been followed in England.

In India, the provisions regarding bail are incorporated in the Criminal Procedural Code,1973.

The Sections 436 to 450 deals with the grant the bail and bonds, in cases of criminal nature.

17.18 In which cases can one get bail?

Section 436

Section 436 of CrPC states that any person who is detained by a police officer, who doesn't have a warrant or that person is prepared in the custody of the police officer before the court has granted him bail, shall be released on bail through a bond without any kind of sureties.

If the person has failed to follow the bail-bond then he can be refused bail. In case, the person appears in the court, such refusal will be subject to the court, and it can call that person and impose penalty given under Section 446 of Cr.P.C.

Bail means releasing an arrested person from legal custody until his trial. Bail gives the freedom to seek advice from friends, to consult a lawyer, to trace witnesses and to collect evidence for one's defence and to continue his job. When bail is not granted, the arrested person will be on remand and will be kept in custody to facilitate the investigation and to obtain evidence. Provisions regarding bail can be classified into 2 categories: i.e.,

1. Bailable cases
2. Non-Bailable Cases.

1. Bailable Cases

In the case of bailable offences, granting of bail is a matter of legal right. This means that bail cannot be refused and shall be granted by a police officer in charge of a police station having the accused in his custody. The release may be ordered on the accused executing a bond, even without sureties.

2. Non-Bailable Cases

In non-bailable cases, only the Court can order the release of the accused person on bail. However, if the police officer or the Magistrate is of the opinion that there is no sufficient material against the accused and that the complaint needs further investigation, he may also release the accused on bail. (Sec.437 (2) Cr.P.C.)

Normally bail is not granted when the accused person appears, on reasonably grounds, to be guilty of an offence punishable with death or imprisonment for file. But women, children under 16, and sick people can be released on bail by a Magistrate even if charged with offences punishable with death or life-imprisonment. An accused person is entitled to be released on bail as soon as reasonable grounds for guilt cease to appear, between the close of the case and the delivery of judgement. A person released on bail may be taken into custody by an order of the Court, if his conduct subsequent to release is found to be prejudicial to a fair trial Sec.48 Cr.P.C. or if he does not o.bserve the conditions of the bail.

17.19 Power of the Court to grant bail.

The discretionary power of the Court to grant bail is judicial power and is given by established principles. Before granting bail, the Court must consider the seriousness of the charge, the nature of the evidence, the severity of the punishment prescribed for the

offences and in some cases the character, means and the status of the accused.

17.20 If you are arrested, how to get released immediately from police custody?

In warrant cases, find out the directions endorsed in the warrant and execute a bond with sureties (Sec.71):

1. If the offence charges is bailable and the arrest is made without warrant, ask the police officer in charge of the police station to grant you bail after executing a bond.
2. The police officer has the discretion to release a person on his executing a bond without sureties. (Sec. 436 of Cr.P.C.)
3. If you are not granted bail immediately you have the right to telephone your advocate, a friend or a relative. Give your advocate the names and addressed of the possible sureties. If you don't have an advocate inform your friend or relative
4. The name of the Court where you will appear.
5. The time the Court starts; and request him:
6. To take to the Court anyone else who is prepared to stand surety.
7. To contact an advocate if possible.

   If you can deal with these matters before you go to the Court, you may be saved an unnecessary remand in custody.

17.21 Granting of Bail by the Magistrate

If a person is arrested for a non-bailable offence, and there exists a reasonable ground to believe the guilt of the person, he may not be granted bail by the police officer. In such cases the accused person must make a written application to the court to grant bail. The court must grant bail unless he is charged with a crime punishable with death or life-imprisonment. In such cases only the sessions or the High Court can grant bail.

17.22 Common police objections to bail

1. The accused will not appear at his trial.
2. He will interfere with witnesses or material evidence.
3. He will commit further offences while on bail.
4. Police enquiries are not complete.
5. Further charges might follow.
6. Stolen properties have not been recovered.
7. The co-accused are absconding.
   The weapons with which the crime was committed has not been recovered.
   Normally the police make an application for the remand of the accused. In such an application they give their reasons for further detention of the accused in custody. The reasons given by the police must be refuted to the extent possible.

17.23 Application for Bail

1. If the accused can afford an advocate, he can make an application and represent the accused before the judge.
2. If the accused cannot afford an advocate he may make a written application to the judge. For this he must get an application form from the prison staff and complete it as fully as possible giving sufficient reasons to convince the judge of the need of granting bail.

The following special grounds for release must be mentioned in the application:

1. Condition and state of accommodation; whether there is a possibility of eviction in case bail is not granted.
2. Whether he is likely to lose his job.
3. How refusal of bail would create hardship to the dependent members of the family.
4. How keeping in custody would affect the poor state of health and treatment.

17.24 Refusal of Bail by the Magistrate

If bail is refused, the Magistrate must record the reasons for the same. Such a record is necessary to make a proper appeal for bail in higher Courts.

17.25 Appeal

If the application for bail is rejected by the Magistrate, the accused person can appeal to a Sessions Court or High Court. Disagreement with the objections raised by the police in granting bail or the fact of no objection raised in the Court must be incorporated in the application for bail. If one's application is rejected, one may try again in one's next Court appearance.

17.26 Conditions for Bail

The Magistrate may grant a bail:

1. Without any condition
2. Subject to special conditions.
3. Subject to bond with or without sureties.

   Special conditions usually state that the accused person must report to the police station at specified times or surrender his passport. One can challenge in a Court any unreasonable condition imposed by the Magistrate. If the Court refuses to change the conditions, the accused person can reject them. But in that case, he will not be released until his appeal is heard and disposed of in his favour.

17.27 Bond and Sureties

1. An accused person may be released on personal bond with or without sureties.
2. Sureties are people who guarantee a sum of money for appearance of the accused in the Court on the appointed day and time.
3. Those who stand as sureties must be present in the Court and if asked must guarantee the Court under oath that they are prepared to act and have sufficient funds.
4. They can file affidavits before the Court stating the fact to show that they have sufficient funds to pay the surety and that they are even otherwise fit to be sureties.

5. The Magistrate has the power to reject the surety without giving any reason. If the sureties are not in the Court, the arrested person will be kept in custody until the police have interviewed them and found them to be satisfactory.
6. Sureties must be over 18, have a permanent address and have sufficient money to cover the amount of surety after payment of all their debts. The sureties may carry to the Court documents such as ration cards, rent receipts, provident fund slips, salary slips and income tax challans.
7. The police and the Magistrate have no right to reject sureties on ground of their personal character, political opinions, criminal records, or sex, unless they are professional sureties.

17.28 Bail after Conviction

If an accused person is found guilty, the Magistrate will pass the sentence after considering his past record. If the convicted person wants to appeal against his sentence in a higher court, the Court which passed the sentence must release him on bail.

1. When the sentence is for imprisonment for a term net exceeding 3 years, or.
2. When the offence for which the person is convicted is a bailable one and the person is already on bail. The release will be for a period that will enable the convict to present the appeal and get the orders of the appellate Court. Once a person files an appeal against his conviction, the appellate Court may suspend the sentence and release him on bail or on personal bond.

17.29 Anticipatory Bail

When a person has reason to believe that he may be arrested for a non-bailable offence, he may apply to the High Court or to the Court of Session for a direction that in the event of such an arrest he may be released on bail. If such a person is arrested without a warrant by a police officer and if he is prepared to give bail, he must be released on bail. In case a warrant is issued against the

accused by a Magistrate, it. The purpose of the provision is to relieve a person from disgrace by being detained in jail for some days before he can apply for bail when he is implicated in a false case by a rival.

17.30 Recent Observations and Recommendations of the Supreme Court on Bail

1. The Bail system prevalent in our country is oppressive and discriminatory against the poor, since the poor would not be able to furnish bail on account of their poverty. The court, by ignoring the differential capacity of the rich and the poor to furnish bail and treating them equally, produces inequality between the rich and the poor.
2. The bail system should be thoroughly reformed so that it should be possible for the poor to obtain pre-trail release as easily as the rich without jeopardising the interests of justice.
3. The Court and the police must abandon the antiquated practice of release only against bond with sureties, and if the accused has ties in the community and there is no substantial risk of nonappearance, he may be released on his personal bond without monetary obligation, subject to penalty in case of breach.
4. The amount of bond the Court fixes to release the accused on personal bond should not be based merely on the nature of the charge but on the financial capacity of the accused and the probability of the absconding.
5. When the accused is released on personal bond, the Court or the police should not insist upon inquiring into his solvency as a condition of acceptance of his personal bond.

17.31 How to Take Bail in India?

Bail is the conditional release of a person accused of a crime, for an amount, pledged for the appearance of the accused when the same is due in court. The person paying the money acts as the surety. Getting bail is one of the rights of the accused in a civil case while it is the discretion of the bail granting authority in a criminal case.

Bail is governed by the Code of Criminal Procedure, 1973. Bail is the tentative release of a person accused in a criminal case in a

court where the trial is pending, and the judgment is yet to be announced.

Bail is not explicitly defined in the Act but the terms bailable offence and non-bailable offenses are defined under Section 2(a). Section 436-450 governs the provisions relating to bail under the Act.

17.32 Types of Bail:

A person accused in a criminal case can apply for the following types of bail:

1. **Regular bail:**
   If a person who has committed a criminal offense or is alleged to have committed the same is in police custody, they can apply for regular bail. When a person commits a cognizable non-bailable offence (one that is so grave in nature that a police officer had to make the arrest of the accused without a predetermined warrant or begin an inquiry without the legal authorization of the court of law), the police has the right of taking him into custody, and he must be sent to prison when the custody term ends.

2. **Interim Bail:**
   An interim bail is granted before the trial for the grant of a regular or anticipatory bail takes place. It is granted for a short period of time.

3. **Anticipatory Bail:**
   The term "anticipatory bail" is self-explanatory. It is a kind of bail that is granted to someone who is expecting to be arrested by the police for a non-bailable offence. In recent years, this has become a very crucial subject since economic rivals and other influential people often attempt to frame their opponents in trumped-up charges. This is a type of advanced bail specified under the Act's Section

438. The police will then be unable to arrest someone who has been granted anticipatory bail.

17.33 Procedure to Apply for Bail:

When a person accused of committing a criminal offense is arrested by the police, they have the legal right to file a bail application for a release from police custody. An accused person must contact a criminal lawyer in Delhi to assist them in filing a bail application. Contents of Bail Application are generally as under:

1. The name of the court under which the bail application is going to be filed.
2. The section of CrPC
3. The name of the parties
4. The FIR numbers
5. The name of the police station in which the accused is in custody
6. The date and day on which the arrest of the accused was made
7. The ground on which the accused should be granted bail
8. The surety of the accused not absconding if bail is granted
9. The signature of the applicant
10. Prayer

When a person seeks bail for the crime, he/she has been convicted of, the accused must submit an application in the form of Form-45, which may be found in the second schedule. This application will be submitted in court where the case procedures will be heard with the assistance of a lawyer. The court will only grant bail if it deems appropriate. Bail cannot be granted without an application seeking the same. When a person has already been convicted and is appealing to a higher court, he may seek bail at this period.

1. During the bail hearing, the District and Sessions Judge takes into account all reasons, evidence, and facts and decides whether it is appropriate to grant the bail or not.

2. The accused has to deposit a certain sum of money as the bail amount. The court has the discretion to set this amount. Factors such as a previous criminal record of the accused, employment status of the accused, and the gravity of the crime are used to determine the bail amount. An accused person need not file a regular bail if they have already been granted anticipatory bail.

Section 437

It states that, if any person is detained for the commission of a non-bailable offense, without a warrant by a police officer, or when there are reasons to believe that there are not sufficient grounds to prove that the person has committed any non-bailable offense, then he can be released. This has to be followed in case he appears in any other court other than the Court of Sessions or the High Court.

Even so, this person cannot be granted bail if there are reasons to believe that he is guilty of any offense punishable with a death sentence or life imprisonment or he has earlier been convicted for an offense which was punished with punishments of the same nature.

Section 439

It gives special powers to the High Court and the Court of Sessions regarding the same.

It enables these courts to release the people on bail for the offenses specified in Section 437(3) of CrPC. The court can impose any condition which it thinks is necessary.

It further provides that any condition which the Magistrate imposes can be set aside if the High Court has granted bail after giving notice to the public prosecutor. The bail, in this case, should be provided in case the offense can be tried exclusively by the Court of Sessions and is punishable with life imprisonment.

Under both of these Sections, the courts can again direct the arrest of that person.

17.34 Interim bail

Before the procedure for granting a regular bail or anticipatory bail, interim bail is provided. It is given for a temporary period. The reason behind this is that the granting of bail by the High Court or the Court of Session requires documents to be sent by the lower courts, which takes time. So, for the time being, the provision of interim bail is provided.

The Interim bail can be extended and if its period expires then the person to whom it is granted has to be put in jail again.

17.35 Circumstances under which bail is given by police.

When the arrest is made without a warrant

Section 43 of the Cr.P.C. provides for the arrest of any accused by a private person. The private person after the arrest should bring the convicted person to the police station or hand him over to the police officer as soon as possible. The police will if it thinks that the convicted person should be released, release him.

Section 56 of the Cr.P.C. enables the police officer to bail that person out under the provision contained in this Section.

Section 169 of Cr.P.C. state that the bail can only be set when the investigation is made. Until then this Section does not provide bail. Bail can be given by the officer-in-charge of the police station or the police officer who is investigating.

Section 170 of Cr.P.C. confers authority to give bail, in the officer-in-charge of the police station in case the person is accused of committing a non-bailable offense.

17.36 When the arrest is made with the issuance of the warrant.

Section 73 of Cr.P.C. states that if the court is issuing the warrant under which it is specified that if the person executes a bond in which he has provided sureties for

appearing before the court when the court specifies, then the police officer to whom the warrant is issued will be allowed to give bail to the person.

According to Section 81 of Cr.P.C. and Section 82 of Cr.P.C., it is specified that if the arrest is made in the district, the police officer other than District Superintendent of Police or the Commissioner of Police can release the accused from custody, but in case the arrest is made out of such district then the District Superintendent of Police or the Commissioner of Police in the area of arrest can release the convicted.

17.37 Theories behind the provision of bail

Well, there are some theories that are believed to take place in pursuance of granting bail. Let's have a look at some.

1. Sometimes the innocents in prison are awaiting trial while being imprisoned all that time, which should not happen.
2. Internment without trial violates the basic rule of law.
3. Detention until not proven guilty is violative of Article 21 as it hampers personal liberty and life.
4. The detention proves to be expensive.
5. It may cause lots of financial suffering on the part of the family of the accused.
6. The person who is incarcerated will get less opportunity to prepare for his case whereas the person who will be bailed out can present his defense in a proper way.

17.38 Process of bail

When a person is accused of a crime, the first step the police take is getting him booked. The police gather his personal information such as date of birth, address, etc and then do a little investigation into his personal history, check on his previous criminal records, if any.

The police also check if he is intoxicated while the charge sheet is being prepared.

17.38.1 Bail application

When the person is convicted of a crime, he has a right to apply for bail. Applying for bail depends upon the juncture at which the case is. To give you an illustration, if the manager of an office apprehends that he can be booked for harassment, alleged by an employee, who is a woman in his office, then, in this case, he can file an anticipatory bail application.

If the person is arrested, hitherto, the first thing he will do is to call you, his criminal defense attorney and apply for bail. Now, we know there are two types of offenses, bailable and non-bailable. In the case of a bailable offense, the accused has to file an application by filing the Form-45 which is provided in the second schedule. This has to be filed in the court where the case proceedings are to be heard. The court has to approve the bail. In case of non-bailable offense, the suspect has to fill up the same form and file it in the court where his case is to be presented, the only change is that here the court has the discretion to grant bail.

Furthermore, every bail application should stand as distinct, as every case has different scenes and many uncommon facts.

17.38.2 Bail on Appeal

When a person is already convicted and applies for appeal in the Higher Court, meanwhile he can apply for bail. There are many things that have been taken into consideration like what if the appeal will be granted by the Higher Court or if there was a grave mistake made on the part of the Lower Court in deciding the case, etc.

17.38.3 Bail hearing

The bail hearing is the process, wherein the judge hears all of the reasons to grant bail and then announces the decision, based on whether he is convinced to grant the bail or not. It is important to understand the motive of the hearing and choose who is representing the convict in the hearing. It is the main role that you,

as an attorney, will have to play. Herein, all the evidence and the facts are presented before the court. And the attorney has to convince the judge so that he starts to believe that there is a likelihood that the accused should not be convicted after his trial and he is innocent.

What all will the judge consider while hearing your case proceedings?

Well, he has to be sure before he gives you bail, so he will be more likely to consider the following factors-

1. The character of the accused,
2. Nature of the crime for which the accused has been convicted,
3. His employment situation and financial conditions,
4. His background history,
5. Whether the accused has been convicted before and if yes, then his regularity in the scheduled appearances by the judge,
6. His family background and history,
7. For how many years he has been a resident of the community, he is currently living in.

All the evidence regarding these factors is to be presented by the accused and his attorney.

However, the judge can grant bail or cancel it due to a lack of evidence or if he thinks the evidence is not proper. When the judge grants the bail then he imposes some conditions along with it. These conditions are most likely related to alcohol tests, constraints in travel, necessary conditions in employment, periodic meetings with an officer.

17.38.4 Determinants to grant bail.

The judge while giving bail, takes into consideration all the factors governing the bail. These factors can be as under:

1. A threat to the community at large

The judge takes into consideration public safety by ensuring that the accused after bail is granted, does not do anything that hampers the safety of the general public.

To make certain of that, the judge looks for certain factors-

1. If the accused is charged with an offense of minor nature.
2. His level of involvement in the alleged crime.
3. His past records.
4. If he has been convicted for violence.
5. If he is of a violent nature.
6. If he has some medical condition which creates a certain disorder.
7. Whether he is small or weak for his age to commit that crime.

2. Flight risk

In order to make certain that the suspect appears in court whenever the judge schedules the meeting, the judge has to take into account the risk of the suspect to flee.

To give you an illustration, Anuj was convicted for money-laundering, he was released on bail as he was a well-established and a famous person. But soon after he ran away to another country where the police cannot capture him.

So, this is the flight risk which has to be taken care of and certain factors by which it can be made certain are-

1. For how long the convicted has been a part of the community?
2. How many family members live in that community?
3. Whether the suspect surrendered voluntarily or was chased down by the police?
4. Did the suspect cause any hindrance in the investigation?
5. Whether the suspect gave a comprehensive statement to the police?
6. The regularity of the suspect while attending his school or college which will show his regularity to attend the scheduled meeting.

7. Whether the suspect let the investigation go in a convenient manner?

Some other factors are necessary to consider such as the trial period of the convict, substance abuse and drug history of the convict.

The defense attorney along with the suspect has to provide the evidence necessary for the verification of the factors stated above, which the judge will take into account while making the judgment regarding giving the bail or not.

3. Setting the bail amount

The judge announces an amount to be paid by the accused when he appears in court. The provision of the setting of the amount is in order to ensure that the suspect appears in court at the time scheduled. In many jurisdictions, there is a provision of the bail schedule which provides for a predetermined amount for different criminal acts.

The factors that impact the setting of the bail amount are-

1. The gravity of the crime.
2. Accused previous criminal records.
3. Employment status of the accused.
4. The accused bond with his relatives.
5. His roots in the community.

4. Cancellation of bail

In certain cases, the judge will deny the bail completely. It can be denied at any stage of the case. The convicted person who applied for the bail will again have to go to jail. However, in a case where police have already provided the bail, the judge cannot deny or cancel it. But in instances where the convict is likely to flee or when some other jurisdiction has placed a hold on the accused then, the judge will cancel the bail and let the other jurisdiction review and make the charges.

THE RAILWAYS ACT, 1989
(PENALTIES & OFFENCES)

18

The Indian Railways Act 1890 was legislated and approved by the British Parliament. This law covered a wide range of matters related to railways. After gaining independence, it became evident that certain modifications were necessary to align the Act with present-day needs. As a result, new legislation called The Railway Act of 1989 was introduced. This updated Act retained certain aspects of the original 1890 Act while rendering others obsolete, and it introduced fresh provisions. The Railway Act 1989 came into effect on July 1, 1990.

The key features of this Act encompass the restructuring of railways into zones, each overseen by a dedicated General Manager. The pricing for passenger and goods transportation was vested in the Central Government. The Act also retained provisions for railways to compensate for losses, damages to goods, accidental fatalities, and injuries. Additionally, special regulations were introduced concerning the monetary

responsibility of railways as carriers of goods, among various other provisions.

Objectives of Railway Act:

The Railway Act of 1989 outlines the primary responsibility of the railway administration regarding the loss, destruction, damage, non-delivery, or deterioration of goods that are entrusted to them for transportation. It also covers cases of injury, loss, or death to passengers resulting from railway accidents or other adverse incidents.

In cases where consignors, consignees, passengers, or their representatives experience damages or losses concerning their booked goods, they have the right to claim compensation. If they are dissatisfied with the decisions made by the railway administration, they may opt to seek legal recourse in a court of law.

Compensation claims for the death, injury, or loss of a property of a passenger in case of train accidents are presently settled by claims commissioners. However, recognizing the time-consuming nature of legal proceedings in both regular courts and before claims commissioners, it has been proposed to establish a dedicated Tribunal to promptly handle and resolve such claims.

Creating a Claims Tribunal, equipped with Benches strategically located throughout the country and staffed by both judicial and technical experts, will greatly alleviate the burden on train users. This establishment will accelerate the process of compensating victims involved in rail accidents and individuals who have experienced loss or damage to their products during rail transit.

Here are the further objectives of the Railway Act concerning passengers:

1. Ensure the safety of railway passengers, passenger areas, and railway property by actively combating criminals.
2. Enhance passenger travel and security by eliminating any anti-social elements from trains, railway premises, and passenger spaces.
3. Vigilantly prevent human trafficking of women and children and provide necessary support to underprivileged children found in railway areas.
4. Collaborate with other departments within Indian Railways to enhance its efficiency and overall image.
5. Act as an intermediary between the Railway administration and the Government Railway Police/local police.
6. Employ modern technology; implement best human rights practices, strategic management, and specific measures to safeguard the well-being of female, elderly, and children's passengers while pursuing these objectives.

1.1 Features of Railway Act: The Indian Railway act provides the following legislative provisions for:

1.1.1 Railway Zones:

Presently, the Indian Railway System is divided into 18 zones, which comprise two deemed zones (namely Kolkata metro and Konkan railway). Each zone is led by a General Manager who holds responsibility for the efficient functioning, maintenance, and financial performance of the respective railway, reporting to the Railway Board.

1.1.2 Construction and maintenance of works

In accordance with the railway act, a railway administration possesses the power to undertake, build, and execute any other essential measures for the establishment, upkeep, modification, or restoration of the railway and its utilization.

1.1.3 Employee and Passenger Services

As per the act, the Central Government has the authority to establish rates for transporting passengers and goods, either for the entire railway network or specific sections, through general or special orders. These orders may set distinct rates for various classes of goods and must outline the conditions under which these rates will be applicable.

1.2 Rules and regulations under Railway Act

According to section 131 of the Railway Act, the railway rule in chapter XIV will not apply to any of the railway servants to whom the Factories act of 1948, the Mines Act of 1952, the railway protection force act (1957), the merchant shipping act of 1958 applies.

1.2.1 Limitations of hours of work

A railway servant whose work is intermittent may not work more than seventy-five hours in any week. A continuous railway servant may not work for more than fifty-four hours per week on average throughout two weeks of fourteen days. An intensively engaged railway servant may not work more than forty-five hours per week on average throughout two weeks of fourteen days.

1.2.2 Grant of periodical rest

A railway servant whose employment is demanding or prolonged shall be given rest of not less than thirty hours straight for each week beginning on a Sunday. A railway servant whose employment is intermittent shall be given rest of not less than

twenty-four hours, along with a whole night, for each week beginning on a Sunday.

1.2.3 Railway servant to remain on duty.

Where proper provisions for a railway servant's relief got established, the act's rules authorize him to leave his duties until he is relieved.

1.2.4 Supervisors of Railway Labour

The Central Government has the authority to select railway labour supervisors. Supervisors of railway labour are responsible for inspecting railways to see whether the provisions of this Chapter or the rules promulgated thereunder are being followed and performing any other responsibilities that may get specified.

1.6 Offences under Railway Act

The offences under the railway act are as follows:

1.6.1 Smoking

Smoking is prohibited in any cabin of a train if any other passenger in that compartment objects. A railway administration may ban smoking in any train or part of a train, notwithstanding anything in other subsections. Whoever violates the terms of other sub-sections is subject to a fine.

1.6.2 Risking safety

Any person committing an offence under this Act, or any rule established thereunder shall get tried for that crime in any place where he is or where the State Government may inform him in this regard, and in any other place liable to be tried under any law currently in force.

If a railway employee, while on duty, puts another person's safety in jeopardy-

1. By breaking any rule established under this Act

2. By disregarding any instruction, direction, or order issued under this Act or its provisions.
3. He shall get punished for any reckless or negligent conduct or omission by imprisonment for a period of up to two years, or a fine of up to Rs. 1000, or both.

1.6.3 Obstructions

If any railway servant or other person obstructs, causes to be obstructed, or attempts to obstruct any train or other rolling stock on a railway-

1. squatting, picketing, or participating in any Rail roko movement or bandh.
2. by retaining any rolling stock on the railway without authorization.
3. tampering with, detaching from, or otherwise interfering with its hose pipe, tampering with signal gear, or otherwise.

He may get sentenced to a period of imprisonment of up to two years, a fine of up to two thousand rupees, or both.

1.6.4 Travelling on roofs, steps, or the engine of the trains.

A passenger or other person who continues to travel on the roof, step, or footboard of any carriage or engine or in any other component of a train not designated for passenger use will get punished under Section 156 of this act. He may get imprisoned for up to three months or fined up to five hundred rupees, or both, and may be removed off the railway by any railway servant.

1.6.5 Travelling without tickets or pass

If, to defraud a railway administration, -

1. enters or remains in a railway carriage or travels in a train in violation of section 55,
2. Uses or seeks to use a single pass or single ticket already been used on a prior journey, or, in the case of a return ticket, a portion thereof that has previously been used.

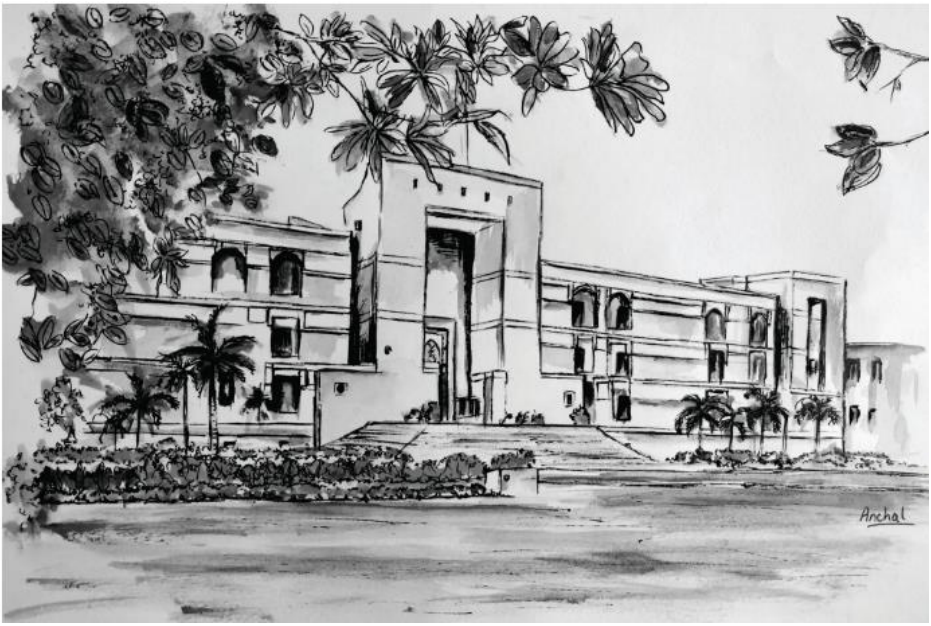
He shall get punished by imprisonment for a term not exceeding six months, or by a fine not exceeding one thousand rupees, or by both: provided, however, that in the absence of unique and sufficient grounds to the contrary specified in the court's judgement, such punishment shall not be less than a fine of five hundred rupees.

1.6.6 Entering Reserved compartments

1. If a person enters a compartment where the railway administration has not assigned him a berth or seat,
2. Suppose a passenger refuses to leave an unapproved berth or seat booked by the railway administration to use other passengers. In that case, a railway employee may evict him or force him to be removed from the compartment, berth, or seat, as the case may be, and fine him up to 500 rupees.
3. A passenger who refuses to allow another passenger to enter a compartment not designated for the resisting passenger will get fined up to two hundred rupees.

Through the Railway Act, Railways have been given authority to make rules for their better and safer working. Common users have been given rights for safer and secure journeys and if Railways fails to carry out the duty, they had been held liable through this

act. A mechanism for fixing liability has also been given through the Railways Act and Railways Claims Tribunal Act.



Gujarat High Court

THE RAILWAYS ACT, 1989

(Act No. 24 of 1989)

The Railways Act, 1989

Act No. 24 of 1989

CHAPTER I
PRELIMINARY

001 Short title and commencement

(1) This Act may be called the Railways Act, 1989.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette appoint:

Provided that different dates may be appointed for different provisions of this Act, and any reference in any such provisions to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

002 Definitions

In this Act, unless the context otherwise requires, -

(1) **"Authorized"** means authorized by a railway administration.

[1][(1A) "Authority" means the Rail Land Development Authority constituted under section 4A;]

(2) **"Carriage"** means the carriage of passengers or goods by a railway administration.

(3) **"Claims Tribunal"** means the Railway Claims Tribunal established under section 3 of the Railway Claims Tribunal Act, 1987 (54 of 1987).

(4) **"Classification"** means the classification of commodities made under section 31 for the purpose of determining the rates to be charged for carriage of such commodities.

(5) **"Class rates"** means the rate fixed for a class of commodity in the classification.

(6) **"Commissioner"** means the Chief Commissioner of Railway Safety, or the Commissioner of Railway Safety appointed under section 5.

(7) **"Commodity"** means a specific item of goods.

(8) **"Consignee"** means the person named as consignee in a railway receipt.

(9) **"Consignment"** means goods entrusted to a railway administration for carriage.

(10) **"Consignor"** means the person, named in a railway receipt as consignor, by whom or on whose behalf goods covered by the railway receipt are entrusted to a railway administration for carriage.

(11) **"Demurrage"** means the charge levied for the detention of any rolling stock after the expiry of free time, if any, allowed for such detention.

(12) **"Endorsee"** means the person in whose favour an endorsement is made, and in the case of successive endorsements, the person in whose favour the last endorsement is made.

(13) **"Endorsement"** means the signing by the consignee or the endorsee after adding a direction on a railway receipt to pass the property in the goods mentioned in such receipt to a specified person.

(14) **"Fare"** means the charge levied for the carriage of passengers.

(15) **"Ferry"** includes a bridge of boats, pontoons or rafts, a swing bridge, a fly-bridge and a temporary bridge and the approaches to, and landing places of, a ferry.

(16) **"Forwarding note"** means the document executed under section 64.

(17) **"Freight"** means the charge levied for the carriage of goods including transhipment charges, if any.

(18) **"General manager"** means the General Manager of a Zonal Railway appointed under section 4.

(19) **"Goods"** includes-

(i) containers, pallets, or similar articles of transport used to consolidate goods; and

(ii) animals.

(20) **"Government railway"** means a railway owned by the Central Government.

(21) **"In transit",** in relation to the carriage of goods by railway, means the period between the commencement and the termination of transit of such goods, and unless otherwise previously determined-

(a) transit commences as soon as the railway receipt is issued or the consignment is loaded, whichever is earlier.

(b) transit terminates on the expiry of the free time allowed for unloading of consignment from any rolling stock and where such unloading has been completed within such free time, transit terminates on the expiry of the free time allowed, for the removal of the goods from the railway premises.

(22) **"Level crossing"** means an inter-section of a road with lines of rails at the same level.

(23) **"Luggage"** means the goods of a passenger either carried by him in his charge or entrusted to a railway administration for carriage.

(24) **"Lump sum rate"** means the rate mutually agreed upon between a railway administration and a consignor for the carriage of goods and for any service in relation to such carriage.

(25) **"non-Government railway"** means a railway other than a government railway.

(26) **"Notification"** means a notification published in the Official Gazette.

(27) **"Parcel"** means goods entrusted to a railway administration for carriage by a passenger or a parcel train.

(28) **"Pass"** means an authority given by the Central Government or a railway Administration to a person allowing him to travel as a passenger but does not include a ticket.

(29) **"Passenger"** means a person traveling with a valid pass or ticket.

(30) **"Prescribed"** means prescribed by rules made under this Act.

(31) **"Railway"** means a railway, or any portion of a railway, for the public carriage of passengers or goods, and includes-

(a) all lands within the fences or other boundary marks indicating the limits of the land appurtenant to a railway.

(b) all lines of rails, sidings, or yards, or branches used for the purposes of, or in connection with, a railway.

(c) all electric traction equipment(s), power supply and distribution installations used for the purposes of, or in connection with, a railway.

(d) all rolling stock, stations, offices, warehouses, wharves, workshops, manufactories, fixed plant and machinery, roads, and streets, running rooms, rest houses, institutes, hospitals, water works and water supply installations, staff' dwellings and any other works constructed for the purpose of, or in connection with, railway.

(e) all vehicles which are used on any road for the purposes of traffic of a railway and owned, hired, or worked by a railway, and

(f) all ferries, ships, boats, and rafts which are used on any canal, river, lake, or other navigable inland waters for the purposes of the traffic of a railway and owned,

hired, or worked by a railway administration, but does not include-

(i) a tramway wholly within a municipal area; and

(ii) lines of rails built in any exhibition ground, fair, park, or any other place solely for the purpose of recreation.

(32) **"Railway administration",** in relation to-

(a) a government railway, means the General Manager of a Zonal Railway; and

(b) a non-Government railway, means the parson who is the owner or lessee of the railway or the person working the railway under an agreement.

(33) **"Railway receipt"** means the receipt issued under-section 65.

(34) **"Railway servant"** means any person employed by the Central Government or by a railway administration in connection with the service of a railway.

(35) **"Rate"** includes any fare, freight, or any other charge for the carriage of any passenger or goods.

(36) **"Regulations"** means the regulations made by the Railway Rates Tribunal under this Act.

(37) **"Rolling stock"** includes locomotives, lenders, carriages, wagons, railcars, containers, trucks, trolleys, and vehicles of all kinds moving on rails.

(38) **"Station to station rate"** means a special reduced rate applicable to a specific commodity booked between specified stations.

(39) **"Traffic"** includes rolling stock of every description, as well as passengers and goods.

(40) **"Tribunal"** means the Railway Rates Tribunal constituted under section 33.

(41) **"Wharfage"** means the charge levied on goods for not removing them from the railway after the expiry of the free time for such removal.

(42) **"Zonal railway"** means a Zonal Railway constituted under section 3.

Commentary

(i) Railway stations and railway carriages may be public place but not public property: Railway Board v. Observer Publications, AIR 1972 SC 1792

(ii) The definition of 'railway administration' does not make the railway administration or its manager a legal entity or Judicial person; State of Kerala v. G.H.S.Kly, AIR 1976 SC 2538.

(iii) Duty pass is a special kind of pass issued by the railway to enable its employee to travel in the train while they are on duty, without payment of the usual fare: Mariaggi v. Union of India, AIR 1971 Mad 488.

(iv) The term "railway" is wide enough to include any office or other works constructed for the purpose of, or in connection with, the railway: Samuel Tipphy v. State, AIR 1963 Ori 20.

(v) The term "railway" includes all stations, offices, warehouses, etc. constructed for the purpose or in connection with a railway company; East India Railway Co. v. Moti Sagar, 116 PLR 1911.

(vi) A carrier who carries goods through a backwater to railway stations under a contract will not be deemed to be part of a railway, Madira Co. Ltd. v. Xavier, AIR 1931 Mad 115.

(vii) A railway line will be a "railway" only if it is meant for the purpose of public carriage of goods, etc., Sai Chandra Traders v. Union of India, AIR 1976 All 230.

(viii) A suit against the railway administration must be instituted against the Union of India; State of Kerala v. General Manager, Southern Railway, AIR 1965 Ker 277.

(ix) The Station Master of a railway station and the General Manager of a railway are not comptent railway administration; State of Assam v. Union of India, AIR 1975 Gau 74.

CHAPTER II
RAILWAY ADMINISTRATIONS

003 Zonal Railways

(1) The Central Government may, for the purpose of the efficient administration of the Government railways, by notification, constitute such railways into as many Zonal Railways as it may deem fit and specify in such notification the names and headquarters of such Zonal Railways and the areas in respect of which they shall exercise jurisdiction.

(2) The Zonal Railway existing immediately before the commencement of this Act shall be deemed to be Zonal Railways constituted under sub-section (1).

(3) The Central Government may, by notification, declare any unit of the railways engaged in research, development designing, construction or production of rolling stock, its parts or, other equipment used on a railway, to be a Zonal Railway.

(4) The Central Government may, by notification, abolish any Zonal Railway or constitute any new Zonal Railway out of any existing Zonal Railway or Zonal Railways, change the name or headquarters of any Zonal Railway or determine the areas in respect of which a Zonal Railway shall exercise jurisdiction.

004 Appointment of General Manager

(1) The Central Government shall, by notification, appoint a person to be the General Manager of a Zonal Railway.

(2) The general superintendence and control of a Zonal Railway shall vest in the General Manager.

CHAPTER III
COMMISSIONERS OF RAILWAY SAFETY

005 Appointment of Chief Commissioner of Railway Safety and Commissioners of Railway Safety.

The Central Government may appoint a person to be the Chief Commissioner of Railway Safety and such other persons as it may consider necessary to be the Commissioners of Railway Safety.

006 Duties of Commissioner

The Commissioner shall-

(a) inspect any railway with a view to determine whether it is fit to be opened for the public carriage of passengers and report thereon to the Central Government as required by or under' this Act.

(b) make such periodical or other inspections of any railway or of any rolling stock used thereon as the Central Government may direct.

(c) make an inquiry under this Act into the cause of any accident on a railway; and

(d) discharge such other duties as are conferred on him by or under this Act.

007 Power of Commissioner

Subject to the control of the Central Government, the Commissioner, whenever it is necessary so to do for any of the purposes of this Act, may-

(a) enter upon and inspect any railway or any rolling stock used thereon.

(b) by order in writing addressed to a railway administration, require the attendance before him of any railway servant and

to require answers or returns to such inquiries as he thinks fit to make from such railway servant or from the railway administrations; and

(c) require the production of any book, document or material object belonging to or in the possession or control of any railway administration which appears to him to be necessary to inspect.

008 Commissioner to be public servant

The Commissioner shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (45 of 1860).

009 Facilities to be afforded to Commissioners.

A railway administration shall afford to the Commissioner all reasonable facilities for the discharge of the duties or for the exercise of the powers imposed or conferred on him by or under this Act.

010 Annual report of Commissioners

The Chief Commissioner of Railway Safety shall prepare in each financial year an annual report giving a full account of the activities of the Commissioners during the financial year immediately preceding the financial year in which such report is prepared and forward, before such date as may be specified by the Central Government, copies thereof to the Central Government and that Government shall cause that report to be laid, as soon as may be, after its receipt before each House of Parliament.

CHAPTER IV
CONSTRUCTION AND MAINTENANCE OF WORKS

011 Power of railway administrations to execute all necessary works.

Notwithstanding anything contained in any other law for the time being in force, but subject to the provisions of this Act and the provisions of any law for the acquisition of land f6r a public purpose or for companies, and subject also, in the case of a non-Government railway, to the provisions of any contract between the non-Government railway and the Central Government, a railway administration may, for the purposes of Constructing or maintaining a railway-

(i) make or construct in or upon, across, under or over any lands, or any streets, hills, valleys, roads, railway, tramways, or any rivers, canals, brooks, streams or other waters, or any drains, water-pipes, gas-pipes, oil-pipes, sewers. electric supply lines, or telegraph lines such, temporary or permanent inclined-planes, bridges, tunnels, culverts, embankments, aqueducts, roads, lines of rails, ways, passages, conduits, drains, piers, cuttings and fences, in-take wells, tube wells, dams, river training and protection works as it thinks proper.

(ii) alter the course of an streets, brooks, streams or other water courses, for the purpose of constructing and maintaining tunnels, bridges, passages or other works over or under them and divert or alter either temporarily or permanently, the course of any rivers, brooks, streams or other water courses or any roads, streets or ways, or raise or sink the level thereof, in order to carry them more conveniently over or under, or by the side of the railway,

(iii) make drains or conduits into, through or under any lands adjoining the railway for the purpose of conveying water from or to the railway.

(iv) erect and construct such houses, warehouses, offices and other buildings, and such yards, stations, wharves, engines, machinery apparatus and other works and conveniences as the railway administration thinks proper,

(v) alter, repair, or discontinue such buildings, works and conveniences as aforesaid or any of them and substitute others in their stead.

(vi) erect operate, maintain, or repair any telegraph and telephone lines in connection with the working of the railway,

(vii) erect operate, maintain, or repair any electric traction equipment, power supply and distribution installation in connection with the working of the railway; and

(viii) do all other acts necessary for making, maintaining, altering, or repairing and using the railway-

Commentary

(i) The clearance under the Environment (Protection) Act, 1986 is not required even though the line passes over the railways, rivers, creeks, etc.; The Goa Foundation v. Konkan Railway Corporation, AIR 1992 Bom 471.

(ii) The person employed by the railway administration to open and shut the gate of a level crossing is, before opening the gate, bound to see that railway is safe for the purpose of crossing and if he opens the gate, when it is unsafe to cross, he does so at the railways administration's, peril; M/S Yatayat Nigam v. Union of India, AIR 1983 Raj 17.

(iii) Where the railway administration has not taken adequate steps to warn the public of an approaching train, then it is a clear case of negligence on their part; Swarnalata v. Union of India, AIR 1963 Ass 117; Ramesh v. Union of India, AIR 1963 Pat 167.

012 Power to alter the position of pipe, electric supply fine, drain or sewer, etc.

(1) A railway administration may, for the purpose of exercising the powers conferred on it by this Act, alter the position of any pipe for the supply of gas, water, oil or compressed air, or the position of any electric supply line, drain or sewer:

Provided that before altering the position of any such pipe, electric supply line, drain or sewer, the railway administration shall, give a notice indicating the time at which the work of such alteration shall commence, to the local authority or other person having control over the pipe, electric supply line, drain or sewer.

(2) The railway administration shall execute the work referred to in sub-section (1) to the reasonable satisfaction of the local authority or the person receiving the notice under the proviso to sub-section (1).

013 Protection for Government property

Nothing in sections 11 and 12 shall authorize-

(a) a railway administration of the Government railway to do anything on or to any works, lands or buildings vested in, or in the possession of, a State Government without the consent of that Government; and

(b) a railway administration of a non-Government railway to do anything on or to any works, lands or buildings vested in, or in the possession of, the Central Government or a State Government without the consent of the Government concerned.

014 Temporary entry upon land to remove obstruction, to repair or to prevent accident.

(1) Where in the opinion of a railway administration-

(a) there is imminent danger that any tree, post, or structure may fall on the railway so as to obstruct the movement of rolling stock; or

(b) any tree, post structure or light obstructs the view of any signal provided for movement of rolling stock; or

(c) any tree, post or structure obstructs any telephone or telegraph line maintained by it, it may take such steps as may be necessary to avert such danger or remove such obstruction and submit a report thereof to the Central Government in such manner and within such time as may be prescribed.

(2) Where in the opinion of a railway administration-

(a) a slip or accident has occurred; or

(b) there is apprehension of any slip or accident to any cutting, embankment, or other work on a railway, it may enter upon any lands adjoining the railway and do all such works as may be necessary for the purpose of repairing or preventing such slip or accident and submit a report thereof to the Central Government in such manner and within such time as may be prescribed.

(3) The Central Government may, after considering the report under sub-section (1) or sub-section (2), in the interest of public safety, by order, direct the railway administration that further action under sub-section (1) or sub-section (2) shall be stopped or the same shall be subject to such conditions as may be specified in that order.

015 Payment of amount for damage or loss

(1) No suit shall lie against a railway administration to recover any amount for any damage or loss caused in the exercise of the powers conferred by any of the foregoing provisions of this Chapter.

(2) A railway administration shall pay or tender payment for any damage or loss caused in the exercise of the powers conferred by any of the foregoing provisions of this Chapter, and in case of a dispute as to the sufficiency of any amount so paid or tendered or as to the persons entitled to receive the amount, it shall immediately refer the dispute for the decision of the District Judge of the district and his decision thereon shall be final:

Provided that where the railway administration fails to make a reference within sixty days from the date of commencement of the dispute, the District Judge may, on an application made to him by the person concerned, direct the railway administration to refer the dispute for his decision.

(3) The reference under sub-section (2) shall be treated as an appeal under section 96 of the (Code of Civil Procedure, 1908 (5 of 1908) and shall be disposed of accordingly.

(4) Where any amount has been paid as required by sub-section (2), the railway administration shall notwithstanding anything in any other law for the time being in force, be discharged from all liabilities to any person whatsoever in respect of any amount so paid.

Commentary

(i) The section bars a suit being filed against the railway administration for recovery of compensation against it. Thus where damage was done by a spark from the engine but the damage was not proved to have been due to negligence, the railway company was held not to be liable because when the Legislature sanctioned and authorised the use of a particular thing and it is used for the purpose, the sanction carries with it the

consequence that if damage results from it, the company is not liable; Halford v. East India Railway Co., (1874) 14 BLR 1.

(ii) If there had been no proof of negligence, and the injury had been an unavoidable result of the proper exercise by a railway company of the powers vested in it by law, a defendant would have been protected from any civil suit, even if damage had resulted from the exercise of that power; Gaekwar Sarkar of Barod v. Gandhi Kachrabhai Kasturchand, ILR 27 Bom 344.

016 Accommodation works

(1) A railway administration shall make and maintain the following works for the accommodation of the owners and occupiers of lands adjoining the railway, namely: -

(a) such crossings, bridges, culverts, and passages over, under or by the sides of, or leading to or from, the railway as may, in the opinion of the State Government, be necessary for the purpose of making good any interruptions caused by the railway to the use of the lands through which the railway is made; and

(b) all necessary bridges, tunnels, culverts, drains, water sources or other passages, over, under or by the sides of the railway of such dimensions as will, in the opinion of the State Government be sufficient at all times to convey water as, freely from or to the lands lying near or affected by the railway as it was before the making of the railway or as nearly as possible.

(2) Subject to the other provisions of this Act, the works specified in sub-section (1) shall be made at the cost of the railway administration during or immediately after the laying out or formation of the railway over the lands traversed and in such a

manner as to cause as little damage or inconvenience as possible to persons interested in the lands or affected by the works :

Provided that-

(a) a railway administration shall not be required to make any accommodation works in such a manner as would prevent or obstruct the working or using of the railway, or to make any accommodation works will respect to which the owners or occupiers of the lands have been paid compensation in consideration of their not requiring the said works to be made.

(b) save as hereinafter, in this Chapter, provided, no railway administration shall be liable to execute any further or additional accommodation works for the use of the owners or occupiers of the lands after the expiration of ten years from the date on which the railway passing through the lands was first opened for public traffic.

(c) where a railway administration has provided suitable accommodation work for the crossing of a road or stream and the road or stream, is afterwards diverted by the act or neglect of the person having the control thereof, the railway administration shall not be compelled to provide any other accommodation work for the crossing of such road or stream.

(3) The State Government may specify a date for the commencement of any work to be executed under sub-section (1) and, if within three months next after that date, the railway administration fails to commence the work or having commenced it, fails to proceed diligently to execute it the Central Government shall, on such failure being brought to its notice by the State Government issue such directions to the railway administration as it thinks fit.

Explanation. - For the purposes of this section, the expression "lands" shall include public roads.

017 Power of owner, occupier, State Government or local authority to cause additional accommodation works to be made.

(1) If an owner or occupier of' any land affected by a railway considers the works made under section 16 to be insufficient for the use of the land, or if the State Government or a local authority desire to construct a public road or other work across under or over a railway, such owner or occupier, or, as the case may be. the State Government or the local authority, may, at any time, require the railway administration to make at the expense of the owner or occupier or of the State Government or the local authority, as the case may be, such further accommodation works as are considered necessary, and are agreed to by the railway administration.

(2) The accommodation works made under sub-section (1) shall be maintained at the cost of the owner or occupier of the land., the State Government or the local authority, at whose request the works were made.

(3) In the case of any difference of opinion between the railway administration and the owner or occupier, the State Government, or the local authority, as, the case may be, in relation to-

(i) the necessity of such further accommodation works; or

(ii) the expenses to be incurred on the construction of such further accommodation works; or

(iii) the quantum of expenses on the maintenance of such further accommodation works, it shall be referred to the Central Government whose decision thereon shall be final.

Commentary

The section will not become applicable where there are no accommodation works already made; G.I.P. Railways Co. v. Municipal Corporation of Bombay, ILR 23 Bom 358.

018 Fences, gates, and bars

The Central Government may, within such time as may be specified by it or within such further time, as it may grant, require that-

(a) boundary marks or fences be provided or renewed by a railway administration for a railway or any part thereof and for roads constructed in connection therewith.

(b) suitable gates, chains, bars, stiles, or handrails be erected or renewed by a railway administration at level crossings.

(c) persons be employed by a railway administration to open and shut gates, chains, or bars.

Commentary

i) No duty is cast on a railway administration to put up gates on a railway crossing, in order to prevent the public from trespassing onto the railway line, unless the Central

ii) Government requires them to do so; Heorak Chand v. Union of India, AIR 1958 MP 93. (ii) The statutory duty of the railway administration does not arise till the Central Government require it to do so; Shanker Rao v. Union of India, AIR 1959 MP 128.

iii) The closing of the gates is an additional precaution or preventive step provided by the railway administration against the public using the road, which is crossed by railway, who in-spite of the red-light and sounding of the gongs may enter the railway track; Krishnappa Naidu v. Union of India, AIR 1976 Mad 95.

019 Over-bridges and under-bridges

(1) Where a railway administration has constructed lines of rails across a public road at the same level, the State Government or the local authority maintaining the road, may, at any time, in the interest of public safety, require the railway administration to take the road either under or over the railway by means of a bridge or arch with

convenient ascents and descents and other convenient approaches, instead of crossing the road on the level, or to execute such other works as may, in the circumstances of the case, appear to the State Government or the local authority maintaining the road to be best adapted for removing or diminishing the danger arising from the level crossing.

(2) The railway administration may require the State Government or the local authority, as the case may be, as a condition of executing any work under sub-section (1), to undertake to pay the whole of the cost of the work and the expense of maintaining the work, to the railway administration or such Proportion of the cost and expenses as the Central Government considers just and reasonable.

(3) In the case of any difference of opinion between the railway administration and the State Government or the local authority, as the case may be, over any of the matters mentioned in sub-section (1), it shall be referred to the Central Government, whose decision thereon shall be final.

Commentary

The interference in matter of wall constructed on both sides of subway to prevent Flow of traffic over railway line and to obviate need of level crossing gate on railway line and to totally avoid placement on duty for 24 hours of railway employees at level crossing is not permissible; Nishatganj Vyapar Mandal v. State of U.P., AIR 1994 All 84.

020 Power of Central Government to give directions for safety.

Notwithstanding anything contained in any other law, the Central Government may, if it is of the opinion that any work undertaken or may be undertaken, is likely to alter or impede the natural course of water flow or cause an increase in the volume of such flow endangering any cutting, embankment or other work on a railway, issue directions in writing to any person, officer or authority responsible for such work to close, regulate or prohibit that work.

CHAPTER V
OPENING OF RAILWAYS

021 Sanction of the Central Government to the opening of railway

No railway shall be opened for the public carriage of passengers until the Central Government has, by order, sanctioned the opening thereof for that purpose.

022 Formalities to be complied with before giving sanction to the opening of a railway.

(1) The Central Government shall, before giving its sanction to the opening of a railway under section 21, obtain a report from the Commissioner that-

(a) he has made a careful inspection of the railway and the rolling stock that may be used thereon.

(b) the moving and fixed dimensions as laid down by the Central Government have not been infringed.

(c) the structure of lines of rails, strength of bridges, general structural character of the works and the size of, and maximum gross load upon, the axles of any rolling stock, comply with the requirements laid down by the Central Government; and

(d) in his opinion, the railway can be opened for the public carriage of passengers without any danger to the public using it.

(2) If the commissioner is of the opinion that the railway cannot be opened without any danger to the public using it, he shall, in his report, state the grounds therefor, as also the requirements which, in

his opinion, are to be complied with before sanction is given by the Central Government.

(3) The Central Government, after considering the report of the Commissioner, may sanction the opening of a railway under section 21 as such or subject to such conditions as may be considered necessary 'by it for the safety of the public.

023 Sections 21 and 22 to apply to the opening of certain works.

The provisions of sections 21 and 22 shall apply to the opening of the following works if they form part of, or are directly connected with, a railway used for the public carriage of passengers and have been constructed subsequent to the giving of a report by the Commissioner under section 22, namely: -.

(a) opening of additional lines of railway and deviation lines.
(b) opening of stations, junctions, and level crossings.
(c) re-modelling of yards and re-building of bridges.
(d) introduction of electric traction; and
(e) any alteration or reconstruction materially affecting the structural character of any work to which the provisions of sections 21 and 22 apply or are extended by this section.

024 Temporary suspension of traffic.

When an accident has occurred on a railway resulting in a temporary suspension of traffic, and either the original lines of rails and works have been restored to their original standard or a temporary diversion has been laid for the purpose of restoring communication, the original lines of rails and works so restored,

or the temporary diversion, as the case may be, may, without prior inspection by the Commissioner, be opened for the public carriage of passengers, subject to the following conditions, namely:-

(a) the railway servant in-charge of the works undertaken by reason of the accident has certified in writing that the opening of the restored lines of rails and works, or of the temporary diversion will not in his opinion be attended with danger to the public; and

(b) a notice of the opening of the lines of rails and works or the diversion shall he sent immediately to the Commissioner.

025 Power to close railway opened for the public carriage of passengers.

Where, after the inspection of any railway opened and used for the public carriage of passengers or any rolling stock used thereon, the Commissioner is of the opinion that the use of the railway or of any rolling stock will be attended with danger to the public using it, the Commissioner shall send a report to the Central Government who may thereupon direct that-

(i) the railway be closed for the public carriage of passengers; or

(ii) the use of the rolling stock be discontinued; or

(iii) the railway or the rolling stock may be used for the public carriage of passengers subject to such conditions as it may consider necessary for the safety of the public.

026 Re-opening of closed railway

When the Central Government has, under section 25, directed the closure of a railway or the discontinuance of the use of any rolling stock-

(a) the railway shall not be re-opened for the public carriage of passengers until it has been inspected by the Commissioner and its re-opening is sanctioned in accordance with the provisions of this Chapter; and

(b) the rolling stock shall not be used until it has been inspected by the Commissioner and its re-use is sanctioned in accordance with the provisions of this Chapter.

027 Use of rolling stock

A railway administration may use such rolling stock as it may consider necessary for the construction, operation and working of a railway:

Provided that before using any rolling stock of a design or type different from that already running on any section of the railway, the, previous sanction of the Central Government shall be obtained for such use.

Provided further that before giving any such sanction, the Central Government shall obtain a report from the Commissioner that he has made a careful inspection of the rolling stock and, in his opinion, such rolling stock can be used.

028 Delegation of powers

The Central Government may, by notification, direct that any of its powers or functions under this Chapter, except section 29, or the rules made thereunder shall, in relation to such matters and subject to such

conditions, if any, as may be specified in the notification, be exercised, or discharged also by a Commissioner.

029 Power to make rules in respect of matters in this Chapter

(1) The Central Government may, by notification, make rules to carry out the purposes of this Chapter.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely: -

(a) the duties of a railway administration and the Commissioner in regard to the opening of a railway for the public carriage of passengers.

(b) the arrangements to be made for and the formalities to be complied with before opening a railway for the public carriage of passengers.

(c) for regulating the mode in which, and the speed at which rolling stock used on railways is to be moved or propelled, and

(d) the cases in which and the extent to which the procedure provided in this Chapter may be dispensed with.

CHAPTER VI
FIXATION OF RATES

030 Power to fix rates

(1) The Central Government may, from time to time, by general or special-order fix, for the carriage of passengers and goods, rates for the whole or any part of the railway and different rates may be fixed for different classes of goods and specify in such order the conditions subject to which such rates shall apply.

(2) The Central Government may, by a like order, fix the rates of any other charges incidental to or connected with such carriage including demurrage and wharfage for the whole or any part of the railway and specify in the order the conditions subject to Which such rates shall apply.

031 Power to classify commodities or alter rates

The Central Government shall have power to-

(a) classify or reclassify any commodity for the purpose of determining the rates to be charged for the carriage of such commodities; and

(b) increase or reduce the class rates and other charges.

Commentary

i) The rates could be altered on grounds of equity e.g. escalation of costs, even though the rate was fixed by an agreement; Union of India v. Bhavnagar Salt Works, AIR 1988 SC 1832.

ii) The powers conferred by this section are quasi-judicial in nature in so far as they relate to non-government railways; Delhi Rohtas Light Railway v. Union of India, AIR 1970 Pat 109.

032 Power of railway administration to charge certain rates

Notwithstanding anything contained in this Chapter, a railway administration may, in respect of the carriage of any commodity and subject to such conditions as may be specified, -

(a) quote a station-to-station rate.

(b) increase or reduce or cancel, after due notice in the manner determined by the Central Government, a station-to-station rate, not being a station-to-station rate introduced in compliance with an order made by the Tribunal.

(c) withdraw, alter, or amend the conditions attached to a station-to-station rate other than conditions introduced in compliance with an order made by the Tribunal; and

(d) charge any lump sum rate.

CHAPTER VII
RAILWAY RATES TRIBUNAL

033 Constitution of the Railway Rates Tribunal

(1) There shall be a Tribunal, to be called the Railway Rates Tribunal, for the purpose of discharging the functions specified in this Chapter.

(2) The Tribunal shall consist of a Chairman and two' other members to be appointed by the Central Government.

(3) A person shall not be qualified for appointments as the' Chairman of the Tribunal unless he is, or has been, a Judge of the Supreme Court or of a High court, and of the other two members, one shall be a person, who, in the opinion of the Central Government, has special knowledge of the commercial, industrial or economic conditions of the country, and the other shall be a person, who, in the opinion of the Central Government, has special knowledge and experience of the commercial working of the railways.

(4) The Chairman and the other members of the tribunal shall hold office for such period, not exceeding five years, as may he prescribed.

(5) In case the Chairman or any other member is, by infirmity or otherwise, rendered incapable of carrying out his duties or is absent on leave or otherwise in circumstances not involving the vacation of his office, the Central Government may appoint another person, to act in his place during his absence.

(6) A person who holds office as the Chairman or other member of the Tribunal shall, on the expiration of the term of his office (not being an office to, fill, a casual vacancy), be ineligible for re-appointment to that office.

(7) Subject to the provisions of sub-sections (5) and (6), the Chairman and other member of the Tribunal shall hold office on such terms and conditions as may be prescribed.

(8) No act or proceeding of the Tribunal shall be invalidated merely by reason of

(a) any vacancy in, or any defect in the constitution of, the Tribunal; or

(b) any defect in the appointment of a person acting as a chairman or other member of the Tribunal.

034 Staff of the Tribunal

(1) The Tribunal may, with the previous approval of the Central Government appoint such officers and employees as it considers necessary for the efficient discharge of its functions under this Chapter.

(2) The terms and conditions of service of the officers and employees of the Tribunal shall be such as may be determined by regulations.

035 Sittings of the Tribunal

The Tribunal may sit at such place or places as it may find convenient for the transaction of its business.

036 Complaints against a railway administration

Any complaint that a railway administration-

(a) is contravening the provisions of section 70; or

(b) is charging for the carriage of any commodity between two stations a rate which is unreasonable: or
(c) is levying any other charge which is unreasonable, may be made to the Tribunal, and the Tribunal, shall hear and decide any such complaint in accordance with the provisions of this Chapter.

Commentary

(i) While deciding the question of reasonableness the Railway Rates Tribunal must take into consideration that Railways are commercial undertakings intending to earn profits; Union of India v. Indian Sugar Mills, AIR 1968 SC 22; Union of India v. Motilal Padampat Sugar Mills & Co., AIR 1969 SC 630.

(ii) The operational cost of Railway cannot by itself be the basis for judging the reasonableness of the rate charged; Delhi Cloth & General Mills Ltd. v. Union of India, AIR 1987 SC 2414.

(iii) The Tribunal is vested with authority, subject to limitations contained in sections 30 and 31 of the Act to entertain a complaint and to give relief in respect of rates which are found to be unreasonable between two stations: Union of India v. West Paper Mills Ltd., AIR 1971 SC 349.

037 Matters not within the jurisdiction of the Tribunal

Nothing in this Chapter shall confer jurisdiction on the Tribunal in respect of-

(a) classification or re-classification of any commodity.
(b) fixation of wharfage and demurrage charges (including condition attached to such charges).
(c) fixation of fares levied for the carriage of passengers and freight levied for the carriage of luggage, parcels, railway material and military traffic; and
(d) fixation of lump sum rates.

038 Powers of the Tribunal

(1) The Tribunal shall have the powers of the civil court under the Code of Civil Procedure, 1908 (5 of 1908) for the purposes of taking evidence on oath, enforcing the attendance of Witnesses, compelling the discovery and production of documents, issuing commissions for the examination of witnesses and of review and shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXXV of the Code of Criminal Procedure, 1973 (2 of 1974) and any reference in such section or Chapter to the presiding officer of a court shall be deemed to include a reference to the Chairman of the Tribunal.

(2) The Tribunal shall also have power to pass such interim and final orders as the circumstance may require, including orders for the payment of costs.

039 Reference to the Tribunal

Notwithstanding anything contained in section 37, the Central Government may make a reference to the Tribunal in respect of any of the matter specified in that section and where any such reference is made in respect of any such matter, the Tribunal shall make an inquiry into that matter and submit its report thereon to the Central Government.

040 Assistance by the Central Government

(1) The Central Government shall give to the Tribunal such assistance as it may require and shall also place at its disposal any information in the possession of the Central Government which that Government may think relevant to any matter before the Tribunal.

(2) Any person duly authorized in this behalf by the Central Government shall be entitled to appear and be heard in any proceeding before the Tribunal.

041 Burden of proof, etc.

In the case of any complaint under clause (a) of section 36, -

(a) whenever it is shown that a railway administration charges one trader or class of traders or the traders in any local area, lower rates for the same or similar goods or lower charges for the same or similar services than it charges to other traders in any other local area, the burden of providing that such lower rate or charge does not amount to an undue preference, shall lie on the railway administration;

(b) in deciding whether a lower rate or charge does not amount to an undue preference, the Tribunal may, in addition to any other considerations affecting the case, take into consideration whether such lower rate or charge is necessary in the interests of the public.

Commentary

The working costs of the Railway and other material circumstances and commercial principle of profit making are the factors which may be considered

to determine reasonableness of rates; Union of India v. Indian Sugar Mills Association, AIR 1968 SC 22.

042 Decision, etc., of the Tribunal

The decisions or orders of the Tribunal shall be by a majority of the members sitting and shall be final.

043 Bar of jurisdiction of courts

No suit shall be instituted or proceeding taken in respect of any matter which the Tribunal is empowered to deal with, or decide, under this Chapter.

Commentary

The validity and interpretation of a riding agreement can be looked into by civil courts and is, therefore, not barred; Union of India v. Modi Industries, AIR 1973 SC 1281.

044 Relief's which the Tribunal may grant

In the case of any complaint made under clause (b) or clause (c) of section 36, the Tribunal may-

(i) fix such rate or charge as it considers reasonable from any date as it may deem proper, not being a date earlier to the date of the filing of the complaint.

(ii) direct a refund of amount, if any, as being the excess of the rate or charge fixed by the Tribunal under clause (i).

045 Revision of decisions given by the Tribunal

Where a railway administration considers that since the date of decision by the Tribunal, there has been a material change in the circumstances on which it was based, it may, after the expiry of one year from such date, make an application to the Tribunal and the Tribunal may, after making such inquiry as it considers necessary, vary, or revoke the decision.

046 Execution of decisions or orders of the Tribunal

The Tribunal may transmit any decision or order made by it to a civil court having local jurisdiction and such civil court shall execute the decision or order as if it were a decree made by that court.

Commentary

An order for payment of costs which may be made by the Tribunal could be transmitted to a civil court and executed by a civil court as if it were a decree; Upper Doab Mills v. S.S. Lt. Rly, AIR 1963 SC 217.

047 Report of the Central Government

The Tribunal shall present annually a report to the Central Government of all its proceedings under this Chapter.

048 Power of the Tribunal to make regulations

(1) The Tribunal may, with the previous approval of the Central Government make regulations consistent with this Act and rules generally to regulate its procedure for the effective discharge of its functions under this Chapter.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely: -

(a) the terms and conditions of service of the officers and employees of the Tribunal,

(b) the award of costs by the Tribunal in any proceedings before it.

(c) the reference of any question to a member or to an officer of the Tribunal or any other person appointed by the Tribunal, for report after holding a local inquiry.

(d) the right of audience before the Tribunal, provided that any party shall be entitled to be heard in person, or by a representative duly authorized in writing, or by a legal practitioner,

(e) the disposal by the Tribunal of any proceedings before it, notwithstanding that in the course thereof there has been a change in the persons sitting as members of the Tribunal.

(f) a scale of fees for and in connection with the proceedings before the Tribunal.

CHAPTER VIII
CARRIAGE OF PASSENGERS

049 Exhibition of certain timings and Tables of fires at stations

(1) Every railway administration shall cause to be pasted in a conspicuous and accessible place at every station in Hindi and English and also in the regional language commonly in use in the area where the station is-

(i) a table of times of arrival and departure of trains which carry passengers and stop at that station, and

(ii) list of fares from such station to such other stations as it may consider necessary.

(2) At every station where tickets are issued to passengers, a copy of the timetable in force shall be kept in the office of the station master.

050 Supply of tickets on payment of fare

(1) Any person desirous of traveling on a railway shall, upon payment of the fare, be supplied with a ticket by a railway servant or an agent authorized in this behalf and such ticket shall contain the following particulars, namely,

(i) this date, of issue.

(ii) the class of carriage.

(iii) the place from and. the place to which it is issued; and

(iv) the amount of the fare.

050…. (cont.)

(2) Every railway administration shall display the hours during which booking windows at a station shall be kept open for the issue of tickets to passengers.

(3) The particulars required to be specified on a ticket under clauses (ii) and (iii) of sub-section (1) shall, -

(a) if it is for the lowest class of carriage, be set forth in Hindi English and the regional language commonly in use at. the place of issue of the ticket; and

(b) if it is for any other class of carriage, be set forth in Hindi and English:

Provided that where it is not feasible to specify such particulars in any such language due to mechanization or any other reason, the Central Government may exempt such particulars being specified in that language.

Commentary

(i) The term 'fare' does not include the charges paid for excess luggage; Emperor v. Paras Ram, 128 PLR 1903.

(ii) A railway employee is not bound to issue a ticket to a person starting on his journey without taking a ticket at a station between that at which he started and station of destination. He can be removed from the train as a trespasser; Patap Daji v. B.B.&C.I., Railway Co., ILR 1 Bom 52.

051 Provision for case in which ticket is issued for class or train not having accommodation for additional passengers

(1) A ticket shall be deemed to have been issued subject to the condition of availability of accommodation in the class of carriage and the train for which the ticket is issued.

(2) If no accommodation is available in the class of carriage for which a ticket is issued, and the holder thereof travels in a carriage of a

lower class, he shall, no returning such ticket, be entitled to a refund of the difference between the fare paid by him and the fare payable for the class of carriage in which he travels.

052 Cancellation of ticket and refund

If a ticket is returned for cancellation, the railway administration shall cancel the same and refund such amount as may be prescribed.

053 Prohibition against transfer of certain tickets

A ticket issued in the name of a person shall be used only by that person:
Provided that nothing contained in this section shall prevent mutual transfer of a seat or berth by passengers traveling by the same train:

Provided further that a railway servant authorized in this behalf may permit change of a name of a passenger having reserved a seat or berth subject to, such circumstances as may be prescribed.

054 Exhibition and surrender of passes and ticket

Every passenger shall, on demand by any railway servant authorized in this behalf, present his pass or ticket to such railway servant for examination during the journey or at the end of the journey and surrender such ticket-

(a) at the end of the journey, or
(b) if such ticket is issued for a specified period, on the 'expiration of such period.

055 Prohibition against traveling without pass or ticket

(1) No person shall enter or remain in any carriage on a railway for the purpose of traveling therein as a passenger unless he has with him a proper pass or ticket or obtained permission of a railway servant authorized this behalf for such travel.

(2) A person obtaining permission under sub-section (1) shall ordinarily get a certificate from the railway servant referred to in that sub-section that he has been permitted to travel in such carriage on condition that he subsequently pays the fare payable for the distance to be travelled.

056 Power to refuse to carry persons suffering from infections or contagious diseases

(1) A person suffering from such infectious or contagious diseases, as may be prescribed, shall not enter, or remain in any carriage on a railway or travel in a train without the permission of a railway servant authorized in this behalf.

(2) The railway servant giving permission under sub-section (1), shall arrange for the separation of the person suffering from such disease from other persons in the train and, such person shall be carried in the train subject to such other conditions as may be prescribed.

(3) Any person who enters or remains in any carriage or travels in a train without permission as required under sub-section (1) or in contravention of any condition prescribed under sub-section (2), such person and a person accompanying him shall be liable to the

forfeiture of their passes or tickets and removal from railway by any railway servant.

057 Maximum number of passengers for each compartment

Subject to the approval of the Central Government, every railway administration shall fix the maximum number of passengers which may be carried in each compartment of every description of carriage and shall exhibit the number so fixed in a conspicuous manner inside or outside each compartment in Hindi English and also in one or more of the regional languages commonly in use in the areas served by the railway.

058 Earmarking of compartment, etc., for ladies

Every railway administration shall, in every train carrying passengers, earmark for the exclusive use of females, one compartment or such number of berths or seats, as the railway administration may think fit.

059 Communication between passengers and railway servant in charge of train

A railway administration shall provide and maintain in every train carrying passengers, such efficient means of communication between the passengers and the railway servant in charge of the train as may be approved by the Central Government:

Provided that where the railway administration is satisfied that the means of communication provided in a train are being misused, it may cause such means to be disconnected in that train for such period as it thinks, fit.

Provided further that the Central Government may specify the circumstances under which a railway administration may be exempted from providing such means of communication in any train.

060 Power to make rule in respect of matters in this Chapter

(1) The Central Government may, by notification, make rules to carry out the purposes of this Chapter.

(2) In particular, and without prejudice to, the generality of the foregoing power, such rules may provide for all or any of the following matters, namely: -

(a) the convenience and accommodation (including the reservation of seats or berths in trains) to passengers.

(b) the amount of refund for the cancellation of a ticket.

(c) the circumstances under which change of names of passengers, having reserved seats or berths, may be permitted.

(d) the carriage of luggage and the conditions subject to which luggage may be kept in the cloak rooms at the stations.

(e) diseases which are infectious or contagious

(f) the conditions subject to which a railway administration may carry passengers suffering from infectious or contagious, diseases and the manner in which carriages used by such passengers may be disinfected.

(g) generally, for regulating the traveling upon, and the use, working and management of the railways.

(3) Any rule made under this section may provide that a contravention thereof shall be punishable with fine which shall not exceed five hundred rupees.

(4) Every railway administration shall keep at every station on its railway a copy of all the rules made under this section and shall also allow any person to inspect it free of charge.

Commentary

(i) The Appointment of Railway Tourist Agent Rules, 1980 made under the provision of section 60 of the Act for recognition of a person as an authorised railway tourist are reasonable and conducive to the objects sought to be achieved, but the failure or inability of the petitioners to comply with them would not be sufficient to reject them as unreasonable, arbitrary or irrelevant; Indermal Jain v. Union of India, AIR 1984 SC 415.

(ii) The Railways have to provide clean toilets and urinals which the passengers would very well appreciate; Ramanathsekhar v. Pandho Pandhya, AIR 1987 Bom 98.

CHAPTER IX
CARRIAGE OF GOOD

061 Maintenance of rate-books, etc., for carriage of goods

Every railway administration shall maintain, at each station and at such other places where goods are received for carriage the rate-books or other documents which shall contain the rate authorized for the carriage of goods from one station to another and make them available for the reference of any person during all reasonable hours without payment of any fee.

062 Conditions for receiving, etc., of goods

(1) A railway: administration may impose conditions, not inconsistent with this Act or rules made thereunder, with respect to the receiving, forwarding, carrying, or delivering of any goods.

(2) A railway administration shall maintain, at each station and at such other places where goods are received for carriage, a copy of the conditions for the time being in force under sub-section (1) and make them available for the reference of any person during all reasonable hours without payment of any fee.

Commentary

It is a statutory notice that the railway administration may impose certain conditions for the receiving, forwarding, or delivering of any animals or goods; Uttam Singh Kala Singh v. Union of India, AIR 1971 Delhi 79.

063 Provision of risk rate

(1) Where any goods are entrusted to a railway administration for carriage, such carriage shall, except where owner's risk rate is applicable in respect of such goods, be at railway risk rate.

(2) Any goods, for which owner's risk rate and railway risk rate are in force, may be entrusted for carriage at either of the rates and if no rate is opted, the goods shall be deemed to have been entrusted at owner's risk rate.

064 Forwarding note

(1) Every person entrusting any goods to a railway administration for carriage shall execute a forwarding note in such form as may be specified by the Central Government:

Provided that no forwarding note shall be executed in the case of such goods as may be prescribed.

(2) The consignor shall be responsible for the correctness of the particulars furnished by him in the forwarding note.

(3) The consignor shall indemnify the railway station against any damage, suffered by it, by reason of the incorrectness or incompleteness of the particulars in the forwarding note.

065 Railway receipt

a. A railway administration shall, -
   (a) in a case where the goods are to be loaded by a person entrusting such goods, on the completion of such loading; or
   (b) in any other case, on the acceptance of the goods by it, issue a railway receipt in such form as may be specified by the Central Government.

b. A railway receipt shall be Prima facie evidence of the weight and the number of packages stated therein:

   Provided that in the case of a consignment in wagon-load or train-load and the weight or the number of packages is not checked by a railway servant authorized in this behalf, and a statement to that effect is recorded in such railway receipt by him, the burden of proving the weight or, as the case may be, the number of packages stated therein, shall lie on the consignor, the consignee or the endorsee.

Commentary

The primary fact that the goods in question were entrusted to the railway for carriage must have to be established notwithstanding the issue of receipt; Union of India v. B.D. Jhunjhunwala, AIR 1988 Ori 267; For contra see Mohan Lal v. Union of India, AIR 1985 Del 209.

066 Power to require statement relating to the description of goods

(1) The owner or a person having charge of any goods which are brought upon a railway for the purposes of carriage by railway, and the consignee or the endorsee of any consignment shall, on the request of any railway servant authorized in this behalf,

deliver to such railway servant a statement in writing signed by such owner or person or by such consignee or endorsee, as the case may be, containing such description of the goods as would enable the railway servant to determine the rate for such carriage.

(2) If such owner or person refuses or neglects to give the statement as required under sub. section (1) and refuses to open the package containing the goods, if so required by the railway servant it shall be open to the railway administration to refuse to accept such goods for carriage unless such owner or person pays for such carriage the highest rate for any class of goods,.

(3) If the consignee or endorsee refuses or neglects to give the statement as required under sub-section (1) and refuses to open the package containing the goods, if so, required by the railway servant, it shall be open to the railway administration to charge in respect of the carriage of the goods the highest rate for any class of goods.

(4) If the statement delivered under sub-section (1) is materially false with respect to the description of any goods to which it purports to relate, the railway administration may charge in respect of the carriage of such goods such rate, not exceedingly double the highest rate for any class of goods as may be specified by the Central Government.

(5) If any difference arises between a railway servant and such owner or person, the consignee, or the endorsee, as the case may be, in respect of the description of the goods for which a statement has been delivered under sub-section (1), the railway servant may detain and examine the goods.

(6) Where any goods have been detained under sub-section (5) for examination and upon such examination it is found that the description of the goods is different from that given in the statement delivered under sub-section (1), the cost of such

detention and examination shall be borne by such owner or person, the consignee or the endorsee, as the case may be, and the railway administration shall not be liable for any loss, damage or deterioration which may be caused by such detention or examination.

067 Carriage of dangerous or offensive goods

(1) No person shall take with him on a railway or require a railway administration to carry such dangerous or offensive goods, as may be prescribed, except in accordance with the provisions of this section.

(2) No person shall take with him on a railway the goods referred to in a sub-section (1) unless he gives a notice in writing of their dangerous or offensive nature to the railway servant authorized in this behalf.

(3) No person shall entrust the goods referred to in sub-section (1) to a railway servant authorized in this behalf for carriage unless he distinctly marks on the outside of the package containing such goods their dangerous or offensive nature and gives a notice in writing of their dangerous or offensive nature to such railway servant.

(4) If any railway servant has reason to believe that goods contained in a package are dangerous or offensive and notice as required under sub-section (2) or sub-section (3), as the case may be, in respect of such goods is not given, he may cause such package to be opened for the purpose of ascertaining its contents.

(5) Notwithstanding anything contained, in this section, any railway servant may refuse to accept any dangerous or offensive goods for

carriage or stop, in transit such goods or cause the same to be removed, as the case may be, if he has reason to believe that the provisions of this section for such carriage are not complied with.

(6) Nothing in this section shall be construed to derogate from the provisions of the Indian Explosives Act, 1884 (4 of 1884), or any rule or order made under that Act, and nothing in sub-sections (4) and (5) shall be construed to apply to any goods entrusted for carriage by order or on behalf of the Government or to any goods which a soldier, sailor, airman or any other officer of the armed forces of the Union or a police officer or a member of the Territorial Army or of the National Cadet Corps may take with him on a railway in the course of his employment or duty as such.

068 Carriage of animals suffering from infectious or contagious diseases

A railway administration shall not be bound to carry any animal suffering from such infectious or contagious disease as may be prescribed.

069 Deviation of route

Where due to any cause beyond the control of a railway administration or due to congestion in the yard or any other operational reasons, goods are carried over a route other than the route by which such goods are booked, the railway administration shall not be deemed to have committed a breach of the contract of carriage by reason only of the deviation of the route.

070 Prohibition of undue preference

A railway administration shall not make or give any undue or unreasonable preference or advantage to, or in favour of, any particular person or any particular description of traffic in the carriage of goods.

071 Power to give direction in regard to carriage of certain goods

(1) The Central Government may, if it is of the opinion that it is necessary in the public interest so to do, by general or special order, direct any railway administration-

(a) to give special facilities for, or preference to, the carriage of such goods or class of goods consigned by or to the Central Government or the Government of any State or of such other goods or class of goods.

(b) to carry any goods or class of goods by such route or routes and at such rates.

(c) to restrict or, refuse acceptance of such goods or class of goods at or to such station for carriage, as may be specified in the order.

(2) Any order made under sub-section (1) shall cease to have effect after the expiration of a period of one year from the date of such order, but may, by a like order, be renewed from time to time for such period not exceeding one year at a time as may be specified in the order.

(3) Notwithstanding anything contained in this Act, every railway administration shall be bound to comply with any order given under sub-section (1) and any action taken by a railway administration in

pursuance of any such order shall not be deemed to be a contravention of section 70.

072 Maximum carrying capacity for wagons and trucks

(1) The gross weight of every wagon or truck bearing on the axles when the wagon or truck is loaded to its maximum carrying capacity shall not exceed such limit as may be fixed by the Central Government for the class of axle under the wagon or truck.

(2) Subject to the limit fixed under sub-section (1), every railway administration shall determine the normal carrying capacity for every wagon or truck in its possession and shall exhibit in words and figures the normal carrying capacity so determined in a conspicuous manner on the outside of every such wagon or truck.

(3) Every person owning a wagon or truck which passes over a railway shall determine and exhibit the normal carrying capacity for the wagon or truck in the manner specified in sub-section (2).

(4) Notwithstanding anything contained in sub-section (2) or sub-section (3), where a railway administration considers it necessary or expedient so to do in respect of any wagon or truck carrying any specified class of goods or any class of wagons or trucks of any specified type, it may vary the normal carrying capacity for such wagon or truck or such class of wagons or trucks and subject to such conditions as it may

think fit to impose, determine for the wagon or truck or class of wagons or trucks such carrying capacity as may be specified in the notification and it shall not be necessary to exhibit the words and figures representing, the carrying capacity so determined on the outside of such wagon or truck or such class of wagons or trucks.

073 Punitive charge for overloading a wagon

Where a person loads goods in a wagon beyond its permissible carrying capacity as exhibited under sub-section (2) or sub-section (3), or notified under sub-section (4), of section 72, a railway administration may, in addition to the freight and other charges, recover from the consignor, the consignee or the endorsee, as the case may be, charges by way of penalty at such rates. as may be prescribed, before the delivery of the goods:

Provided that it shall be lawful for the railway administration to unload the goods loaded beyond the capacity of the wagon, if detected at the forwarding station or at any place before the destination station and to recover the cost of such unloading and any charge for the detention of any wagon on this account

074 Passing of property in the goods covered by railway receipt

The property in the consignment covered by a railway receipt shall pass to the consignee or the endorsee, as the case may be, on the delivery of such railway receipt to him and he shall have all the rights and liabilities of the consignor.

075 Section 74 not to affect right of stoppage in transit or claims for freight

Nothing contained in section 74 shall prejudice or affect-

(a) any right of the consignor for stoppage of goods in transit as an unpaid vendor (as defined under the Sale of Goods Act, 1930) (3 of 1930) on his written request to the railway administration.

(b) any right of the railway to claim freight from the consignor; or

(c) any liability of the consignee or the endorsee, referred to in that section by reason of his being such consignee or endorsee,

076 Surrender of railway receipt

The railway administration shall deliver the consignment under a railway receipt on the surrender of such railway receipt:

Provided that in case the railway receipt is not forthcoming, the consignment may be delivered to the person, entitled in the opinion of the railway administration to receive the goods, in such manner as may be prescribed.

077 Power of railway administration to deliver goods or sale proceeds thereof in certain cues

Where no railway receipt is forthcoming and any consignment or the sale proceeds of any consignment are claimed by two or more persons, the railway administration may withhold delivery of such consignment or sale proceeds as the case may be and shall deliver such consignment or sale proceeds in such manner as ma be prescribed.

078 Power to measure, weigh, etc.

Notwithstanding anything contained in the railway receipt, the railway administration may, before the delivery of the consignment, have the right to-

(i) re-measure, re-weigh or re-classify any consignment.
(ii) re-calculate the freight and other charges; and
(iii) correct any other error or collect any amount that may have been omitted to be charged.

079 Weighment of consignment on request of the consignee or endorsee

A railway administration may, on the request made by the consignee or endorsed, allow weighment of the consignment subject to such conditions and on payment of such charges as may be prescribed and the demurrage charges if any:

Provided that except in cases where a railway servant authorized in this behalf considers it necessary so to do, no weighment shall be allowed of goods booked at owner's risk rate or goods which are perishable and are likely to lose weight in transit:

Provided further that no request for weighment of consignment in wagonload or trainload, shall be allowed if the weighment is not feasible due to congestion in the yard or such other circumstances as may be prescribed.

080 Liability of railway administration for wrong delivery

Where a railway administration delivers the consignment to the person who produces the railway receipt it shall not be responsible for any wrong delivery on the ground that such person is not entitled thereto or that the endorsement on the railway receipt is forged or otherwise defective.

081 Open delivery of consignments

Where the consignment arrives in a damaged condition or shows signs of having been tampered with and the consignee or the endorsee demands open delivery, the railway administration shall give open delivery in such manner as may he prescribed.

082 Partial delivery of consignments

(1) The consignee or endorsee shall, as soon as the consignment or part thereof is ready for delivery, take delivery of such consignment or part thereof notwithstanding that such consignment or part thereof is damaged.

(2) In the case of partial delivery under sub-section (1), the railway administration shall furnish a partial delivery certificate, in such form as may be prescribed.

(3) If the consignee or endorsee refuses, to take delivery under sub-section (1), the consignment or part thereof shall be subject 1 to wharfage charges beyond the time allowed for removal.

083 Lien for freight or any other sum due

(1) If the consignor, the consignee, or the endorsee fails to pay on demand any freight or other charges due from him in respect of any consignment, the railway administration may detain such consignment or part thereof or, if such consignment is delivered, it may detain any other consignment of such person which is in, or thereafter comes into, its possession.

(2) The railway administration may, if the consignment detained under sub-section (1) is-

(a) perishable in nature, sell at once; or

(b) not perishable in nature, sell, by public auction, such consignment or part thereof, as may be necessary to realize a sum equal to the freight or other charges:

Provided that where a railway administration for reasons to be recorded in writing is of the opinion that it is not expedient to hold the auction, such consignment or part thereof may be sold in such manner as may be prescribed.

(3) The railway administration shall give a notice of not less than seven days of the public auction under clause (b) of sub-section (2) in one or more local newspapers or where there are no such newspapers in such manner as may be prescribed.

(4) The railway administration may, out of the sale proceeds received under sub-section (2), retain a sum equal to the freight and other charges including expenses for the sale due to it and the surplus of such proceeds and the part of the consignment, if any, shall be rendered to the person entitled thereto.

084 Unclaimed consignment

(1) If any person fails to take delivery of-
  (a) any consignment; or
  (b) the consignment released from detention made under sub-section (1) of section 83; or
  (c) any remaining part of the consignment under sub-section (2) of section 83 such consignment shall be treated as unclaimed.

(2) The railway administration may, -
  (a) in the case of an unclaimed consignment which is perishable in nature, sell such consignment in the manner provided in clause (a) of sub-section (2) of section 83; or
  (b) in the cast of an unclaimed consignment which is not perishable in nature, cause a notice to be served upon the consignee if his name and address are known, and upon the consignor if the name and address of the consignee are not known, requiring him to remove the goods within a period of seven days from the receipt thereof and if such notice cannot be served or there is a failure to comply with the requisition in the notice, sell such consignment in the manner provided in clause (b) of sub-section (2) of section 83.

(3) The railway administration shall, out of the sale proceeds received under sub-section (2), retain a sum equal to the freight and other charges including expenses for the sale due to it and the surplus, if any, of such sale proceeds shall be rendered to the person entitled thereto.

085 Disposal of perishable consignments in certain circumstances

(1) Where by reason of any flood, land-slip, breach of any lines of rails, collision between trains, derailment of, or other accident to a train or any other cause, traffic on any route is interrupted and there is no likelihood of early resumption of such traffic, nor is there any other reasonable route whereby traffic of perishable consignment may be diverted to prevent, loss or deterioration of, or damage to, such consignment the railway administration may sell them in the manner provided in clause (a) of sub-section (2) of section 83.

(2) The railway administration shall, out of the sale proceeds received under sub-section (1), retain a sum equal to the freight and other charges including expenses for the sale due to it and the surplus, if any, of such sale proceeds, shall be rendered to the person entitled thereto.

086 Sales under sections 83 to 85 not to affect the right to suit

Notwithstanding anything contained in this Chapter, the right of sale under sections 83 to 85 shall be without prejudice to the right of the railway administration to recover by suit, any freight, charge, amount, or other expenses due to it.

087 Power to make rules in respect of matters in this Chapter

(1) The Central Government may, by notification, make rules to carry out the purposes of this Chapter.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely: -

(a) goods in respect of which no forwarding note shall be executed under proviso to sub-section (1) of section 64.

(b) dangerous and offensive goods for the purposes of sub-section (1) of section 67.

(c) infectious or contagious diseases for the purposes of section 68,

(d) rates of penalty charges under section 73.

(e) the manner in which the consignment may be delivered without a railway receipt under section 76.

(f) the manner of delivery of consignment or the sale proceeds to the person entitled thereto under section 77,

(g) the conditions subject to which and charges payable for allowing weighment and circumstances for not allowing weighment of consignment in wagonload or trainload under section 79.

(h) the manner of giving open delivery under section 81,

(i) the form of partial delivery certificate under sub-section (2) of section 82.

(j) the manner of sale of consignment or part thereof under the proviso to sub-section (2) of section 83.

(k) the manner in which a notice under sub-section (3) of section 83 may be given.

(l) generally, for regulating the carriage of goods by the railways.

(3) Any rule made under this section may provide that a contravention thereof shall be punishable with fine which may extend to one hundred and fifty rupees.

(4) Every railway administration shall keep at each station a copy of the rules for the time being in force under this section and shall allow any. person to refer to it free of charge.

CHAPTER X
SPECIAL PROVISIONS AS TO GOODS BOOKED TO NOTIFIED STATIONS

088 Definitions

In this Chapter, unless the context otherwise requires, -

(a) "Essential commodity" means an essential commodity as defined in clause (a) of section 2 of the Essential Commodities Act 1955 (10 of 1955).

(b) "Notified station" means a station declared to be a notified' station under section 89.

(c) "State Government", in relation to a notified station, means the Government of the State in which such station is situated, or where such station is situated in a Union territory, the administrator of that Union territory appointed under article 239 of the Constitution.

089 Power to declare notified stations

(1) The Central Government may, if it is satisfied that it is necessary that goods entrusted for carriage by train intended solely for the carriage of goods to any railway station should be removed without delay from such railway station declare, by notification, such railway station to be a notified station for such period as may be specified in the notification:

Provided that before declaring any railway station to be a notified station under this subsection, the Central Government shall have regard. to all or any of the following factors, namely: -

(a) the volume of traffic and the storage space available at such railway station.

(b) the nature and quantities of goods generally booked to such railway station.

(c) the scope for causing scarcity of such goods by not removing them for long periods from such railway station and the hardship which such scarcity may cause to the community.

(d) the number of wagons likely to be held up at such railway station if goods are not removed there from quickly and the need for quick movement and availability of such wagons.

(e) such other factors (being relevant from. the point of view of the interest of the general public) as may be prescribed:

Provided further that the period specified in any notification, issued under this sub-section in respect of any railway station shall not exceeds six months in the first instance, but such period may, by notification, be extended from time to time by a period not exceeding six months on each occasion.

(2) If any person entrusting any goods to a railway administration to be carried to a notified station makes an application in such form and manner as may be prescribed and specifies therein the address of the person to whom intimation by registered post of the arrival of the goods at the notified station shall be given and pays the postage charges required for giving such intimation, the railway administration shall, as soon as may be after the arrival of the goods at the notified station, send such intimation accordingly.

(3) There shall be exhibited at a conspicuous place at each notified station a statement in the prescribed form setting out the description of the goods which by reason of the fact that they have not been removed from the station within a period of seven days from the termination of transit thereof are liable to be sold, in

accordance with the provision, of sub-section (1) of section 90 by public auction and the dates on which they would be so sold:

Provided that different statements may be so exhibited in respect of goods proposed to be sold on different dates.

(4) If the goods specified in any statement to be exhibited under sub-section (3) include essential commodities, the railway servant preparing the statement shall, as soon as may be after the preparation of such statement, forward a copy thereof to-

(a) the representative of the Central Government nominated by that Government in this behalf,

(b) the representative of the State Government, nominated by that Government in this behalf; and

(c) the District Magistrate within the local limits of whose Jurisdiction the railway station is situated.

090 Disposal of unremoved goods at notified stations

(1) If any goods entrusted for carriage to any notified station by a train intended solely for the carriage of goods are not, removed from such station by a person, entitled to do so within a period of seven days after the termination of transit thereof at such station, the railway administration may, subject to the provisions of sub-section (2), sell such goods by public auction and apart from exhibiting, in accordance with the provisions of sub-section (3) of section 89, a statement containing a description of such goods, it shall not be necessary to give any notice of such public auction, but the date on which such auction may be held under this sub-section may be notified in one or more local newspapers, or where

090… (cont.)

there are no such newspapers, in such manner as may be prescribed.

Provided that if at any time before the sale of such goods under this sub-section, the person entitled thereto pays the freight, and other charges and the expenses due in respect thereof to the railway administration, he shall be allowed to remove such goods.

(2) If any goods which may be sold by public auction under sub-section (1) at a notified station, being essential commodities, are required by the Central Government or the State Government for its own use or if the Central Government or such State Government considers that it is necessary for securing the availability of all or any such essential commodities at fair prices so to do, it may, by order in writing direct the railway servant in-charge of such auction to transfer such goods to it or to such agency, co-operative society or other person (being an agency, co-operative society or other person subject to the control of the Government) engaged in the business of selling such essential commodities as may be specified in the direction.

(3) Every direction issued under sub-section (2) in respect of any essential commodity shall be binding on the railway, servant to whom it is issued, and the railway administration and it shall be a sufficient defense against any claim by the person, entitled to the goods that such essential commodities have been transferred in compliance with such direction.

Provided that-

(a) such direction shall not be binding on such railway servant or the railway administration-

090… (cont.)

(i) if it has not been received by the railway servant sufficiently in time to enable him to prevent the sale of the essential commodities to which it relates; or

(ii) if before the time appointed for such sale, the person entitled to such goods pays the freight and other charges and the expenses due in respect thereof and claims that he be allowed to remove the goods; or

(iii) if the price payable for such goods (as estimated by the Central Government or, as the case may be, the State Government) is not credited to the railway administration in the prescribed manner and the railway administration is not indemnified against any additional amount which it may become liable to pay towards the price by reason of the price not having been computed in accordance with the provisions of sub-section (4);

(b) where directions are issued in respect of the same goods both by the Central Government and the State Government the directions received earlier shall prevail.

(4) The price payable for any essential commodity transferred in compliance with a direction issued under sub-section (2) shall be the price calculated in accordance with the provisions of sub-section (3) of section 3 of the Essential Commodities Act, 1955 (10 of 1955):

Provided that-

(a) in the case of any essential commodity being a foodstuff in respect whereof a notification issued under sub-section (31) of section 3 of the Essential Commodities Act 1955 (10 of 1955), is in force in the locality in which the notified station is situated, the price payable shall be calculated in accordance with the provisions of clauses (iii) and (iv) of that sub-section.

090… (cont.)

(b) in the case of an essential commodity being any grade or variety of food grains, edible oil-seeds or edible oils in respect whereof no notification issued under sub-section (10 of section 3 of the Essential Commodities Act, 1955 (10 of 1955), is in force in the locality in which the notified station is situated, the price payable shall be calculated in accordance with the provisions of sub-section (3B) of that section;

(c) in the case of an essential commodity being any. kind of sugar in respect whereof no notification issued under sub-section (3A) of section 3 of the Essential Commodities Act 1955 (10 of 1955), is in force in the locality in which the notified station is situated, the price payable shall, if such sugar has been booked by the producer to himself, be calculated in accordance with the provisions of sub-section (3C) of that section.

Explanation. - For the purposes of this clause, the expressions "producer" and "sugar" shall have the meanings assigned to these expressions in the Explanation to sub-section (3C) of section 3, and clause (e) of section 2 of the Essential Commodities Act, 1955 (10 of 1955), respectively.

091 Price to be paid to person entitled after deducting dues

(1) Out of the proceeds of any sale of goods under sub-section (1) of section 90 or the price payable therefor under sub-section (4) of that section, the railway administration may retain a sum equal to the freight and other charges due in respect of such goods and the expenses incurred in respect of the goods and the auction thereof and render the surplus, if any, to the person entitled thereto.

(2) Notwithstanding anything contained in sub-section (1), the railway administration may recover by suit any such freight or charge or expenses referred to therein or balance thereof.

(3) Any goods sold under sub-section (1) of section 90 or transferred in compliance with the directions issued under sub-section (2) of that section shall vest in the buyer or the transferee free from all encumbrances but subject to a priority being given for the sum which may be retained by a railway administration under sub-section (1), the person in whose favour such encumbrance subsists may have a claim in respect of such encumbrance against the surplus, if any, referred to in that sub-section

092 Power to make rules in respect of matters in this Chapter

(1) The Central Government may, by notification, make rules to carry out the purposes of this Chapter.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely. -

(a) the factors to which the Central Government shall have regard under clause (e) of the first proviso to sub-section (1) of section 89.

(b) the form and manner in which an application may be made under sub-section (2) of section 89.

(c) the form in which a statement is required to be exhibited under sub-section (3) of section 89.

(d) the manner in which. the dates of public auctions may be notified under sub-section (1) of section 90.

(e) the manner of crediting to the railway administration the price of goods referred to in sub-clause (iii) of clause (a) of the proviso to sub-section, (3) of section 90.

CHAPTER XI
RESPONSIBILITIES IF RAILWAY ADMINISTRATIONS AS CARRIERS

093 General responsibility of a railway administration as carrier of goods

Save as otherwise provided in this Act, a railway administration shall be responsible. for the loss, destruction, damage or deterioration in transit, or non-delivery of any consignment, arising from any cause except the following, namely. -

(i) act of God.
(ii) act of war.
(iii) act of public enemies.
(iv) arrest, restraint or seizure under legal process.
(v) orders or restrictions imposed by the Central Government or a State Government or by an officer or authority subordinate to the Central Government or a State Government authorized by it in this behalf.
(vi) act or omission or negligence of the consignor or the consignee or the endorsee or the agent or servant of the consignor or the consignee or the endorsee.
(vii) natural deterioration or wastage in bulk or weight due to inherent defect, quality, or vice of the goods.
(viii) latent defects.
(ix) fire, explosion, or any unforeseen risk:

Provided that even where such loss, destruction, damage, deterioration, or non-delivery is proved to have arisen from any one or more of the aforesaid causes, the railway administration, shall not be relieved of its responsibility for the loss, destruction, damage, deterioration or not delivery unless the railway administration further proves that it has used reasonable foresight and care in the carriage of the goods.

Commentary

The special provision in section 97 excludes the general provision in section 93, Union of India v. Manchand, AIR 1967 Cal 133

094 Goods to be loaded or delivered at a siding not belonging to a railway administration

(1) Where goods are required to be loaded at a siding not belonging to a railway administration for carriage by railway, the railway administration shall not be responsible for any loss, destruction, damage or deterioration of such goods from whatever cause arising, until the wagon containing the goods has been placed at the specified point of interchange of wagons between the siding and the railway administration and a railway servant authorized in this behalf has been informed in writing accordingly by the owner of the siding.

(2) Where any consignment is required to be delivered by a railway administration at a siding not belonging to a railway administration, the railway administration shall not be responsible for any loss, destruction, damage or deterioration or non-delivery of such consignment from whatever cause arising after the wagon containing the consignment has been placed at the specified point of interchange of wagons between the railway and the siding and the owner of the siding has been informed in writing accordingly by a railway servant authorized in this behalf.

095 Delay or retention in transit

A railway administration shall not be responsible for the loss, destruction, damage, or deterioration of any consignment proved by the owner to have been caused by the delay or detention in their carriage if the railway administration proves that the delay or detention arose for

reasons beyond its control or without negligence or misconduct on its part or on the part of any of its servants.

Commentary

A consignment of pineapples took 10 days in transit against the normal time of 5 days. Held, the Railway is responsible for deterioration in quality and hence must make good the loss to the plaintiff as far as possible in as good a position as if the contract has been performed in time; New Swadeshi Mills v. Union of India, AIR 1981 All 268

096 Traffic passing over railways in India and railways in foreign countries

Where in the course of carriage of any consignment from a place in India to a place outside India or from a place outside India to a place in India or from one place outside India to another place outside India or from one place in India to another place in India over any territory outside India, it is carried over the railways of any railway administration in India, the railway administration shall not be responsible under any of the provisions of this Chapter for the loss, destruction, damage or deterioration of the goods, from whatever cause arising, unless it is proved by the owner of the goods that such loss, destruction, damage or deterioration arose over the railway of the railway administration.

Commentary

Where the goods booked ex-Peshawar in Pakistan, and the loss was neither alleged nor proved to have arisen on the Northern Railway, the claim was rejected. Held that the Fundamental and Subsidiary Rules of Interchange of Traffic between India and Pakistan Railway could not be availed of; Union of India v. Kewal Prakash, AIR 1977 Del 146.

097 Goods carried at owner's risk rate

Notwithstanding anything contained in section 93, a railway administration shall not be responsible for any loss, destruction,

damage, deterioration or non-delivery in transit, of any consignment carried at owner's risk rate, from whatever cause arising, except upon proof, that such loss, destruction, damage, deterioration or non-delivery was due to negligence or misconduct on its part or on the part of any of its servants:

Provided that-

(a) where the whole of such consignment or the whole of any package forming part of such consignment is not delivered to the consignee or the endorsee and such non-delivery is not proved by the railway administration to have been due to fire or to any accident to the train; or

(b) where in respect of any such consignment or of any package forming part of such consignment which had been so covered or protected that the covering or protection was not readily removable by hand, it is pointed out to the railway administration on or before delivery that any part of that consignment or package had been pilfered in transit, the railway administration shall be bound to disclose to the consignor, the consignee or the endorsee how the consignment or the package was dealt with throughout the time it was in its possession or control, but if negligence or misconduct on the part of the railway administration or of any of its servants cannot be fairly inferred from such disclosure, the burden of proving such negligence or misconduct shall lie on the consignor, the consignee or the endorsee.

Commentary

Even when a consignment is booked at the owner's risk rate the railway administration is bound to take as much care of the consignment as it would have taken of its own goods; Shiv Nath v. Union of India, AIR 1965 SC 1666.

098 Goods in defective condition or defectively packed

(1) Notwithstanding anything contained in the foregoing provisions of this Chapter, when any goods entrusted to a railway administration for carriage-

(a) are in a defective condition as a consequence of which they are liable to damage, deterioration, leakage or wastage; or

(b) are either defectively packed or not packed in such manner as may be prescribed and as a result of such defective or improper packing are liable to damage, deterioration, leakage or wastage, and the fact of such condition or defective or improper packing has been recorded by the consignor or his agent in the forwarding note, the railway administration shall not be responsible for any. damage, deterioration. leakage or wastage or for the condition in which such goods are available for delivery at destination:

Provided that the railway administration shall be responsible for any such damage deterioration, leakage, or wastage or for the Condition in which such goods are available for delivery at destination if negligence or misconduct on the part of the railway administration or of any of its servants is proved.

(2) When any goods entrusted to a railway administration for carriage are found on arrival at the destination station to have been damaged or to have suffered deterioration, leakage or wastage, the railway administration shall not be responsible for the damage, deterioration, leakage or wastage of the goods on proof by railway administration, -

(a) that the goods were, at the time of entrustment to the railway administration, in a defective condition, or were at that time either defectively packed or not packed in such manner as

may be prescribed and as a result of which we're liable to damage, deterioration, leakage or wastage; and

(b) that such defective condition or defective or improper packing was not brought to the notice of the railway administration or any of its servants at the time of entrustment of the goods to the railway administration for carriage by railway:

Provided that the railway administration shall be responsible for any such damage, deterioration, leakage, or wastage if negligence or misconduct on the part of the railway administration or of any of its servants is proved.

Commentary

Where the Forwarding Note was not produced by the railway, nor was any explanation given for its non-production nor any witness produced to prove that the shortage was due to the consignor's negligence, held that Forwarding Note alone could have shown whether the packing was defective or not, and the responsibility was of the railways to check up as to in which condition the goods have been entrusted to it for consignment; Bihar State Cooperative Society v. Union of India, AIR 1978 Pat 213.

099 Responsibility of a railway administration after termination of transit

(1) A railway administration shall be responsible as a bailee under sections 151, 152 and 161 of the Indian Contract- Act, 1872 (9 of 1872), for the loss, destruction, damage, deterioration, or non-delivery of any consignment up to a period of seven day after the termination of transit:

Provided that where the consignment is at owner's risk rate the railway administration shall not be responsible as a bailee for such loss, destruction, damage, deterioration, or non-delivery except on proof of negligence or misconduct on the part of the railway administration or of any of its servants.

(2) The railway administration shall not be, responsible in any case for the loss, destruction, damage, deterioration, or non-delivery of any consignment arising after the expiry of a period of seven days after the termination of transit.

(3) Notwithstanding anything contained in the foregoing provisions of this section, a railway administration shall not be responsible for the loss, destruction, damage, deterioration or non-delivery of perishable goods, animals, explosives and such dangerous or other goods as may be prescribed, after the termination of transit.

(4) Nothing in the foregoing provisions of this section shall affect the liability of any person to pay any demurrage or wharfage, as the case may be, for so long as the consignment is not unloaded from the railway wagons or removed from the railway premises.

Commentary

This section alters or varies the absolute liability of railway under section 93; Punjab National Bank v. Beniprasad, 1981 ACC CJ 431 (MP).

100 Responsibility as carrier of luggage

A railway administration shall not be responsible for the loss, destruction, damage, deterioration or non-delivery of any luggage unless a railway servant has booked the luggage and given a receipt therefor and in the case of luggage which is carried by the passenger in his charge unless it is also proved that the loss, destruction, damage or deterioration was due to the negligence or misconduct on its part or on the part of any of its servants.

101 Responsibility as a carrier of animals

A railway administration shall not be responsible for any loss or destruction of, or injuries to, any animal carried by railway arising from fright or restiveness of the animal or from overloading of wagons by the consignor.

102 Exoneration from liability in certain cases

Notwithstanding anything contained in the foregoing provisions of this Chapter, a railway administration shall not be responsible for the loss, destruction, damage, deterioration, or non-delivery of any consignment, -

(a) when such loss, destruction, damage, deterioration, or non-delivery is due to the fact that a materially false description of the consignment is given in the statement delivered under sub-section (1) of section 66, or,

(b) where a fraud has been practiced by the consignor or the consignee or the endorsee or by an agent of the consignor, consignee or the endorsee; or

(c) where it is proved by the railway administration to have been caused by, or to have arisen from-

(i) improper loading or unloading by the consignor or the consignee or the endorsee or by an agent of the consignor, consignee, or the endorsee.

(ii) riot, civil commotion, strike, lock-out stoppage or restraint of labour from whatever cause arising whether partial or general; or

(d) for any indirect or consequential loss or damage or for loss of particular market.

Commentary

The liability of an ordinary carrier does not extend to a damage which is indirect or remote loss of profit or loss of a particular market and can be awarded only if it is proved that the party which is guilty of committing the breach was aware or had knowledge that such a loss would be caused under this section; Union of India v. Steel Stock Holders, (1976) 3 SCC 108.

103 Extent of monetary liability in respect of any consignment

(1) Where any consignment is entrusted to a railway administration for carriage by railway and the value of such consignment has not been declared as required under sub-section (2) by the consignor, the amount of liability of the railway administration for the, loss, destruction, damage, deterioration or non-delivery of the consignment shall in no case exceed such amount calculated with reference to the weight of the consignment as may be-prescribed, and where such consignment consists of an animal, the liability shall not exceed such amount as may be prescribed.

(2) Notwithstanding anything contained in sub-section (1) where the consignor declares the value of any consignment at the time of its entrustment to a railway administration for carnage by railway, and pays such percentage charge as may be prescribed on so much of the value of such consignment as is in excess of the liability of the railway administration as calculated or specified, as the case may be, under sub-section (1), the liability of the railway administration for the loss, destruction, damage, deterioration or non-delivery of such consignment shall not exceed the value so declared.

(3) The Central Government may, from time to time, by notification, direct that such, goods as may be specified in the notification shall not be accepted for carriage by railway unless the value of such

goods is declared and percentage charge is paid as, required under sub-section (2).

104 Extent of liability in respect of goods carried in open wagon

Where any goods, which, under ordinary circumstances would be carried in covered wagon and would be liable to damage, if carried otherwise, are with the consent of the consignor, recorded in the forwarding note, carried in open wagon, the responsibility of railway administration for destruction, damage or deterioration which may arise only by reason of the goods being so carried, shall be one-half of the amount of liability for such destruction, damage or deterioration determined under this Chapter.

105 Right, of railway administration to cheek contents of certain consignment or luggage

Where the value has been declared under section 103 in respect of any consignment a railway administration may make it a condition of tarrying such consignment that a railway servant authorized by it in this behalf has been satisfied by examination or otherwise that the consignment tendered for carriage contain the articles declared.

106 Notice of claim for compensation and refund of over charge

(1) A person shall not be entitled to claim compensation against a railway administration for the loss, destruction, damage, deterioration, or non-delivery of goods carried by railway, unless a notice thereof is served by him or on his behalf, -

(a) to the railway administration to which the goods are entrusted for carriage; or

(b) to the railway administration on whose railway the destination station lies, or the loss, destruction, damage, or deterioration occurs, within a period of six months from the date of entrustment of the goods.

(2) Any information demanded, or enquiry made in writing from, or any complaint made in writing to, any of the railway administrations mentioned in sub-section (1) by or on behalf of the person within the said period of six months regarding the non-delivery or delayed delivery of the goods with particulars sufficient to identify the goods shall, for the purpose, of this section, be deemed. to be a notice of claim for compensation.

(3) A person shall not be entitled to a refund of an overcharge in respect of goods carried by railway unless a notice therefor has been served by him or on his behalf to the railway administration to which the overcharge has been paid within six months from the date of such payment or the date of delivery of such goods at the destination station, whichever is later.

107 Applications for compensation for loss, etc., of goods

An Application for compensation for loss, destruction, damage, deterioration, or non-delivery of goods shall be filed against the railway administration on whom a notice under section 106 has been served.

108 Person entitled to claim compensation

(1) If a railway administration pays compensation for the loss, destruction, damage, deterioration or non-delivery of goods

entrusted to it for carriage, to the consignee or the endorsee producing the railway receipt the railway administration shall be deemed to have discharged its liability and no application before the Claims Tribunal or any other legal proceeding shall lie against the railway administration on the ground that the consignee or the endorsee was not legally entitled to receive such compensation.

(2) Nothing in sub-section (1) shall affect the right of any person having any interest in the goods to enforce the same against the consignee or the endorsee receiving compensation under that sub-section.

109 Railway administration against which application for the compensation for personal injury is to be filed.

An. application before the Claims Tribunal for compensation for the loss of life or personal injury to a passenger, may be instituted against,-

(a) the railway administration from which the passenger obtained his pass or purchased his ticket, or

(b) the railway administration on whose railway the destination station lies, or the loss or personal injury occurred.

110 Burden of proof

In an application before the Claims Tribunal for compensation for less, destruction or non-delivery of any goods, the burden of proving-

(a) the monetary loss actually sustained; or

(b) where the value has been declared under sub-section (2) of section 103 in respect of any consignment that the value so declared is its true value, shall lie on the person claiming compensation, but

subject to the other provisions contained in this Act, it shall not be necessary for him to prove how the loss, destruction, damage, deterioration, or non-delivery was caused.

111 Extent of liability of railway administration in respect of accidents at sea

(1) When a railway administration contracts to carry passengers or goods partly by railway and partly by sea, a condition exempting the railway administration from responsibility for any loss of life, personal injury or loss of or damage to goods which may happen during the carriage by sea from act of God, public enemies, fire, accident from machinery, boilers and steam and all and every other dangers and accidents of the seas, rivers and navigation of whatever nature and kind shall, without being expressed, be deemed to be part of the contract, and, subject to that condition, the railway administration shall, irrespective of the nationality or ownership of the ship used for the carriage by sea, be responsible for any loss of life, personal injury or loss of or damage to goods which,. may happen during the carriage by sea, to the extent to which it would be responsible under the Merchant Shipping Act, 1958 (44 of 1958), if the ships were registered under that Act and the railway administration were owner of the ship and not to any greater extent.

(2) The burden, of proving that any such loss, injury or damage as is mentioned in sub-section (1) happened during the carriage by sea shall lie on the railway administration.

112 Power to make rules in respect of matters in this Chapter

(1) The Central Government may, by notification, make rules to carry out the purposes of this Chapter.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely: -

(a) the manner of packing of goods entrusted to a railway administration under clause (b) of sub-section (1) of section 98.

(b) the goods for the purposes of sub-section (3) of section 99; and

(c) the maximum amount payable by the railway administration for the loss, destruction, damage, deterioration, or non-delivery of any consignment under sub-section (1) of section 103.

CHAPTER XII
ACCIDENT

113 Notice of railway accident

(1) Were, in the course of working a railway-

(a) any accident attended with loss of any human life, or with grievous hurt, as defined in the Indian Penal Code (45 of 1860), or with such serious injury to property as may be prescribed; or

(b) any collision between trains of which one is a train carrying passengers; or

(c) the derailment of any train carrying passengers, or of any part of such train; or

(d) any accident of a description usually attended with loss of human life or with such grievous hurt as aforesaid or with serious injury to property; or

(e) any accident of any other description which the Central Government may notify in this behalf in the Official Gazette, occurs, the station master of the station nearest to the place at which the accident occurs or where there is no station master, the railway servant in charge of the section of the railway on which the accident occurs, shall, without delay, give notice of the accident to the District Magistrate and Superintendent of Police, within whose jurisdiction the accident occurs, the officer in charge of the police station within the local limits of which the accident occurs and to such other Magistrate or police officer as may be appointed in this behalf by the Central Government.

(2) The railway administration within whose jurisdiction the accident occurs, as also the railway administration to whom the train involved in the accident belongs, shall without delay, give notice

of the accident to the State Government and the Commissioner having jurisdiction over the place of the accident.

114 Inquiry by Commissioner

(1) On the receipt of notice under section 113 of the occurrence of an accident to a train carrying passengers resulting in loss of human life or grievous hurt causing total or partial disablement of permanent nature to a passenger or serious damage to railway property, the Commissioner shall, as soon as may be, notify the railway administration in whose jurisdiction the accident occurred of his intention to hold an inquiry into the causes that led to the accident and shall at the same time fix and communicate the date, time and place of inquiry :

Provided that it shall be open to the Commissioner to hold an inquiry into any other accident which, in his opinion, requires the holding of such an inquiry.

(2) If for any reason, the Commissioner is not able to hold an inquiry as soon as may he after the occurrence of the accident, he shall notify the railway administration accordingly.

115 Inquiry by railway administration

Where no inquiry is held by the Commissioner under sub-sections (1) of section 114 or where the Commissioner has informed the railway administration under sub-section (2) of that section that he is not able to hold an inquiry, the railway administration within whose jurisdiction the

accident occurs, shall cause an inquiry to be made in accordance with the prescribed procedure.

116 Powers of Commissioner in relation to inquiry

(1) For the purpose of conducting, an inquiry under this Chapter into the causes of any accident on a railway, the Commissioner shall, in addition to the powers specified in section 7, have the powers as are vested in a civil court while trying a suit under the Code of Civil Procedure, 1908 (5 of 1908), in respect of the following matters, namely: -

(a) summoning and enforcing the attendance of persons and examining them on oath.
(b) requiring the discovery and production of documents.
(c) receiving evidence on affidavits.
(d) requisitioning any public record or copies thereof from any court or office.
(e) any other matter which may be prescribed.

(2) The Commissioner while conducting an inquiry under this Chapter shall be deemed to be a Civil Court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

117 Statement made before Commissioner

No statement made by a person in the course of giving evidence in an inquiry before the Commissioner shall subject him to, or be used against him in, any civil or criminal proceeding, except a prosecution for giving false evidence by such statement:

Provided that the statement is-

(a) made in reply to a question which is required by the Commissioner to answer; or

(b) relevant to the subject-matter of the inquiry.

118 Procedure, etc.

Any railway administration or the Commissioner conducting an inquiry under this Chapter may send notice of the inquiry, to such persons, follow such procedure, and prepare the report in such manner as may be prescribed.

119 No inquiry, investigation, etc., to be made if the Commission of inquiry is appointed

Notwithstanding anything contained in the foregoing provisions of this Chapter, where a Commission of Inquiry is appointed under, the Commissions of Inquiry Act, 1952 (3 of 1952), to inquire into an accident any inquiry, investigation or other proceeding pending in relation toys that accident shall not be proceeded with, and all records or other documents relating to such inquiry shall be forwarded to such authority as may be specified by the Central Government in this behalf.

120 Inquiry into accident not covered by section 113

Where any accident of the nature not specified in section 113 occurs in the course of working a railway, the railway administration within whose jurisdiction the accident occurs, may cause such inquiry to be made into the causes of the accident, as may be prescribed.

121 Returns

Every railway administration shall send to the Central Government, a return of accidents occurring on its railway, whether attended with

injury to any person or not, in such form and manner and at such intervals as may be prescribed.

122 Power to make rules in respect of matters in this Chapter

(1) The Central Government may, by notification, make rules to carry out the purposes of this Chapter.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely: -

(i) the injury to property which shall be considered serious under clause (a) of sub-section (1) of section 113.

(ii) the forms of notice of accidents to be given under section 113 and the particulars of the accident such notices shall contain.

(iii) the manner of sending the notices of accidents, including the class of accidents to be sent immediately after the accident.

(iv) the duties of the Commissioner, railway administration, railway servants, police officers and Magistrates on the occurrence of an. accident.

(v) the persons to whom notices in respect of any inquiry under this Chapter are to be sent, the procedure to be followed in such inquiry and the manner in which a report of such inquiry shall be prepared.

(vi) the nature of inquiry to be made by a railway administration into the causes of an accident under section 120.

(vii) the form and manner of sending a return of accidents by a railway administration under section 121.

CHAPTER XIII
LIABILITY OF RAILWAY ADMINISTRATION FOR DEATH AND INJURY TO PASSENGERS DUE TO ACCIDENT

123 Definitions

In this Chapter, unless the context otherwise requires, -

(a) **"accident"** means, an accident of the nature described in section 124.

(b) **"dependant"** means any of the following relatives of a deceased passenger, namely: -

(i) the wife, husband, son, and daughter, and in case the deceased passenger is unmarried, or is a minor, his parent.

(ii) the parent, minor brother or unmarried sister, widowed sister, widowed daughter-in-law and a minor child of a pre-deceased son, its dependant wholly or partly on the deceased passenger.

(iii) a minor child of a predeceased daughter, if wholly dependent on the deceased passenger.

(iv) the paternal grandparent wholly dependent on the deceased passenger.

2[(c) "untoward incident" means-

(1)(i) the commission of a terrorist act within the meaning of sub-section (1) of section 3 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (28 of 1987); or

(ii) the making of a violent attack or the commission of robbery or dacoity; or

(iii) the indulging in rioting, shoot-out, or arson, by any person in or on any train carrying passengers, or in a waiting hall, cloak room or reservation or booking office or on any platform or in any other place within the precincts of a railway station; or

(2) the accidental falling of any passenger from a train carrying passengers.]

124 Extent of liability

When in the course of working a railway, an accident occurs, being either a collision between trains of which one is a train carrying passengers or the derailment of or other accident to a train or any part of a train carrying passengers, then whether or not there has been any wrongful act, neglect or default on the part of the railway administration such as would entitle a passenger who has been injured or has suffered a loss to maintain an action and recover damages in respect thereof, the railway administration shall, notwithstanding anything contained in any other law, be liable to pay compensation to such extent as may be prescribed and to that extent only for loss occasioned by the death of passenger dying as a result of such accident, and for personal injury and loss, destruction, damage or deterioration of goods owned by the passenger and accompanying him in his compartment or on the train, sustained as a result of such accident.

Explanation. - For the purposes of this section "passenger" includes a railway servant on duty.

Commentary

Comment: Mr. Goswami, learned counsel appearing for the railway administration does not dispute that under the new Act, there is statutory liability on the railways but submits that the 1989 Act does not have any retrospective operation. We do not wish to go into that question in this case and leave that issue open. We are resting our case on the breach of common law duty of reasonable care, which lies upon all carriers including the railways. The standard of care is high and strict. It is not a case where the omission on the part of the railway officials can be said to be wholly unforeseen or beyond their control. Here there has been a complete dereliction of duty which resulted in a precious life been taken away, rendering the guarantee under Article 21 of the Constitution illusory. Had the deceased not pulled the alarm chain with a view to stop the train, the position might have been different. Liability in this case is fault based. Such a liability is not inconsistent with the scheme of the The Railways Act of 1890 either (Refer

Section 80 with advantage). P. A. Narayanan v. Union of India, AIR 1998 SUPREME COURT 1659

124A. Compensation on account of untoward incidents

When in the course of working a railway an untoward incident occurs, then whether or not there has been any wrongful act, neglect or default on the part of the railway administration such as would entitle a passenger who has been injured or the dependant of a passenger who has been killed to maintain an action and recover damages in respect thereof, the railway administration shall, notwithstanding anything contained in any other law, be liable to pay compensation to such extent as may be prescribed and to that extent only for loss occasioned by the death of, or injury to, a passenger as a result of such untoward incident.

Provided that no compensation shall be payable under this section by the railway administration if the passenger dies or suffers injury due to-

(a) suicide or attempted suicide by him.
(b) self-inflicted injury.
(c) his own criminal act.
(d) any act committed by him in a state of intoxication or insanity.
(e) any natural cause or disease or medical or surgical treatment unless such treatment becomes necessary due to injury caused by the said untoward incident.

Explanation. - For the purposes of this section, "passenger" includes-

(i) a railway servant on duty; and

(ii) a person who has purchased a valid ticket for traveling, by a train carrying passengers, on any date or a valid platform ticket and becomes a victim of an untoward incident.]

Commentary

(i) Compensation will be payable as applicable on the date of the accident with interest as may be considered reasonable from time to time on the same pattern as in accident claim cases. If the amount so calculated is

less than the amount prescribed as on the date of the award of the Tribunal, the claimant will be entitled to higher of the two amounts; Union of India v. Radha Yadav, LNIND 2019 SC 72: AIR 2019 SC 1410: (2019) 3 SCC 410.

(ii) Standing at the open doors of the compartment of a running train may be a negligent act, even a rash act but, without anything else, it is certainly not a criminal act; Jameela v. Union of India, AIR 2010 SC 3705: JT 2010 (9) SC 138: (2010) 8 SCALE 663.

(iii) Section 124A provides that when in the course of working a railway an untoward incident occurs, then whether or not there has been any wrongful act, neglect or default on the part of the railway administration, a passenger who was injured or filled is entitled for compensation; Union of India v. B. Koddekar, AIR 2003 AP 23.

(iv) Guard of the train was held not to be a passenger so as to be entitled to compensation under this section; Ram Ekbal v. Union of India, AIR 1988 Pat 130.

125 Application for compensation

(1) An application for compensation under section 124 4[or section 124A] may be made to the Claims Tribunal

(a) by the person who has sustained injury or suffered any loss, or

(b) by any agent duly authorized by such person in this behalf, or

(c) where such person is a minor, by his guardian, or

(d) where death has resulted from the accident 5[or the untoward incident] by any dependant of the deceased or where such a dependant is a minor, by his guardian.

(2) Every application by a dependant for compensation under this section shall be for the benefit of every other dependant.

Commentary

Clause (d) of sub-section (1) provides that where death has resulted, any defendant can file an application. Sub-section (2) provides that an application for compensation under this section shall be for the benefit of every other dependant; S. Das (Smt.) v. Union of India, AIR 2003 Gau 11.

126 Interim relief by railway administration

(1) Where a person who has made an application for compensation under section 125 desires to be paid interim relief, he may apply to the railway administration for payment of interim relief along with a copy of the application made under that section.

(2) Where, on the receipt of an application made under sub-section (1) and after making such inquiry as it may deem fit, the railway administration is satisfied that circumstances exist which requires relief to be afforded to the applicant immediately, it may, pending determination by the Claims Tribunal of the actual amount of compensation payable under section 124 4[or section 124A] pay to any person who has sustained the injury or suffered any loss, or where death has resulted from the accident, to any dependant of the deceased, such sum as it consider reasonable for affording such relief, so however, that the sum paid shall not exceed the amount of compensation payable at such rates as may be prescribed.

(3) The railway administration shall, as soon as may be, after making an order regarding payment of interim relief under sub-section (2), send a copy thereof to the Claims Tribunal.

(4) Any sum paid by the railway administration under sub-section (2) shall be taken into account by the Claims Tribunal while determining the amount of compensation payable.

127 Determination of compensation in respect of any injury or loss of goods

(1) Subject to such rules as may be made, the rates of compensation payable in respect of any injury shall be determined by the Claims Tribunal.

(2) The compensation payable in respect of any loss of goods shall be such as the Claims Tribunal may, having regard to the circumstances of the case, determine to be reasonable.

Commentary

The Claims Commissioner is a Special Tribunal constituted for the limited purpose of determining compensation payable under section 124.He has no power to grant compensation under any head which is not provided in Rule 3 of the Accident Compensation Rules dealing with amount of compensation; Union of India v. Adhoc Claims Commissioner, AIR 1973 All 342.

128 Saying as to certain rights

(1) The right of any person to claim compensation under section 124 6[or section 124A] shall not affect the right of any such person to recover compensation payable under the Workmen's Compensation Act 1923 (8 of 1923), or any other law for the time being in force but no person shall be entitled to claim compensation more than once in respect of. the same accident.

(2) Nothing in sub-section (1) shall affect the right of any person to claim compensation payable under any contract or scheme providing for payment of compensation for death or personal injury or for damage to property or any sum payable under any policy of insurance.

129 Power to make rules in respect of matters in this Chapter

(1) The Central Government may, by notification make rules to carry out the purposes of this Chapter.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely: -

(a) the compensation payable for death.

(b) the nature of the injuries for which compensation shall be paid and the amount of such compensation.

CHAPTER XIV
REGULATION OF HOURS OF WORK AND PERIOD OF REST

130 Definitions

In this Chapter, unless the context otherwise requires, -

(a) the employment of a railway servant is said to be "continuous" except when it is excluded or has been declared to be essentially intermittent or intensive.

(b) the employment of a railway servant is said to be "essentially intermittent" when it has been declared to be so by the prescribed authority on the ground that the daily hours of duty of the railway servant normally include periods of inaction aggregating to fifty per cent. or more (including at least one such period of not less than one hour or two such periods of not less than half an hour each) in a tour of twelve hours duty (on the. average over seventy-two consecutive hours), during which the railway servant may be on duty, but is not called upon to display either physical activity or sustained attention.

(c) the employment of a railway servant is said to be "excluded" if he belongs to any one of the following categories, namely: -
  (i) railway servants employed in a managerial or confidential capacity.
  (ii) armed guards or other personnel subject to discipline similar to that of any of the armed police forces.
  (iii) staff of the railway schools imparting technical training or academic education.
  (iv) such staff as may be specified as supervisory under the rules.
  (v) such other categories of staff as may be prescribed.

(d) the employment of a railway servant is said to be "intensive" when it has been declared to be so by the prescribed authority on the ground that it is of a strenuous nature involving continued concentration or hard manual labour with little or no period of relaxation.

131 Chapter not to apply to certain railway servants

Nothing in this Chapter shall apply to any railway servant to whom the Factories Act, 1949 (63 of 1948) or the Mines Act, 1952 (35 of 1952) or the Railway Protection Force Act, 1957 (23 of 1957) or the Merchant Shipping Act, 1958 (44 of 1958), applies.

132 Limitation of hours of work

(1) A railway servant whose; employment is essentially intermittent shall not be employed for more than seventy-five hours in any week.

(2) A railway servant whose employment is continuous shall not be employed for more than fifty-four hours a week on an average in a two wary period of fourteen days.

(3) A railway servant whose employment is intensive shall not be employed for more than forty-five hours a week on an average in a two-weekly period of fourteen days.

(4) Subject to such rules as may be prescribed, temporary exemptions of railway servants from the provisions of sub-section (1) or sub-section (2) or sub-section (3), may made by the prescribed authority if it is of opinion that such temporary exemptions are necessary to avoid serious interference with the ordinary working of the railway or in

cases of accident actual or threatened, or when argent work is required to be done to the railway or to rolling stock or in any emergency which could not have been foreseen or prevented. or in other cases of exceptional pressure of work:

Provided that where such exemption results in, the increase of hours of employment of a railway servant referred to in any of the sub-section, he shall be paid overtime at not less than two times his ordinary rate of pay for the excess hour of work.

133 Grant of periodical rest

(1) Subject to the provisions of this section, a railway servant-

(a) whose employment is intensive or continuous shall, for every week commencing on a Sunday, be granted a rest of not less than thirty consecutive hours.

(b) whose employment is essentially intermittent shall for every week commencing on a Sunday, be granted a rest of not less than twenty-four consecutive hours including a full night.

(2) Notwithstanding anything contained in sub-section (1), -

(i) any locomotive or traffic running staff shall be granted, each mouth, a rest of at least four periods of not less than thirty consecutive hours each or at least five periods of not less than twenty-two consecutive hours each, including a full night.

(ii) the Central Government may, by rules, specify the railway servants to whom periods of rest on scales less than those laid down under sub-section (1) may be granted and the periods thereof.

(3) Subject to such rules as may be made in this behalf, if the prescribed authority is of the opinion that such circumstances as are referred to in sub-section (4) of section 132 are present it may

exempt any railway servant from the provisions of sub-section (1) or clause (i) of sub-section (2):

Provided that a railway servant so exempted shall, in such circumstances as may be prescribed, be granted compensatory periods of rest for the periods he has foregone.

134 Railway servant to remain on duty

Nothing in this Chapter or the rules made thereunder shall, where due provision has been made for the relief of a railway servant, authorize him to leave his duty until he has been relieved.

135 Supervisors of railway labour

(1) Subject to such rules as may made in this behalf, the Central Government may appoint supervisors of railway labour.

(2) The duties of supervisors of railway labour shall be-

(i) to inspect railways in order to determine whether the provisions of this Chapter or of the rules made thereunder are duly observed; and

(ii) to perform such other functions as may be prescribed.

(3) A supervisor of railway labour shall be deemed to be a Commissioner for the purposes of sections 7 and 9.

136 Power to make rules in respect of matters in this Chapter

(1) The Central Government may, by notification, make rules to carry out the purposes of this Chapter.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely: -

(a) the authorities who may declare the employment of any railway servant essentially intermittent or intensive.

(b) the appeals against any such declaration and the manner in which, and the conditions subject to which any such appeal may be filed and heard.

(c) the categories of staff that may be specified under sub-clauses (iv) and (v) of clause (c) of section 130.

(d) the authorities by whom exemptions under sub-section (4) of section 132 or sub-section (3) of section 133 may be made.

(e) the delegation of power by the authorities referred to in clause (d).

(f) the railway servants to whom clause (ii) of sub-section (2) of section 133 apply and the periods of rest to be granted to them.

(g) the appointment of supervisors of railway labour and their functions.

CHAPTER XV
PENALTIES AND OFFENCES

137 Fraudulently traveling or attempting to travel without proper pass or ticket

(1) If any person, with intent to defraud a railway administration,

(a) enters or remains in any carriage on a railway or travels in train in contravention of section 55, or

(b) uses or attempts to use a single pass or a single ticket which has already been used on a previous journey, or in the case of a return ticket, a half thereof which has already been so used,

he shall be punishable with imprisonment for a term which may extend of six months, or with fine which may extend to one thousand rupees, or with both:

Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the court, such punishment shall not be less than a fine of five hundred rupees.

(2) The person referred to in sub-section (1) shall also be liable to pay the excess charge mentioned in sub-section (3) in addition to the ordinary single fare for the distance which he has travelled, or where there is any doubt as to the station from which he started, the ordinary single fare from the station from which the train originally started, or if the tickets of passengers traveling in the train have been examined since the original starting of the train, the ordinary single fare from the place where the tickets were so examined or, in case of their having been examined more than once, were last examined.

(3) The excess charge referred to in sub-section (2) shall be a sum equal to the ordinary single fare referred to in that sub-section or fifty rupees, whichever is more.

(4) Notwithstanding anything contained in section 65 of the Indian Penal Code (45 of 1860), the court convicting an offender may

direct that the person in default of payment of any fine inflicted by the court shall suffer imprisonment for a term which may extend to six months.

Commentary

Sending of "goods" by passenger train without travelling is not an offence; Emperor v. Paras Ram, 128 PLR 1903.

138 Levy of excess charge and fare for traveling without proper pass or ticket or beyond authorized distance.

(1) If any passenger, -

(a) being in or having alighted from a train, fails, or refuses to present for examination or to deliver up his pass or ticket immediately on a demand being made therefor under section 54, or

(b) travels in a train in contravention of the provisions of section 55, he shall be liable to pay, on the demand of any railway servant authorized in this behalf, the excess charge mentioned in sub-section (3) in addition to the ordinary single fare for the distance which he has travelled or, where there is any doubt as to the station from which he started, the ordinary single fare from the station from which the train originally started, or, if the tickets of passengers traveling in the train have been examined since the original starting of the train, the ordinary single fare from the place where the tickets were so examined or in the case of their having been examined more than once, were last examined.

(2) If any passenger, -

(a) travels or attempts to travel in or on a carriage, or by a train, of a higher class than that for which he has obtained a pass or purchased a ticket; or

(b) travels in or on a carriage beyond the place authorized by his pass or ticket, he shall be liable to pay, on the demand of any

railway servant authorized in this behalf, any difference between the fare paid by him and the fare payable in respect of the journey he has made, and the excess charge referred to in sub-section (3).

(3) The excess charge shall be a sum equal to the amount payable under sub-section (1) or sub-section (2), as the case may be, or fifty rupees, whichever is more:

Provided that if the passenger has with him a certificate granted under sub-section (2) of section 55, no excess charge shall be payable.

(4) If any passenger liable to pay the excess charge and the fare mentioned in sub-section (1), or the excess charge and any difference of fare mentioned in sub-section (2), fails or refuses to pay the same on a demand being made there for under one or other of these sub-sections, as the case may be, any railway servant authorized by the railway administration in this behalf may apply to any Metropolitan Magistrate or a Judicial Magistrate of the first or second class, as the case may be, for the recovery of the sum payable as if it were a fine, and the Magistrate if satisfied that the sum is payable shall order it to be so recovered, and may order that the person liable for the payment shall in default of payment suffer imprisonment of either description for a term which may extend to one month but not less than ten days.

(5) Any sum recovered under sub-section (4) shall, as and when it is recovered, be paid to the railway administration.

Commentary

The section applies not to offenders against justice but ordinarily to innocent persons who may find themselves in the wrong by mere accident. It implies no criminal intention or offence; Narian v. Rex, AIR 1950 All 441.

139 Power to remove persons

Any person failing or refusing to pay the fare and the excess charge referred to in section 138 may be removed by any railway servant authorized in this behalf who may call to his aid any other person to effect such removal:

Provided that nothing in this section shall be deemed to preclude a person removed from a carriage of a higher class from continuing his journey in a carriage of a class for which he holds a pass or ticket:

Provided further that a woman or a child if unaccompanied by a male passenger, shall not be so removed except either at the station from where she or he commences her or his journey or at a junction or terminal station or station at the headquarters of a civil district and such removal shall be made only during the day.

140 Security for good behaviour in certain cases

(1) When a court convicting a person of an offence under section 137 or section 138 finds that he has been habitually committing or attempting to commit that offence and the court is of the opinion that it is necessary or desirable to require that person to execute a bond for good behaviour, such court may, at the time of passing the sentence on the person, order him to execute a bond with or without sureties, for such amount and for such period not exceeding three years as it deems fit.

(2) An order under sub-section (1) may also be made by an appellate court or by the High Court when exercising its powers of revision.

141 Needlessly interfering with means of communication in a train

If any passenger or any other person, without reasonable and sufficient cause, makes use of, or interferes with, any means provided by a railway administration in a train for communication between passengers and the railway servant in charge of the train, he shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both :

Provided that, in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the court, where a passenger, without reasonable and sufficient cause, makes use of the alarm chain provided by a railway administration, such punishment shall not be less than-

(a) a fine of five hundred rupees, in the case of conviction for the first offence; and

(b) imprisonment for three months in the case of conviction for the second or subsequent offence.

142 Penalty for transfer of tickets

(1) If any person not being a railway servant or an agent authorized in this behalf-

(a) sells or attempts to sell any ticket or any half of a return ticket; or

(b) parts or attempts to part with the possession of a return ticket against which reservation of a seat or berth has been made or any half of a return ticket or a season ticket, in order to enable any other person to travel therewith, he shall be punishable with imprisonment for a term which may extend to three months, or with fine

which may extend to five hundred rupees, or with both, and shall also forfeit the ticket which he sells or attempts to sell or parts or attempts to part.

(2) If any person purchases any ticket referred to in clause (a) of sub-section (1) or obtains the possession of any tickets referred to in clause (b) of that sub-section from any person other than a railway servant or an agent authorized in 138:behalf, he shall be punishable with imprisonment for a term which may extend to three months and with fine which may extend to five hundred rupees and if the purchaser or holder of any ticket aforesaid travels or attempts to travel therewith, he shall forfeit the ticket which he so purchased or obtained and shall be deemed to be traveling without a proper ticket and shall be liable to be dealt with under section 138 :

Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the court, the punishment under sub-section (1) or sub-section (2) shall not be less than a fine of two hundred and fifty rupees.

143 Penalty for unauthorized carrying on of business of procuring and supplying of railway tickets

(1) If any person, not being a railway servant or an agent authorized in this behalf, -

(a) carries on the business of procuring and supplying tickets for travel on a railway or for reserved accommodation for journey in a train; or

(b) purchases or sells or attempts to purchase or sell tickets with a view to carrying on any such business either by himself or by any other person, he shall be punishable with imprisonment for a terms which may extend to three years or with fine which may extend to ten thousand rupees, or with both, and

shall also forfeit the tickets which he so procures, supplies, purchases, sells or attempts to purchase or sell :

Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the court, such punishment shall not be less than imprisonment for a term of one month or a fine of five thousand rupees.

(2) Whoever abets any offence punishable under this section shall, whether or not such offence is committed, be punishable with the same punishment as is provided for the offence.

144 Prohibition on hawking, etc., and begging

(1) If any person canvasses for any custom or hawks or exposes for sale any article whatsoever in any railway carriage or upon any part of a railway, except under and in accordance with the terms and conditions of a license granted by the railway administration in this behalf, he shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to two thousand rupees, or with both :

Provided that, in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the court, such punishment shall not be less than a fine of one thousand rupees.

(2) If any person begs in any railway carriage or upon a railway station, he shall be liable for punishment as provided under sub-section (1).

(3) Any person referred to in sub-section (1) or sub-section (2) may be removed from the railway carriage or any part of the railway or railway station, as the case may be, by any railway servant authorized in this behalf or by any other person whom such railway servant may call to his aid.

145 Drunkenness or nuisance

If any person in any railway carriage or upon any part of a railway-

(a) is in a state of intoxication; or

(b) commits any nuisance or act of indecency or uses abusive or obscene language; or

(c) wilfully or without excuse interferes with any amenity provided by the railway administration so as to affect the comfortable travel of any passenger, he may be removed from the railway by any railway servant and shall, in addition to the forfeiture of his pass or ticket, be punishable with imprisonment which may extend so six months and with fine which may extend to five hundred rupees:

Provided that in the absence of special and adequate reason to the contrary to be mentioned in the judgment of the court, such punishment shall not be less than-

(a) a fine of one hundred rupees in the case of conviction for the first offence; and

(b) imprisonment of one month and a fine of two hundred and fifty rupees, in the case of conviction for second or subsequent offence.

146 Obstructing railway servant in his duties

If any person willfully obsturct5s or prevents any railway servant in the discharge of his duties, he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

147 Trespass and refusal to desist from trespass

(1) If any person enters upon or into any part of a railway without lawful authority, or having lawfully entered upon or into such part misuses such property or refuses to leave, he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both:

Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the court, such punishment shall not be less than a fine of five hundred rupees.

(2) Any person referred to in sub-section (1) may be removed from the railway by any railway servant or by any other person whom such railway servant may call to his aid.

148 Penalty for making a false statement in an application for compensation

If in any application for compensation under section 125, any person makes statement which is false or which he knows or believes to be false or does not believe to be true, he shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

149 Making a false claim for compensation

If any person requiring compensation from a railway administration for loss, destruction, damage, deterioration, or non-delivery of any

consignment makes a claim which is false or which he knows or believes to be false or does not believe to be true, he shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

150 Maliciously wrecking or attempting to wreck a train

(1) Subject to the provisions of sub-section (2) if any person unlawfully, -

(a) puts of throws upon or across any railways, any wood, stone or other matter or thing; or

(b) takes up, removes, loosens, or displaces any rail, sleeper or other matter or things belonging to any railway; or

(c) turns, moves, unlocks, or diverts any points or other machinery belonging to any railway; or

(d) makes or shows, or hides or removes, any signal or light upon or near to any railway; or

(e) does or causes to be done or attempts to do any other act or thing in relation to any railway, with intent or with knowledge that he is likely to endanger the safety of any person traveling on or being upon the railway, he shall be punishable with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years:

Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the court, where a person is punishable with rigorous imprisonment, such imprisonment shall not be less than-

(a) three years, in the case of a conviction for the first offence; and

(b) seven years, in the case of conviction for the second or subsequent offence.

(2) If any person unlawfully does any act or thing referred to in any of the clauses of sub-section (1) –

(a) with intent to cause the death of any person and the doing of such act or thing cause the death of any person; or

(b) with knowledge that such act or thing is so imminently dangerous that it must in all probability cause the death of any person or such bodily injury to any person as is likely to cause the death of such person, he shall be punishable with death or imprisonment for life.

151 Damage to or destruction of certain railway properties

(1) If any person, with intent to cause, or knowing that he is likely to cause damage or destruction to any property of a railway referred to in sub-section (2), causes by fire, explosive substance or otherwise, damage to such property or destruction of such property, he shall be punishable with imprisonment for a term which may extend to five years, or with fine, or with both.

(2) The properties of a railway referred to in sub-section (1) are railway track, bridges, station buildings and installations, carriages or wagons, locomotives, signalling, telecommunications, electric traction, and block equipment's and such other properties as the Central Government being of the opinion that damage thereto or destruction thereof is likely to endanger the operation of a railway, may, by notification, specify.

152 Maliciously hurting or attempting to hurt persons traveling by railway

If any person unlawfully throws or causes to fall or strike at against, into or upon any rolling stock forming part of a train, any wood, stone or other matter or thing with intent, or with knowledge that he is likely to endanger the safety of any person being in or upon such rolling stock or in or upon any other rolling stock forming part of the same train, he shall be punishable with imprisonment for life, or with imprisonment for a term which may extend to ten years.

153 Endangering safety of persons traveling by railway by willfully act or omission

If any persons by any unlawful act or by any willful omission or neglect, endangers or causes to be endangered the safety of any person traveling on or being upon any railway, or obstructs or causes to be obstructed or attempts to obstruct any rolling stock upon any railway, he shall be punishable with imprisonment for a term which may extend to five years.

154 Endangering safety of persons traveling by railway rash or negligent act or omission

If any person in a rash and negligent manner does any act or omit to do what he is legally bound to do, and the act or omission is likely to endanger the safety of any person traveling or being upon any railway, he shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

155 Entering into compartment reserved or resisting entry into a compartment not reserved

(1) If any passenger-

(a) having entered a compartment wherein no berth or seat has been reserved by a railway administration for his use, or

(b) having unauthorizedly occupied a berth or seat reserved by a railway administration for the use of another passenger, refuses to leave it when required to do so by any railway servant authorized in this behalf, such railway servant may remove him or cause him to be removed, with the aid of any other person, from the compartment, berth or seat, as the case may be, and he shall also be punishable with fine which may extend to five hundred rupees.

(2) If any passenger resists the lawful entry of another passenger into a compartment not reserved for the use of the passenger resisting, he shall be punishable with fine which may extend to two hundred rupees.

156 Traveling on roof, step, or engine of a train

If any passenger or any other person, after being warned by a railway servant to desist, persists in traveling on the rood, step or footboard of any carriage or on an engine, or in any other part of a train not intended for the use of passengers, he shall be punishable with imprisonment for a term which may extend to three months, or with fine which imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both and may be removed from the railway by any railway servant.

157 Altering or defacing pass or ticket

If any passengers willfully alter or defaces his pass or ticket so as to render the date, number or any material portion thereof illegible, he shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

158 Penalty for contravention of any of the provision of Chapter XIV

Any person under whose authority any railway servant is employed in contravention of any of the provisions of Chapter XIV or of the rules made thereunder shall be punishable with fine which may extend to five hundred rupees.

159 Disobedience of drivers or conductors of vehicles to directions of railway servant, etc.

If any driver or conductor of any vehicle while upon the premises of a railway disobeys the reasonable directions of any railway servant or police officer, he shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

160 Opening or breaking a level crossing gate

(1) If any person, other than a railway servant or a person authorized in this behalf, opens any gate or chain or barrier set up on either side of a level crossing which is closed to road traffic, he shall be punishable with imprisonment for a term which may extend to three years.

(2) If any person breaks any gate or chain or barrier set up on either side of a level crossing which is closed to road traffic, he shall be punishable with imprisonment for a term which may extend to five years.

161 Negligently crossing unmanned level crossing

If any person driving or leading a vehicle is negligent in crossing an unmanned level crossing, he shall be punishable with imprisonment which may extend to one year.

Explanation. - For the purposes of this section, "negligence" in relation to any person driving or leading a vehicle in crossing an unmanned level crossing means the crossing of such level crossing by such person-

(a) without stopping or caring to stop the vehicle near such level crossing to observe whether any approaching rolling stock is in sight, or

(b) even while an approaching rolling stock is in sight.

162 Entering carriage or other place reserved for females

If a male person knowing or having reason to believe that a carriage, compartment, berth or seat in a train or room or other place is reserved by a railway administration for the exclusive use of females, without lawful excuse, -

(a) enters such carriage, compartment, room, or other place, or having entered such carriage, compartment, room, or place, remains therein; or

(b) occupies any such berth or seat having been required by any railway servant to vacate it, he shall, in addition to being liable to forfeiture of his pass or ticket, be punishable with fine which may extend to five hundred rupees and may also be removed by any railway servant.

163 Giving false account of goods

If any person required to furnish an account of goods under section 66, gives an account which is materially false, he and, if he is not the owner of the goods, the owner also shall, without prejudice to his liability to pay any freight or other charge under any provision of this Act, be punishable with fine which may extend to five hundred rupees for every quintal or part thereof of such goods.

164 Unlawfully bringing dangerous goods on a railway

If any person, in contravention of section 67, takes with him any dangerous goods or entrusts such goods for carriage to the railway administration, he shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to one thousand rupees or with both and shall also be liable for any loss, injury or damage which may be caused by reason of bringing such goods on the railway.

165 Unlawfully bringing offensive goods on a railway

If any person, in contravention of section 67, takes with him any offensive goods or entrusts such goods for carriage to the railway administration, he shall be punishable with fine which may extend to five hundred rupees and shall also be liable for any loss, injury or damage which may be caused by reason of bringing such goods on the railway.

166 Defacing public notices

If any person without lawful authority-

(a) pulls down or willfully damage any board or document set up or posted by the order of a railway administration on a railway or any rolling stock; or

(b) obliterates or alters any letters or figures upon any such board or document or upon any rolling stock, he shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

167 Smoking

(1) No person in any compartment of a train shall, if objected to by any other passenger in that compartment, smoke therein.

(2) Notwithstanding anything contained in sub-section (1), a railway administration may prohibit smoking in any train or part of a train.

(3) Whosoever contravenes the provisions of sub-section (1) or sub-section (2) shall be punishable with fine which may extend to one hundred rupees.

168 Provision with respect to commission of offence by the children of acts endangering safety of person traveling on railway

(1) If a person under the age of twelve years is guilty of any of the offences under sections 150 to 154, the court convicting him may require the father or guardian of such person to execute, within such time as the court may fix, a bond for such amount and for such period as the court may direct for the good conduct of such person.

(2) The amount of the bond, if forfeited, shall be recoverable by the court as if it were a fine imposed by itself.

(3) If a father or guardian fails to execute a bond under sub-section (1) within the time fixed by the court, he shall be punishable with fine which may extend to fifty rupees.

169 Levy of penalty on non-Government railway

If a non-Government railway fails to comply with, any requisition made, decision or direction given, by the Central Government, under any of the provisions of this Act, or otherwise contravenes any of the

provisions of this Act, it shall be open to the Central Government, by order, to levy a penalty not exceeding two hundred and fifty rupees and a further penalty not exceeding one hundred and fifty rupees for every day during which the contravention continues :

Provided that no such penalty shall be levied except after giving a reasonable opportunity to the non-Government railway to make such representation as it deems fit.

170 Recovery of penalty

Any penalty imposed by the Central Government from under section 169, shall be recoverable by a suit in the District Court having jurisdiction in the place where the head office of the non-Government railway is situated.

171 Section 169 or 170 not to preclude Central Government from taking any other action

Nothing in section 169 or 170 shall preclude the Central Government from resorting to any other action to compel a non-Government railway to discharge any obligation imposed upon it by or under this Act.

172 Penalty for intoxication

If any railway servant is in a state of intoxication while on duty, he shall be punishable with fine which may extend to five hundred rupees and when the performance of any duty in such state is likely to endanger the safety of any person traveling on or being upon a railway, such railway servant shall be punishable with

imprisonment for a term which may extend to one year, or with fine, or with both.

173 Abandoning train, etc., without authority

If any railway servant, when on duty, is entrusted with any responsibility connected with the running of a train, or of any other rolling stock from one station or place to another station or place, and he abandons his duty before reaching such station or place without authority or without properly handing over such train or rolling stock to another authorized railway servant, he shall be punishable with imprisonment for a term which may extend to two year, or with fine which may extend to one thousand rupees, or with both.

174 Obstructing running of train, etc.

If any railway servant (whether on duty or otherwise) or any other person obstructs or causes to be obstructed or attempts to obstruct any train or other rolling stock upon a railway, -

(a) by squatting or picketing or during any Rail roko agitation or bandh; or

(b) by keeping without authority any rolling stock on the railway; or

(c) by tempering with, disconnecting, or interfering in any other manner with its hose pipe or tampering with signal gear or otherwise, he shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to two thousand rupees, or with both.

175 Endangering the safety of persons

If any railway servant, when on duty, endangers the safety of any person-

(a) by disobeying any rule made under this Act; or

(b) by disobeying any instruction, direction or order under this Act or the rules made there under; or

(c) by any rash or negligent act or omission, he shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

176 Obstructing level crossing

If any railway servant unnecessarily-

(a) allows any rolling stock to stand across a place where the railway crosses a public road on the level: or

(b) keeps a level crossing closed against the public, he shall be punishable with fine which may extend to one hundred rupees.

177 False returns

If any railway servant required to furnish a return by or under this Act, signs and furnishes a return which is false in any material particular or which he knows or believes to be false, or does not believe to be true, he shall be punishable with imprisonment which may extend to one year, or with fine which may extend to five hundred rupees, or with both.

178 Making a false report by a railway servant

If any railway servant who is required by a railway administration to inquire into a claim for loss, destruction, damage, deterioration or non-delivery of any consignment makes a report which is false or which he knows or believes to be false or does not believe to be true, he shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

179 Arrest for offences under certain sections

(1) If a person commits any offence mentioned in sections 137, 141 to 147, 150 to 157, 160 to 162, 164, 166, 168 and 172 to 175, he may be arrested without warrant or other written authority by any railway servant or police officer not below the rank of a head constable.

(2) The railway servant or the police officer may call to his aid any other person to effect the arrest under sub-section (1).

(3) Any person so arrested under this section shall be produced before the nearest Magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the Magistrate.

180 Arrest of persons likely to abscond, etc.

(1) If any person who commits any offence under this Act, other than an offence mentioned in section 179, or is liable to pay any excess charge or other sum demanded under section 138, fails or refuses to give his name and address or there is reason to believe that the name and address given by him are fictitious or that he will abscond, any railway

servant authorized in this behalf or any police officer not below the rank of a head constable may arrest him without warrant or written authority.

(2) The railway servant or the police officer may call to his aid any other person to effect the arrest under sub-section (1).

(3) Any person arrested under this section shall be produced before the nearest Magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the Magistrate unless he is released earlier on giving bail or if his true name and address are ascertained on executing a bond without sureties for his appearance before the Magistrate having jurisdiction to try him for the offence.

(4) The provisions of Chapter XXIII of the Code of Criminal Procedure, 1973 (2 of 1974), shall so far as may be, apply to the giving of bail and the execution of bonds under this section.

181 Magistrate having jurisdiction under the Act

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try an offence under this Act.

182 Place of trial

(1) Any person committing an offence under this Act, or any rule made thereunder shall be triable for such offence in any place in which he may be or which the State Government may notify in this behalf, as well as in any other place in which he is liable to be tried under any law for the time being in force.

(2) Every notification under sub-section (1) shall be published in the Official Gazette, and a copy thereof shall be exhibited for the information of the public in some conspicuous place at such railway stations as the State Government may direct.

CHAPTER XVI
MISCELLANEOUS

183 Power to provide other transport services

(1) A railway administration may, for the purpose of facilitating the carriage of passengers or goods or to provide integrated service for such carriage, provide any other mode of transport.

(2) Notwithstanding anything contained in any other law for the time being in force, the provisions of this Act shall apply to the carriage of passengers or goods by the mode of transport referred to in sub-section (1).

184 Taxation on railways by local authorities

(1) Notwithstanding anything to the contrary contained in any other law, a railway administration shall not be liable to pay any tax in aid of the funds of any local authority unless the Central Government, by notification, declares the railway administration to be liable to pay the tax specified in such notification.

(2) While a notification of the Central Government under sub-section (1) is in force, the railway administration shall be liable to pay to the local authority either the tax specified in the notification or, in lieu thereof, such sum, if any, as an officer appointed in this behalf by the Central Government may, having regard to all the circumstances of the case, from time to time, determine to be fair and reasonable.

(3) The Central Government may at any time revoke or very a notification issued under sub-section (1).

(4) Nothing in this section shall be construed to prevent any railway administration from entering into a contract with any local authority for the supply of water or light, or for the scavenging of railway premises, or for any other service which the local authority may be rendering or be prepared to render to the railway administration.

Commentary

The Fire Brigade Fund of Calcutta Police Commissioner was held to be a fund of local authority; Marriot v. Howrah Municipality, AIR 1941 Cal 319

185 Taxation on railways for advertisement

(1) Notwithstanding anything to the contrary contained in any other law, a railway administration shall not be liable to pay any tax to any local authority in respect of any advertisement made on any part of the railway unless the Central Government, by notification, declares the railway administration to be liable to pay the tax specified in such notification.

(2) The Central Government may at any time revoke or very a notification issued under sub-section (1).

186 Protection of action taken in good faith

No suit, prosecution or other legal proceeding shall lie against the Central Government, any railway administration, a railway servant or any other person for anything which is in good faith done or intended to be done in pursuance of this Act or any rules or orders made thereunder.

187 Restriction on execution against railway property

(1) No rolling stock, machinery, plant, tools, fittings, materials or effects used or provided by a railway administration for the purpose of traffic on its railway, or of its stations or workshops, shall be liable to be taken in execution of any decree or order of any court or of any local authority or person having by law the power to attach or distrain property or otherwise to cause property to be taken in execution, without the previous sanction of the Central Government.

(2) Nothing in sub-section (1) shall be construed to affect the authority of any court to attach the earnings of a railway in execution of a decree or order.

188 Railway servants to be public servants for the purposes of Chapter IX and section 409 of the Indian Penal Code.

(1) Any railway servant, who is not a public servant within the meaning of section 21 of the Indian Penal Code (45 of 1860), shall be deemed to be a public servant for the purposes of Chapter IX and section 409 of that Code.

(2) In the definition of "legal remuneration" in section 161 of the Indian Penal Code (45 of 1860), the word "Government" shall, for the purposes of sub-section (1), be deemed to include any employer of a railway servant as such.

189 Railway servants not to engage in trade

A railway servant shall not-

(a) purchase or bid for, either in person or by an agent, in his own name or in that of another, or jointly or in shares with others, any property put to auction under section 83 or section 84 or section 85 or section 90; or

(b) in contravention of any direction of the railway administration in this behalf, engage in trade.

190 Procedure for delivery to railway administration of property detained by a railway servant.

If a railway servant is discharged from service or is suspended, or dies or absconds or absents himself, and he or his wife or widow or any member of his family or his representative refuses or neglects, after notice in writing for that purpose, to deliver up to the railway administration or to a person appointed by the railway administration, in this behalf, any station, office or other building with its appurtenances, or any books, papers, keys, equipment or other matters, belonging to the railway administration and in the possession or custody of such railway servant at the occurrence of any such event as aforesaid, any Metropolitan Magistrate or Judicial Magistrate of the first class may, on application made by or on behalf of the railway administration, order any police officer, with proper assistance, to enter upon the station, office or other building and remove any person found therein and take possession thereof, or to take possession of the books, papers or other matters, and to deliver the same to the railway administration

or to a person appointed by the railway administration in that behalf.

191 Proof of entries in records and documents

Entries made in the records or other document of a railway administration shall be admitted in evidence in all proceedings by or against the railway administration, and all such entries may be proved either by the production of the records or other documents of the railway administration containing such entries or by the production of a copy of the entries certified by the officer having custody of the records or other documents under his signature and stating that it is a true copy of the original entries and that such original entries are contained in the records or other documents of the railway administration in his possession.

192 Service of notice, etc., on railway administration

Any notice or other document required or authorized by this Act to be served on a railway administration may be served, in the case of a Zonal Railway, on the General Manager or any of the railway servant authorized by the General Manager, and in the case of any other railway, on the owner or lessee of the railway or the person working the railway under an agreement.

(a) by delivering it to him; or
(b) by leaving at his office; or
(c) by registered post to his office address.

193 Service of notice, etc., by railway administration

Unless otherwise provided in this Act or the rules framed thereunder, any notice or other document required or authorized by this Act to be served on any person by a railway administration may be served-

(a) by delivering it to the person; or

(b) by leaving it at the usual or last known place of abode of the person; or

(c) by registered post addressed to the person at his usual or last known place of abode.

194 Presumption where notice is served by post

Where a notice or other document is served by post, it shall be deemed to have been served at the time when the letter containing it would be delivered in the ordinary course of post, and in proving such service, it shall be sufficient to prove that the letter containing the notice or other document was properly addressed and registered.

195 Representation of railway administration

(1) A railway administration may, by order in writing, authorize any railway servant or other person to act for, or represent it, as the case may be, in any proceeding before any civil, criminal or other court.

(2) A person authorized by a railway administration to conduct prosecutions on its behalf shall, notwithstanding anything in

section 302 of the Code of Criminal Procedure, 1973 (2 of 1974), be entitled to conduct such prosecutions without the permission of the Magistrate.

196 Power to exempt railway from Act

(1) The Central Government may, by notification, exempt any railway from all or any of the provisions of this Act.

(2) Every notification issued under sub-section (1) shall be laid as soon as may be after it is issued before each House of Parliament.

197 Matters supplemental to the definitions of "railway" and "railway servant"

(1) For the purposes of sections 67, 113, 121, 123, 147, 151 to 154, 160, 164, 166, 168, 170, 171, 173 to 176, 179, 180, 182, 184, 185, 187 to 190, 192, 193, 195 and of this section, the word "railway" whether it occurs alone or as a prefix to another word, has reference to a railway or portion of a railway under construction and to a railway or portion of a railway not used for the public carriage of passengers, animals or goods as well as to a railway falling within the definition of that word in clause (31) of section 2.

(2) For the purposes of sections 7, 24, 113, 146, 172 to 176 and 188 to 190, the expression "railway servant" includes a person employed under a railway in connection with the service thereof by a person fulfilling a contract with the railway administration.

198 General power to make rules

Without prejudice to any power to make rules contained elsewhere in this Act, the Central Government may make rules generally to carry out the purposes of this Act.

199 Rules to be laid before Parliament

Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

200 Repeal and saving

(1) The Indian Railways Act, 1890 (9 of 1890), is hereby repealed.

(2) Notwithstanding the repeal of the Indian Railways Act, 1890 (9 of 1890) (hereinafter referred to as the repealed Act)-

(a) anything done or any action taken or purported to have been done or taken including any rule, notification

inspection, order or notice made or issued, or any appointment or declaration made or any license, permission, authorization or exemption granted or any document or instrument executed or any direction given or any proceedings taken or any penalty or fine imposed) under the repealed Act shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act;

(b) any complaint made to the Railway Rates Tribunal under sub-section (1) of section 41 of the repealed Act but not disposed of before the commencement of this Act and any complaint that may be made to the said Tribunal against any act or omission of a railway administration under the repealed Act, shall be heard and decided by the Tribunal constituted under this Act in accordance with the provisions of Chapter VII of this Act.

(3) The mention of particular matters in sub-section (2) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 (10 of 1897), with regard to the effect of repeal.



Supreme Court of India (Old Pencil Drawing)

THE RAILWAY PROTECTION FORCE ACT, 1957
ACT NO. 23 OF 1957

[29th August 1957.]

[1][An Act to provide for the constitution and regulation of an armed Force of the Union for the better protection and security of [2][railway property, passenger area and passengers] and for Matters connected therewith.]

BE it enacted by Parliament in the Eighth Year of the Republic of India as follows: —

1. Short title, extent, and commencement. —

(1) This Act may be called the Railway Protection Force Act, 1957.

(2) It extends to the whole of India.

(3) It shall come into force on such date3as the Central Government may, by notification in the Official Gazette, appoint.

2. Definitions. —

[4][(1)] In this Act, unless the context otherwise requires, —

(a) "Force" means the Railway Protection Force constituted under section 3.

[5][(b) "Director-General" means the Director-General of the Force appointed under sub-section (1) of section 4.

(ba) "enrolled member of the Force" means any subordinate officer, under officer or any other member of the Force of a rank lower than that of under officer.

(bb) "Force custody" means the arrest or confinement of a member of the Force in accordance with rules made under this Act;]

(c) "member of the Force" means a person appointed to the Force under this Act 6* * *.

[7][(ca) "passenger" shall have the meaning assigned to it in the Railways Act, 1989 (24 of 1989).

(cb) "passenger area" shall include railway platform, train, yard, and such other area as is frequently visited by passengers;]

(d) "prescribed" means prescribed by rules made under this Act.

(e) "railway property" includes any goods, money or valuable security, or animal, belonging to, or in the charge or possession of, a railway administration.

[8][(ea) "subordinate officer" means a person appointed to the Force as an Inspector, Sub-Inspector, or an Assistant Sub-Inspector;]

1. Subs. by Act 60 of 1985, s. 2, for the long title (w.e.f. 20-9-1985).
2. Subs. by Act 52 of 2003, s. 2, for "railway property" (w.e.f. 1-7-2004).
3. 10th September 1959, vide notification No. 58-security/16/9, dated 10-9-1959, see Gazette of India, Extraordinary, Part II, s. 1.
   Extended to Goa, Daman, and Diu with modifications, by Reg. 12 of 1962, s. 3 and Schedule.
   The Act comes into force in Pondicherry on 1-10-1963, s. 3 and Schedule I.
   Extended to and brought into force in Dadra and Nagar Haveli (w.e.f. 1-7-1965) by Reg. 6 of 1963, s. 2 and Schedule I.
4. Section 2 renumbered as sub-section (1) thereof by Act 60 of 1985, s. 3 (w.e.f. 20-9-1985).
5. Subs. by s. 3, ibid., for clause (b) (w.e.f. 20-9-85).
6. The words "other than a superior officer" omitted by s. 3, ibid. (w.e.f. 20-9-1985).
7. Ins. by Act 52 of 2003, s. 3 (w.e.f. 1-7-2004).
8. Ins. by Act 60 of 1985, s. 3(w.e.f. 20-9-1985).

(f) "superior officer" means any of the officers appointed under section 4 and includes any other officer appointed by the Central Government as a superior officer of the Force.

[1][(fa) "under officer" means a person appointed to the Force as a Head Constable or Naik;]

(g) words and expressions used but not defined in this Act and defined in the Indian Railways

Act, 1890 (9 of 1890), shall have the meanings respectively assigned to them under that Act.

[1][(2) Any reference in this act to a law which is not in force in any area shall in relation to that area, be construed as a reference to the corresponding law, if any, in force in that area.]

3. Constitution of the Force. —

(1) There shall be constituted and maintained by the Central Government a 2[an armed Force of the Union] to be called the Railway Protection Force for the better protection and security of railway property.

(2) The force shall be constituted in such manner shall consist of such number of 3 [superior officers subordinate officers, under officers and other enrolled members] of the Force and shall receive such pay and other renumeration as may be prescribed.

4. Appointment and powers of superior officers. —

[4][(1) The Central Government may appoint a person to be the Director-General of the Force and may appoint other persons to be Inspector-General, Additional Inspector-General, Deputy Inspector-General, Assistant Inspector-General, Senior Commandants, Commandants or Assistant Commandants of the Force.]

(2) The [5][Director-General] and every other superior officer so appointed shall possess and exercise such powers and authority over the members of the Force under their respective commands as is provided by or under this Act.

5. [Classes and ranks among members of the Force.]— Omitted by the Railway Protection Force (Amendment) Act, 1985 (60 of 1985), s. 6 (w.e.f. 20-9-1985).

[6][6. Appointment of members of the Force. —

The appointment of enrolled members of the Force shall rest with the Inspector-General, Additional Inspector-General or Deputy Inspector-General who shall exercise that power in accordance with rules made under this Act:

Provided that the power of appointment under this section may also be exercised by other superior officer as the Inspector-General, Additional Inspector-General or Deputy Inspector-General concerned may, by order, specify in this behalf.]

7. Certificates to members of the Forces. —

(1) Every member of the Force shall receive on his appointment a certificate in the form specified in the Schedule, under the seal of the 7[Inspector-General, Additional Inspector-General or Deputy Inspector-General] or such other superior officer as the a [7][Inspector-General, Additional Inspector-General or Deputy Inspector-General] may specify in this behalf by virtue of which the person holding such certificate shall be vested with the powers of a member of the Force.

(2) Such certificate shall cease to have effect whenever the person named in it ceases for any reason to be a member of the Force 8* * *.

1. Ins. by Act 60 of 1985, s. 3 (w.e.f. 20-9-1985).
2. Subs. by s. 4, ibid., for "a Force" (w.e.f. 20-9-1985).
3. Subs. by s. 4, ibid., for "superior officers and members" (w.e.f. 20-9-1985).
4. Subs. by s. 5, ibid., for sub-section (1) (w.e.f. 20-9-1985).
5. Subs. by s. 5, ibid., for "Inspector-General" (w.e.f. 20-9-1985).
6. Subs. bys. 7, ibid., for s. 6 (w.e.f. 20-9-1985).
7. Subs. by s. 8, ibid., for "Chief Security Officer" (w.e.f. 20-9-1985).
8. Certain words omitted by s. 8, ibid. (w.e.f. 20-9-1985).

[1][8. Superintendence and administration of the Force. —

(1) The superintendence of the Force shall vest in the Central Government, and subject thereto and to the provisions of this Act and of any rules made thereunder, the command supervision and administration of the Force shall vest in the Director General.

(2) Subject to the provisions of sub-section (1), the administration of the Force, within such local limits in relation to a railway as may be prescribed shall be carried on by an Inspector-General, an Additional Inspector-General or a Deputy Inspector-General in accordance with the provisions of this Act and of any rules made thereunder and they shall, subject to any direction that may be given by the Central Government or the Director-General in this behalf discharge his function under the general supervision of the General Manager of the Railway.]

9. Dismissal, removal, etc., of members of the force. —

(1) Subject to the provisions of article 311 of the Constitution and to such rules as the Central Government may make under this Act, any superior officer may—

(i) dismiss, suspend, or reduce in rank any [2][enrolled member] of the Force whom he shall think remiss or negligent in the discharge of his duty, or unfit for the same; or

(ii) award any one or more of the following punishments to any [1][enrolled member] of the Force who discharges his duty in a careless or negligent manner, or who by any act of his own renders himself unfit for the discharge thereof, namely: —

(a) fine to any amount not exceeding seven days' pay or reduction in pay scale.

(b) confinement to quarters for a period not exceeding fourteen days with or without punishment, drill, extra guard, fatigue or other duty.

(c) removal from any office of distinction or deprivation of any special emolument.

[3]**[(2)** Any enrolled member of the force aggrieved by an order made under sub-section (1) may, within thirty days from the date on which the order is communicated to him prefer an appeal against the order to such authority as may be prescribed: Provided that the prescribed authority may entertain the appeal after the expiry of the said period of thirty days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(3) In disposing of the appeal, the prescribed authority shall follow such procedure as may be prescribed:

Provided that no order imposing an enhanced penalty under sub-section (2) shall be made unless a reasonable opportunity of being heard has been given to the person affected by such order.]

10. Officers and members of the Force to be deemed to be railway servants. —

[4][Director-General and every member of the Force] shall for all purposes be regarded as railway servants with the meaning of the Indian Railways Act, 1890 (9 of 1890), other than Chapter VIA thereof, and shall be entitled to exercise the powers conferred on railway servants by or under that Act.

[5][11. Duties of members of the Force. —

It shall be the duty of every superior officer and member of the Force—

(a) promptly to execute all orders lawfully issued to him by his superior authority.

(b) to protect and safeguard railway property, passenger area and passengers.

(c) to remove any obstruction in the movement of railway property or passenger area; and

(d) to do any other act conducive to the better protection and security of railway property, passenger area and passengers.]

1. Subs. by Act 60 of 1985 s. 9, for section 8 (w.e.f. 20-9-1985).
2. Subs. bys. 10, ibid., for "member" (w.e.f. 20-9-1985).
3. Subs. by s. 10, ibid., for sub-section (2) (w.e.f. 20-9-1985).
4. Subs. by s. 18 and the Schedule, ibid., for certain words (w.e.f. 20-9-1985).
5. Subs. by Act 52 of 2003, s. 4, for section 11 (w.e.f. 1-7-2004).

[1][12. Power to arrest without warrant. —

Any member of the Force may, without an order from a Magistrate and without a warrant, arrest—

(i) any person who voluntarily causes hurt to, or attempts voluntarily to cause hurt to, or wrongfully restrains or attempts wrongfully to restrain, or assaults, threatens to assault, or uses, or threatens or attempts to use, criminal force to him or any other member of the Force in the execution of his duty as such member, or with intent to prevent or to deter him from discharging his duty as such member, or in consequence of anything done or attempted to be done by him in the lawful discharge of his duty as such member; or

(ii) any person who has been concerned in, or against whom a reasonable suspicion exists of his having been concerned in, or who is found taking precautions to conceal his presence under circumstances which afford reason to believe that he is taking such precautions with a view to committing a cognizable offence which relates to 2[railway property, passenger area and passengers]; or

(iii) any person found taking precautions to conceal his presence within the railway limits under circumstances which afford reason to believe that he is taking such precautions with a view to committing theft of, or damage to, [2][railway property, passenger area and passengers]; or

(iv) any person who commits or attempts to commit a cognizable offence which involves, or which is likely to involve imminent danger to the life of any person engaged in carrying on any work relating to [2][railway property, passenger area and passengers].]

13. Power to search without warrant. —

(1) Whenever 3*** any member of the Force, not below the rank of a Senior Rakshak, has reason to believe that any such offence as is referred to in section 12 has been or is being committed and that a search-warrant cannot be obtained without affording the offender an opportunity of escaping or of concealing evidence of the offence, he may detain him and search his person and belongings forthwith and, if he thinks proper, arrest any person whom he has reason to believe to have committed the offence.

(2) The provisions of the 4[Code of Criminal Procedure, 1973 (2 of 1974)], relating to searches under that Code shall, so far as may be, apply to searches under this section.

14. Procedure to be followed after arrest. —

Any 5*** member of the Force making an arrest under this Act, shall, without unnecessary delay, make over the person so arrested [6][to a police officer together with a detailed report of the circumstances leading to the arrest of such persons], or in the absence of a police officer, take such person or cause him to be taken to the nearest police station.

15. Officers and members of the Force to be considered always on duty and liable to be employed in any part of the railways. —

[7][(1) Every member of the Force shall, for the purposes of this Act, be considered to be always on duty, and shall, at any time, be liable to be employed at any place within India.]

(2) No 1* * * member of the Force shall engage himself in any employment or office other than his duties under this Act.

1. Subs. by Act 60 of 1985, s. 11, for section 12 (w.e.f. 20-9-1985).
2. Subs. by Act 52 of 2003, s. 5, for "railway property" (w.e.f. 1-7-2004).
3. The words "any superior officer or" omitted by Act 60 of 1985, s. 18 and the Schedule (w.e.f. 20-9-1985).
4. Subs. by s. 18 and Schedule, ibid., for "Code of Criminal Procedure, 1898 (5 of 1898)" (w.e.f. 20-9-1985).
5. The words "superior officer or" omitted by s. 18 and the Schedule, ibid. (w.e.f. 20-9-1985).
6. Subs. by Act 52 of 2003, s. 6, for "to a police officer" (w.e.f. 1-7-2004).
7. Subs. by Act 60 of 1985, s. 12, for sub-section (1) (w.e.f. 20-9-1985).

[2][15A. Restrictions respecting right to Form association, etc.—

(1) No member of the Force shall, without the previous sanction in writing of the Central Government or of the prescribed authority, —

(a) be a member of, or be associated in any way with, any trade union, labour union, political association or with any class of trade unions, labour unions or political associations; or

(b) be a member of, or be associated in any way with, any other society, institution, association, or organisation that is not recognised as part of the Force or is not of a purely social, recreational or religious nature; or

(c) communicate with the press or publish or cause to be published any book, letter or other document except where such communication or publication is in the *bona fide*

discharge of his duties or is of a purely literary, artistic or scientific character or is of a prescribed nature.

Explanation.— If any question arises as to whether any society, institution, association or organization is of a purely social, recreational or religious nature under clause (*b*) of this sub-section, the decision of the Central Government thereon shall be final.

(*2*) No member of the Force shall participate in, or address, any meeting or take part in any demonstration organised by any body of persons for any political purposes or for such other purposes as may be prescribed.

16. Responsibilities of members of the Force during suspension. —

A member of the Force shall not by reason of his suspension from office cease to be a member of the Force; and he shall, during that period, be subject to the same responsibilities, discipline and penalties to which he would have been subject if he were on duty.

[3][**16A. Surrender of certificate, arms, etc., by persons ceasing to be members of the Force. —**

(1) Every person who for any reason ceases to be a member of the Force, shall forthwith surrender to any superior officer empowered to receive the same, his certificate of appointment, the arms, accoutrements, clothing, and other articles which have been furnished to him for the performance of his duties as a member of the Force.

(2) Any person who wilfully neglects or refuses to surrender his certificate of appointment, the arms, accoutrements, clothing and other articles furnished to him, as required by sub-section (1) shall on conviction, be punished with imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

(3)Nothing in this section shall be deemed to apply to any article which, under the orders of the Director-General, has become the property of the person to whom the same was furnished.]

[4][**17. Penalties for neglect of duty, etc.—**

(1) Without prejudice to the provisions contained in section 9, every enrolled member of the Force who shall be guilty of any violation of duty or wilful breach or neglect of any rule or lawful order made by a superior officer, or who shall withdraw from duties of his office without permission, or who, being absent on leave, fails, without reasonable cause, to report himself for duty on the expiration of the leave, or who engages himself without authority for any employment other than his duty as an enrolled member of the Force, or who shall be guilty of cowardice may be taken into Force custody and shall, on conviction, be punished with imprisonment which may extend to one year.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1973), an offence punishable under this section shall be cognizable and non-bailable.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1973), the Central Government may invest Assistant Inspector-General, Senior Commandant or Commandant with the powers of a Magistrate of any class for the purpose of inquiring into or trying any offence committed by an enrolled member of the Force and punishable under this Act, or any offence committed by an enrolled member of the Force against the person or property of another member of the Force:

Provided that—

(i) when the offender is on leave or absent from duty; or

(ii) when the offence is not connected with the offender's duties as an enrolled member of the Force; or

(iii) when it is a petty offence even if connected with the offender's duties as an enrolled member of the Force; or

(iv) when, for reasons to be recorded in writing, it is not practicable for the Commandant invested with the powers of a Magistrate to inquire into or try the offence, the offence may, if the prescribed authority within the limits of whose jurisdiction the offence has been committed so requires, be inquired into or tried by an ordinary criminal court having jurisdiction in the matter.

(4) Nothing contained in this section shall be construed to prevent any enrolled member of the Force from being prosecuted under any other law for any offence made punishable by that law, or for being liable under any such law to any other or higher penalty or punishment than is provided for such offence by this section:

Provided that no person shall be punished twice for the same offence.]

1. The words "superior officer or" omitted by Act 60 of 1985, s. 12 (w.e.f. 20-9-1985).
2. Ins. by s. 13, *ibid*. (w.e.f. 20-9-1985).
3. Ins. by s. 14, *ibid*. (w.e.f. 20-9-1985).
4. Subs.by s. 15, *ibid*., for section 17 (w.e.f. 20-9-1985).

18. Application of act 22 of 1922 to members of the Force. — The Police (Incitement to Disaffection) Act, 1922 shall apply to members of the Force as it applies to members of a police force.

1[19. Certain Acts not to apply to members of the Force. — Nothing contained in the Payment of Wages Act, 1936 (4 of 1936), or the Industrial Disputes Act, 1947 (14 of 1947), or the Factories Act, 1948 (63 of 1948), or any corresponding law relating to investigation and settlement of industrial dispute in force in a State shall apply to members of the Force.]

20. Protection of acts of members of the Force. —

(1)In any suit or proceeding against any 2* * * member of the Force for any act done by him in the discharge of his duties, it shall be lawful for him to plead that such act was done by him under the orders of a competent authority.

(2)Any such plea may be proved by the production of the order directing the act, and if it is so proved, the 2* * * member of the Force shall thereupon be discharged from any liability in respect of the act so done by him, notwithstanding any defect in the jurisdiction of the authority which issued such order.

(3)Notwithstanding anything contained in any other law for bed time being in force, any legal proceeding, whether civil or criminal, which may lawfully be brought against any 2* * * member of the Force for anything done or intended to be done under the powers conferred by, or in pursuance of, any provision of this Act or the rules thereunder shall be commenced within the months after three act complained of shall have been committed and not otherwise; and notice in writing of such proceeding and of the cause thereof shall be given to the person concerned and his superior officer at least one month before the commencement of such proceeding.

1. Subs. by Act 60 of 1985, s. 16, for section19 (w.e.f. 20-9-1985).
2. The words "superior officer or" omitted by s. 18 and the Schedule, ibid. (w.e.f. 20-9-1985).

21. Power to make rules. —

(1)The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2)In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for—

(a) regulating the classes and grades and the pay and remuneration of 1*** members of the Force and their conditions of service in the Force.

(b) regulating the powers and duties of 1*** members of the Force authorised to exercise any functions by or under this Act.

(c) fixing the period of service for 1*** members of the Force;

[2][(d) prescribing the description and quality of arms, accoutrements, clothing, and other necessary articles to be furnished to the members of the Force.

(e) prescribing the places of residence of the member of the Force.

(f) institution, management and regulation of any fund for any purpose connected with the administration of the Force.

(g) regulating the punishments and prescribing authorities to whom appeal shall be preferred from orders of punishment, or remission of fines, or other punishments and the procedure to be followed for the disposal of such appeals.

(h) regulating matters with respect to Force custody under this Act, including the procedure to be followed for taking persons into such custody.

(i) regulating matters with respect to disposal of cases relating to offences under this Act and specifying the places in which person convicted under this Act may be confined.

(j) any other matter which has to be, or may be, imposed or in respect of which rules are required to be made under this Act.]

[3][(3) Every rule made under this Act shall be laid, as soon as may be, after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.]

THE SCHEDULE

(See section 7)

A.B. has been appointed a member of the Railway Protection Force under the Railway Protection Force Act, 1957, and is vested with the powers, functions, and privileges of a member of the Force.

1. The words "superior officers and" omitted by Act 60 of 1985, s. 17 (w.e.f. 20-9-1985).
2. Subs. by s. 17, ibid., for clauses (d) and (e) (w.e.f. 20-9-1985).
3. Subs. by s. 17, ibid., for sub-section (3) (w.e.f. 20-9-1985).

RAILWAY PROPERTY (UNLAWFUL POSSESSION) ACT, 1966

20

Introduction:

1. In order to combat crime against Railway Property effectively, the Railway property (Unlawful Possession) Act-1966 was enacted and made operational w.e.f. 01.04.1968.

2. Initially Railway crimes were detected, investigate, and prosecuted by the GRP under the Railway Stores (Unlawful Possession) Act-1955.

3. With the increase of crime, the State Police remained preoccupied with law-and-order problems, left with little time to give proper attention towards dealing the crime relating to railways.

4. The definition of "Railway Property" under Railway Stores (Unlawful Possession) Act, 1955 was also very narrow.

Booked Consignments were not part of the definition of the Railway's property.

5. In the Railway property (Unlawful Possession) Act-1966-
   - **a)** The powers of registration, investigation & prosecution of offences have been handed over to RPF in place of GRP, and
   - **b)** Definition of railway's property has also been widened to include booked consignment, goods, money, valuable security, which were not included under the definition of old Act of 1955.

Salient features:

1. This Act extends to whole of India.
2. As mentioned above, definition of railway's property has been widened.
3. A provision of deterrent punishment has been made under this Act, which extends up to 5 years of imprisonment and fine. Enhanced punishment for second offence.
4. A special evidentiary rule has been incorporated which shifts the onus of proof from the prosecution to the accused.
5. The RPF officers making inquiry under this Act has been vested with similar powers as available to police during investigation of a crime and status of such enquiry has been made judicial for the purpose of Sec193&228 IPC.

Important definitions (Section 2):

a) **Force**: means Railway Protection Force constituted under Section 3 of the Railway Protection Force Act, 1957.

b) **Member of the Force** means a person appointed to the force, other than a superior officer.

c) **Officer of the Force**: an officer of and above the rank of Assistant Sub-Inspector appointed to the force and includes a superior officer.

d) **Railway Property**: includes any goods, money or valuable security or animal belonging to, or in the charge or possession of, a Railway administration.

e) **Superior Officer**: means any of the officers appointed under Section 4 of the Railway Protection Force Act, 1957, and includes any other officer appointed by Central Government as superior officer of the force.

Penalty for Unlawful Possession of Railway Property [Sec. 3]:

Whoever is found, or is proved to have been, in possession of any railway property reasonably suspected of having been stolen o run lawfully obtained shall, unless he proves that the property came into his possession lawfully, be punishable.

Punishment for Connivance [Sec. 4]:

Any owner or occupier of land or building, or any agent of such owner or occupier in- charge of the management of that land or building, who willfully connives at an offence against the provisions of this Act, shall be punishable with imprisonment for a term which may extend to five years, or with fine, or with both.

Power to Arrest without Warrant [Sec. 6]:

Any superior officer or member of the Force may, without an order from a magistrate and without a warrant, arrest any person who has been concerned in an offence punishable under this Act or against whom a reasonable suspicion exists of having been so concerned.

Inquiry under the Act [Sec. 8]:

Same power sand shall be subject to the same provisions as the officer in-charge of a police station may exercise and is subject to under the Cr.P.C., 1898, when investigating a cognizable offence.

Other Important Provisions:

1. The offences under this Act will non cognizable (Sec-5)
2. The Power to summon persons to give evidence & produce documents (Section-9).
3. To get the search warrant issued from court. (Section-10).
4. All the searches and arrest under this Act shall be carried out according to provisions of Cr.P.C.
5. All officers are required to assist members of the force in the enforcement of this Act (Section-12).
6. Court has power to forfeiture vehicles or other conveyances etc. used in carrying the property (Section—13).
7. The provisions of this Act shall have effect not withstanding anything inconsistent there with contained in any other Law for the time being in force (Section-14).
8. The Railway Stores (Unlawful Possession) Act-1955 is hereby repealed.

THE RAILWAY PROPERTY (UNLAWFUL POSSESSION) ACT, 1966
ACT NO. 29 OF 1966

[16th September 1966.]

An Act to consolidate and amend the law relating to unlawful possession of railway property.

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

1. Short title, extent, and commencement. (1) This Act may be called the Railway Property (Unlawful Possession) Act, 1966.

(2) It extends to the whole of India.

(3) It shall come into force on such a date as the Central Government may, by notification in the Official Gazette, appoint.

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

(a) **"Force"** means the Railway Protection Force constituted under section 3 of the Railway.
Protection Force Act 1957 (23 of 1957).

(b) **"Member of the Force"** means a person appointed to the Force, other than a superior officer,

(c) **"Officer of the Force"** means an officer of and above the rank of Assistant Sub-Inspector appointed to the Force and includes a superior officer,

(d) **"Railway property"** includes any goods, money or valuable security or animal, belonging to, or in the charge or possession of a railway administration,

(e) **"Superior officer"** means any of the officers appointed under section 4 of the Railway.
Protection Force Act, 1957 (23 of 1957), and includes any other officer appointed by the Central Government as a superior officer of the force,

(f) words and expressions used but not defined in this Act and defined in the Indian Railways Act, 1890 (9 of 1890), shall have the meanings respectively assigned to them under that Act.

3. [Penalty for theft, dishonest misappropriation, or unlawful possession of railway property]- [Whoever commits theft, or dishonestly misappropriates or is found, or is proved) to have been, in possession of any railway property reasonably suspected of having been stolen or unlawfully obtained shall, unless he proves that the railway property came into his possession lawfully, be punishable-

(a) for the first offence, with imprisonment for a term which may extend to five years, or with fine, or with both and in the absence of special and adequate reasons to be mentioned in the judgment of the court, such imprisonment shall not be less than one year and such fine shall not be less than one thousand rupees.

(b) for the second or a subsequent offence, with imprisonment for a term which may extend to five years and also with fine and in the absence of special and adequate reasons to be mentioned in the judgment of the court, such imprisonment shall not be less than two years and such fine shall not be less than two thousand rupees.

[Explanation. For the purposes of this section, "theft" and "dishonest misappropriation" shall have the same meanings as assigned to them respectively in section 378 and section 403 of the Indian Penal Code (45 of 1860)]

4. [Punishment for abetment, conspiracy, or connivance at offences.]-[Whoever abets or conspires in the commission of an offence punishable under this Act, or any owner] or occupier of land or building, or any agent of such owner or occupier in-charge of the management of that land or building, who willfully connives at an offence against the provisions of this Act, shall be punishable

with imprisonment for a term which may extend to five years, or with fine, or with both.

[Explanation. For the purposes of this section, the words "abet" and "conspire" shall have the same meanings as assigned to them respectively in sections 107 and 120A of the Indian Penal Code (45 of 1860.)]

5. **Offences under the Act not to be cognizable-** Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (5 of 1898), an offence under this Act shall not be cognizable.
6. **Power to arrest without warrant-** Any superior officer or member of the Force may, without an order from a Magistrate and without a warrant, arrest any person who has been concerned in an offence punishable under this Act or against whom a reasonable suspicion exists of his having been so concerned.
7. **Disposal of persons arrested-** Every person arrested for an offence punishable under this Act shall, if the arrest was made by a person other than an officer of the Force, be forwarded without delay to the nearest officer of the Force.
8. **[Inquiry how to be made]-**
   (1) [When an officer of the Force receives information about the commission of an offence punishable under this Act, or when any person is arrested) by an officer of the Force for an offence punishable under this Act or is forwarded to him under section 7, he shall proceed to inquire into the charge against such person.
   (2) For this purpose, the officer of the Force may exercise the same powers and shall be subject to the same provisions as the officer incharge of a police-station may exercise and is subject to under the Code of Criminal Procedure, 1898 (5 of 1898), when investigating a cognizable case Provided that-

(a) if the officer of the Force is of opinion that there is sufficient evidence or reasonable ground of suspicion against the accused person, he shall either admit him to bail to appear before a Magistrate having jurisdiction in the case, or forward him in custody to such Magistrate.

(b) if it appears to the officer of the Force that there is not sufficient evidence or reasonable ground of suspicion against the accused person, he shall release the accused person on his executing a bond, with or without sureties as the officer of the Force may direct, to appear, if and when so required before the Magistrate having jurisdiction, and shall make a full report of all the particulars of the case to his official superior

9. Power to summon persons to give evidence and produce documents-

(1) An officer of the Force shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document, or any other thing in any inquiry which such officer in making for any of the purposes of this Act.

(2) A summons to produce documents or other things may be for the production of certain specified documents or things or for the production of all documents of things of a certain description in the possession or under the control of the person summoned.

(3) All persons, so summoned, shall be bound to attend either in person or by an authorized agent as such officer may direct, and all persons so summoned shall be bound to state the truth upon any subject respecting which they are examined or make

statements and to produce such documents and other things as may be required.

Provided that the exemptions under sections 132 and 133 of the Code of Civil Procedure, 1908 (5 of 1908), shall be applicable to requisitions for attendance under this section.

(4) Every such inquiry as aforesaid, shall be deemed to be a "judicial proceeding" within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860).

10. Issue of search warrant-

(1) If an officer of the Force has reason to believe that any place is used for the deposit or sale of railway property which had been stolen or unlawfully obtained, he shall make an application to the Magistrate, having jurisdiction over the area in which that place is situate, for issue of a search warrant.

(2) The Magistrate to whom an application is made under sub-section (1), may, after such inquiry as he thinks necessary, by his warrant authorize any officer of the Force-

(a) to enter, with such assistance as may be required, such place.

(b) to search the same in the manner specified in the warrant.

(c) to take possession of any railway property therein found which he reasonably suspects to be stolen or unlawfully obtained, and

(d) to convey such railway property before a Magistrate, or to guard the same on the spot until the offender is taken before a Magistrate, or otherwise to dispose thereof in some place of safety.

11. Searches and arrests how to be made- All searches and arrests made under this Act shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1898 (5 of 1898), relating respectively to searches and arrests made under that Code.

12. **Officers required to assist** All officers of Government and all village officers are hereby empowered and required to assist the superior officers and members of the Force in the enforcement of this Act.
13. **Power of courts to order forfeiture of vehicles, etc.** Any court trying an offence punishable under this Act may order the forfeiture to Government of any property in respect of which the Court is satisfied that an offence under this Act has been committed and may also order the forfeiture of any receptacles, packages, or coverings in which such property is contained, and the animals, vehicles, or other conveyances used in carrying the property.
14. **Act to override other laws-** The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.
15. **Construction of references to laws not in force in Jammu and Kashmir-** Any reference in this Act to a law which is not in force in the State of Jammu and Kashmir shall, in relation to that State, be construed as a reference to the corresponding law, if any, in force in that State.
16. **Repeal and savings-**
    (1) The Railway Stores (Unlawful Possession) Act, 1955 (51 of 1955), is hereby repealed.
    (2) Nothing contained in this Act shall apply to offences punishable under the Act hereby repealed and such offences may be investigated and tried as if this Act had not been passed.
    (3) The mention of particular matters in sub-section (2) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 (10 of 1897), with regard to the effect of repeals.

THE STATUTORY INVESTIGATION INTO RAILWAY ACCIDENTS RULES, 1998

21

In exercise of the powers conferred by section 122 of the Railway Act, 1989 24 of 1989), the Central Government hereby makes the following rules namely:

1. (1) These rules may be called the Statutory Investigation into Railway Accidents Rules, 1998.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. (1) (a) Inquiry into a serious accident by the Commissioner of Railway Safety Where the Commissioner of Railway Safety receives notice under section 113 of the Railways Act, 1989 (24 of 1989) hereinafter referred to as the Act, of the occurrence of an accident which he considers of a sufficiently serious nature to justify such a course, he shall, as soon as may be, notify the Chief Commissioner of Railway Safety, the Railway Board and the Head of the Railway Administration concerned of his intention to hold an inquiry and shall, at the same time, fix and communicate the date, time and place for the inquiry. He shall also issue or cause to be issued a Press Note in this behalf inviting

the public to tender evidence at the inquiry and send information relating to the accident to his office address.

(1) (b) While notifying his intention to hold an inquiry as aforesaid, the Commissioner of Railway Safety shall also inform or cause to inform the Chief Secretary of the State, the District Magistrate and the Superintendent of Police of the district concerned.

(2) For the purpose of this rule, every accident to a train carrying passengers which is attended with loss of life of a passenger or passengers in the train or with grievous hurt, as defined in the Indian Penal Code (hereinafter referred to as the grievously hurt) to a passenger or passengers in the train or with serious damage or railway property of a value exceeding twenty-five lakh rupees and any other accident which in the opinion of the Chief Commissioner of Railway Safety or the Commissioner of Railway Safety requires the holding of an inquiry shall be deemed to be an accident of such a serious nature as to require the holding of an inquiry.

These accidents shall be termed as "Serious train accidents".

(3) However, for any accident the Chief Commissioner may either hold the inquiry himself or direct any Commissioner of Railway Safety to do so. Explanation. The inquiry under this rule shall be obligatory only in those cases where the passengers, killed or grievously hurt were travelling in the train carrying passengers. If an accident involving a train carrying passengers leads to loss of life or grievous injury to any Railway Servant(s) irrespective of whether he was travelling in that passenger train or not, inquiry under this rule shall be obligatory. However, if a person being a railway servant or holding valid pass or ticket or otherwise travelling outside the Rolling Stock of a Passenger train (such as on footboard or roof or buffers but excluding the inside of vestibules between coaches) is killed or grievously hurt or is run over at a level crossing or elsewhere on the railway track, an inquiry under this rule shall not be obligatory. Similarly, if in a collision between a road vehicle and a passenger train at a level crossing, no passenger in the train is killed or grievously hurt, it shall not be obligatory to hold an inquiry. For the purpose of this rule, workmen's trains or ballast trains or Material trains or Accident

Relief Trains or Tower wagons or such other trains carrying workmen or cattle specials/Military specials carrying authorised escorts or similar such trains shall also be treated as passenger trains and in the event of a workman or escort being killed or grievously hurt as a result of an accident to the train, an inquiry under this rule shall be obligatory,

(4) When an accident requiring the holding of an inquiry occurs at a station whether the jurisdiction of two or more Commissioners of Railway Safety meet, the duty of complying with this rule shall devolve on the Commissioner of Railway Safety within whose jurisdiction the railway working such station lies. At other such locations where the issue cannot be resolved then it shall be finalised by the Chief Commissioner of Railway Safety.

(5) (a) If, for any reason, the concerned Commissioner of Railway Safety is unable to hold an inquiry at an early date after the occurrence of such an accident, he shall intimate by the fastest means of communication without any delay to the Chief Commissioner of Railway Safety of the reasons why the inquiry cannot be held by him. The Chief Commissioner may choose to conduct the inquiry himself or direct any other Commissioner to take up the inquiry or decide to let the inquiry be conducted by the Railway Administration. The concerned Commissioner shall thereafter notify the Railway Administration and the Railway Board accordingly.

(b) On receipt of the proceedings of the joint inquiry (inquiry made by a Committee of Railway Officers) from the Head of the Railway Administration in accordance with Rule 15 of Railway (Notices of and Inquiries into Accidents) Rules, 1997, the Commissioner of Railway Safety shall scrutinise the same, and in case he agrees with the findings of the joint inquiry, shall forward a copy of the report to the Chief Commissioner of Railway Safety along with his views on the findings and recommendations made. In case the Commissioner feels, he may direct the Railway Administration either to conduct inquiry de novo or re-examine specific issues and submit revised findings. On the other hand the Commissioner of Railway Safety, after examination of the joint inquiry proceedings, considers that an inquiry should be held by

himself, he shall, as soon as possible, notify the Chief Commissioner of Railway Safety, the Railway Board, and the Head of the Railway Administration concerned, of his intention to hold as inquiry and he shall at the same time fix, and communicate the date, time and place for the inquiry.

(6) (a) Where having regard to the nature of the accident, the Central Government has appointed a Commission of Inquiry to inquire into the accident under the Commission of Inquiry Act, 1952 (60 of 1952), or has appointed any other authority to inquire into it and for that purpose has made all or any of the provisions of the said Act applicable to that authority, the Commissioner of Railway Safety to whom notice of the accident has been given shall not hold his inquiry and where he has already commenced his inquiry he shall not proceed further with it and shall hand over the evidence, records or other documents in his possession, relating to the inquiry, to such authority as may be specified by the Central Government in this behalf.

(b) If, as a result of the Police Investigation a regular case is lodged in a Criminal Court by the Police or arising out of the accident, a case is lodged in a Civil Court by interested person(s), the Commissioner shall finalise his report and circulate the same as per Rule 4, as a strictly confidential document.

3. **Commissioner of Railway Safety to submit a brief preliminary narrative report -** Where a Commissioner of Railway Safety has held an inquiry in respect of any of the accidents described in sub-rule (2) of Rule 2, he shall submit a brief preliminary narrative report to the Chief Commissioner of Railway Safety and the Railway Board simultaneously. In case Chief Commissioner of Railway Safety has held an inquiry in terms of Rule 2(3) and 2(5) he shall submit the brief preliminary narrative report to the Railway Board. The report shall be factual and shall not contain any reference to persons implicated.
4. **Commissioner of Railway Safety to submit a report –**

(1) Whenever the Commissioner of Railway Safety has made an inquiry under Rule 2, he shall submit a confidential report in

writing to the Chief Commissioner of Railway Safety and shall forward copies of the report to-

i. the Railway Board.
ii. the Railway Administration of all the Zonal Railways.
iii. in the case of a Railway under the control of a State Government or Local Administration to such Government or administration if the accident has occurred in that Railway.
iv. other Commissioner of Railway Safety;
v. the Director, Intelligence Bureau, Ministry of Home Affairs, Government of India, if the Commissioner of Railway find that the accident was caused by sabotage or train wrecking.

(2) In case the inquiry has been held by the Chief Commissioner of Railway Safety he shall forward his report to the authorities mentioned in (i) to (vi) of sub- rule (1) of this Rule.

5. **Publication of reports-** Recommendations in regard to the publication of reports shall be made by the Chief Commissioner of Railway Safety and Railway Board (Ministry of Railways) informed accordingly. In case the Railway Board has reservations on the recommendations of the Chief Commissioner, the matter shall be finally decided by the Central Government (Ministry of Civil Aviation).
6. **District Magistrate or his representative to attend the inquiry conducted by Commissioner of Railway Safety-** Where no Magisterial inquiry is being made under clause (a) or (b) of Rule 17 of the Railway (Notices of and Inquiries into Accidents) Rules, 1997, the District Magistrate shall, as far as possible, attend the inquiry conducted by the Commissioner of Railway Safety personally or depute some other officer to represent him at the inquiry.
7. **District Superintendent of Police or his representative.** The District Superintendent of Police shall, as far as possible also attend the inquiry conducted by the Commissioner of Railway

Safety personally or depute some other officer to represent him at the inquiry.

8. **Commissioner of Railway Safety to assist the Magistrate of the Commission of Inquiry etc. in clarifying technical matters-** The Commissioner of Railway Safety, as far as possible, assist any Magistrate making a judicial inquiry or an inquiry under Rule 17 of Railway (Notices of and Inquiries into Accidents) Rules, 1997 or a Commission of Inquiry appointed under the Commission of Inquiry Act, 1952 (60 of 1952), or any other authority appointed by the Central Government to which all or any of the provisions of the said Act have been made applicable, whenever he may be called upon to do so for the purpose of clarification of any technical matters.
9. **Powers of the Commissioner of Railway Safety-** Nothing in these rules shall, except to the extent provided in sub-rule (6) of Rule 2, be deemed to limit or otherwise affect the exercise of any of the powers conferred on Commissioner of Railway Safety by sections 7 and 8 of the Act of 1989.
10. **Repeal and Saving-**

(1) The Statutory Investigation into Railway Accident Rules, 1973', published with notification of Government of India in the Ministry of Tourism & Civil Aviation No. 22, dated 2-6-1973, Part II, Section 3 are hereby repealed.

(2) Notwithstanding such repeal, anything done, or any action taken under the rules hereby repealed shall be deemed to have been done or taken under the corresponding provisions of these rules.

THE RAILWAY (NOTICES OF AND INQUIRIES INTO ACCIDENTS) RULES, 1998

22

In exercise of the powers conferred by section 122 of the Railways Act, 1989 (24 of 1989), the Central Government hereby makes the following rules, namely-

1. Short title and commencement-

(1) These rules may be called the Railway (Notices of and Inquiries into Accidents) Rules, 1998.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. Particulars to be given in the notices- The notices mentioned in section 113 of the Railways Act, 1989 (24 of 1989) (hereinafter referred to as the Act), shall contain the following particulars, namely: -

i. Kilometerage, or station, or both, at which the accident occurred.
ii. time and date of the accident.
iii. number and description of the train, or trains.
iv. nature of the accident.

v. number of people killed or injured, as far as is known.
vi. cause of the accident, as far as is known; and
vii. probable detention to traffic.

3. Responsibility for sending notices, to whom to be sent and mode thereof- Whenever any accident, as falls under section 113 of the Act (hereinafter referred to as "Reportable train accident") occurs in the course of working a railway, the Station Master nearest to the place at which the accident has occurred or, where there is no Station Master, the railway servant in charge of the section of the railway on which the accident has occurred or any other Station Master in charge of a section of a railway to whom the report of the accident is made, shall give notice of the accident by telegraph to the Commissioner of Railway Safety, the District Magistrate and the District Superintendent of Police of the district in which the accident has occurred or such other Magistrate or police officer as may be appointed in this behalf by the State Government concerned and by telegraph, telephone or through special messenger or such other quick means as may be available, to the Superintendent of Railway Police and to the officer-in-charge of the police station within the local limits of which the accident has occurred.

Explanation- For the purpose of this rule, "Reportable Train accident" under section 113 of the Act also includes those usually attended with loss of human life (such as accidents to passenger trains involving collisions, derailments, train wrecking, or attempted train-wrecking, cases of running over obstructions placed on the line, of passengers falling out of trains or of fires in trains), or grievous hurt as defined in the Indian Penal Code (hereinafter referred to as the grievous hurt), or serious damage to railway property of the value exceeding [rupees two crore] which have not actually occurred but which by the nature of the accident might reasonably have been expected to occur; and also cases of landslides or of breach by rain or flood which cause the

interruption of any important throughline of communication for at least 24 hours.

4. Mode of sending notices to the State Government- The notice of accidents, required under section 113 of the Act, to be sent without delay by the Railway Administration, shall be sent to the State Government

a) by telegram in the case of-

i. accidents deemed, under the Explanation to Rule 3, to be serious by reason of loss of human life;

ii. accidents by reason of which the permanent way is likely to be blocked for more than twenty-four hours; and

iii. train-wrecking or attempted train-wrecking; and

(b) by letter in all other cases.

5. Railway servants to report accidents- Every railway servant shall report, with as little delay as possible every accident occurring in the course of working the railway which may come to his notice and such report shall be made to the nearest Station Master, or, where there is no Station Master, to the railway servant in charge of the section of the railway on which the accident has occurred.

6. Station Master or railway servant in charge of the section to report accidents- The Station Master or the railway servant in charge of the section, shall report all accidents in accordance with the rules laid down by the Railway Administration concerned for the reporting of accidents.

[6A. Responsibility of ensuring correct reporting of accidents- The responsibility of ensuring correct reporting of accidents shall be of the Divisional Railway Manager (DRM) at Divisional Level and the General Manager (GM) at Zonal Level.]

7. Railway Administration to report serious accidents- (1) Whenever a serious accident as defined in sub-rule (2) of Rule 2 of the Statutory Investigation into Railway Accidents Rules, 1998 occurs, the railway administration concerned shall, as soon after the accident as possible, by telegraph, supply to the Press such

particulars as are mentioned in Rule 2 and as are till then available, and by supplementary telegrams if necessary, immediately after further information is available. A copy shall be sent simultaneously by express telegram to the Railway Board, the Commissioner of Railway Safety of the circle concerned and the Chief Commissioner of Railway Safety. In addition, the Commissioner of Railway Safety shall be informed, telephonically, of any serious accident, by the control of the division in which the accident has occurred.

(2) For the purpose of sub-rule (1), an accident shall be a serious railway accident where-

(i) accident to a train carrying passengers which is attended with loss of life or with grievous hurt to a passenger or passengers in the train, or with serious damage to railway property of the value exceeding [rupees two crore] and any other accident which in the opinion of the Chief Commissioner of railway Safety or Commissioner of Railway Safety requires the holding of an inquiry by the Commissioner of Railway Safety, shall be deemed to be a serious accident. A workmen's train or a ballast train carrying workmen or cattle special train or a tower wagon or such other train carrying workmen or cattle special, military special carrying authorised escorts or similar such train shall be treated as a passenger train.

(ii) an accident involving a carrying passengers leads to loss of life train carrying or grievous injury to any railway servant irrespective of whether he was travelling in that passenger train or not, it shall come under the purview of inquiry by the Commission of Railway Safety and shall be treated as a serious railway accident:

Provided that

(a) cases of trespassers run over and injured or killed through their own carelessness or of passengers injured or killed through their own carelessness, and

(b) cases involving persons being railway servants or holding valid passes/tickets or otherwise who are killed or grievously injured while travelling outside the rolling-stock of a passenger train such as on footboard or roof or buffer but excluding the inside of vestibules between coaches, or run over at a level crossing or elsewhere on the Railway track by a passenger train, and

(c) collusion, between a Road Vehicle and a passenger train at a Level Crossing where no passenger or Railway Servant is killed or grievously hurt shall not be treated as a Serious Railway Accident even if those travelling in the road vehicle are killed or grievously hurt shall not be treated as serious railway accident, unless the Chief Commissioner of Railway Safety or Commissioner of Railway Safety is of the opinion that the accident requires the holding of an inquiry by the Commissioner of Railway Safety.

8. **Facility for reaching the site of the accident-** Whenever any accident has occurred in the course of working a railway, the Head of the Railway Administration concerned shall give all reasonable aid to the District Magistrate or the Magistrate appointed or deputed under Rule 17 or to the Commission of Inquiry appointed under the Commissions of Inquiry Act, 1952 (60 of 1952), or any other authority to whom all or any of the provisions of the said Act have been made applicable, and to the Commissioner of Railway Safety, medical officers, the police and others concerned to enable them to reach the scene of the accident promptly and shall also assist those authorities in making inquires and in obtaining evidence as to the cause of the accident.
9. **Medical aid to the persons grievously hurt in accidents-** Whenever an accident, occurring in the course of working a railway, has been attended with grievous hurt, it shall be the duty of the Head of the Railway Administration concerned to afford medical aid to the sufferers and to see that they are properly and carefully attended to till they are removed to their homes or handed over to the care of their relatives or friends. In any such

case, or in any case in which any loss of human life or grievous hurt has occurred, the nearest available local Medical Officer shall be sent for if such Medical Officer is nearer at hand than the Railway Medical Officer.

[**9A.** (1) The reports containing the names and addresses of the injured victims or persons deceased shall be dispatched to the Principal Bench of the Railway Claims Tribunal. Wherever the names of next of kin of the deceased passengers are known, the said information shall also be furnished to the Principal Bench of the Railway Claims Tribunals.

(2) Legal Aid to Claimants or victims of accidents:- It shall be the duty of the Railway Administration to forward the names of the injured victims or the persons who died in a railway accident to the Principal Bench of the Railway a Claims Tribunal for rendering appropriate legal aid for obtaining compensation in the manner provided under the Railway Claims Tribunal Act and to that end, wherever information is available, the names of the next of kin shall also be furnished to the Principal Bench of the Railway Claims Tribunal.]

10. Arranging attendance of railway servants at the place of judicial inquiries or inquiries conducted by Commissioner of Railway Safety or a Magistrate. When an inquiry under Rule 2 of the Statutory Investigation into Railway Accidents Rules, 1998, or under Rule 17 of these rules, or a judicial inquiry is being made, the Head of the Railway Administration concerned shall arrange for the attendance, as long as may be necessary, at the place of inquiry, of all railway servants whose evidence is likely to be required at such inquiry; and if the inquiry is to be held by the Commissioner of Railway Safety under Rule 2 of the Statutory Investigation into Railway Accidents Rules, 1998 the Head of the Railway Administration concerned shall,

(a) cause notice of the date, hour and place at which the inquiry will begin to be given to the officers mentioned in clauses (a) and (c) of sub-rule (1) of Rule 14, and

(b) arrange for the attendance of the divisional officers, railway servants required as witness at the inquiry.

11. Action to be taken by Head of the Railway Administration on receipt of the report of Commissioner of Railway Safety. Whenever the Head of the Railway Administration concerned receives a copy of the report of the Commissioner of Railway Safety under Rule 4 of the Statutory Investigation into Railway Accidents Rules, 1998, he shall at once acknowledge its receipt, and-

(a) submit his remarks, on the views expressed in the report, to the Chief Commissioner of Railway Safety with copy to the Commissioner of Railway Safety immediately on receipt of the report by the Railway Administration and if he is not able to submit his remarks immediately he shall in his acknowledgment of the report indicate his intention to submit his remarks later a early as possible;

(b) if the Head of the Railway Administration concerned agree with the views expressed in the report and considers the prosecution of any person or persons desirable, he shall immediately forward a statement of such persons to the District Magistrate of the district in which the accident occurred, or to such other officer as the State Government may appoint in this behalf and to the concerned police authorities.

(c) in case the District Magistrate or Police Authorities require copies of the report, it may be sent to them, and the confidentiality of the report should be made clear to the District Magistrate Police Authorities, and the Police Authorities shall, as soon as possible, intimate the Head of the Railway Administration concerned about their decision regarding launching any prosecution.

12. Head of the Railway Administration to offer remarks on the suggestions made in the report of Commissioner of Railway

Safety. Whenever the report of the Commissioner of Railway Safety points to the necessity for or suggests a change in any of the rules or in the system of working of the railway, the Head of the Railway Administration concerned shall, intimate the action which has been taken, or which it proposes to take, to prevent a recurrence of similar accidents, to the Chief Commissioner of Railway Safety with copy to the Commissioner of Railway Safety.

13. Joint inquiry when dispensed with-

(1) Whenever a reportable train accident, such as is described in section 113 of the Act has occurred in the course of working a railway, the Head of the Railway Administration concerned shall cause an inquiry to be promptly made by a committee of railway officers (to be called a "joint inquiry") for a thorough investigation of the causes which led to the accident:

Provided that such an inquiry may be dispensed with-

(a) if any inquiry is to be held by the Commissioner of Railway Safety under Rule 2 of the Statutory Investigation into Railway Accidents Rules, 1998, or a Commission appointed under the Commissions of Inquiry Act, 1952 (60 of 1952) or any other authority appointed by the Central Government to which all or any of the provisions of the said Commission of Inquiry Act have been made applicable under Rule 2 of the said 'Statutory Investigation into Railway Accidents Rules, or

(b) if there is no reasonable doubt as to the cause of the accident; or

(c) if any department of the railway administration concerned intimates that it accepts all responsibility in the matter.

(2) Where such inquiry is dispensed with under clause (b) or clause (c) of the proviso to sub-rule (1), it shall be the duty of the Head of the Department of the Railway Administration responsible for the accident to make such inquiry (to be called a "departmental inquiry") as he may consider necessary and, if his staff or the system or working is at fault, to adopt or

suggest such measures as he may consider necessary for preventing a recurrence of similar accidents.

14. Notice of joint inquiry-

(1) Whenever a joint inquiry is to be made, the Head of the Railway Administration concerned shall cause notice of the date and hour at which the inquiry will commence, to be given to the following officers, namely: -

(a) the District Magistrate of the district in which the accident occurred, or such other officer as the State Government may appoint in this behalf, the Superintendent of the Railway Police, and the District Superintendent of Police.

(b) the Commissioner of Railway Safety for the section of the railway on which the accident occurred; and

(c) the Head of the Railway Police having jurisdiction at the place where the accident occurred or, if there are no Railway Police, the officer- in-charge of the police station having jurisdiction at such place.

(2) The date and hour at which the inquiry will commence shall be fixed so as to give the officers mentioned in sub-rule (1) sufficient time to reach the place where the inquiry is to be held. (3) When a joint inquiry is held into an accident after receipt of information about the inability of the Commissioner of Railway Safety to hold an inquiry, under sub-rule (5) of Rule 2 of the Statutory Investigation into Railway Accidents Rules, 1998, the Head of the Railway Administration concerned shall issue a Press Note in this behalf inviting the public to tender evidence at the inquiry send information or relating to the accident to the Joint Inquiry Committee at an address specified in the Press Note.

15. Report of joint inquiry or departmental inquiry to be sent to the Head of the Railway Administration and the action to be taken thereon-

(1) As soon as any joint inquiry or departmental inquiry has been completed, the President of the Committee of railway officers or the Head of the Department, as the case may be, shall send to the

Head of the Railway Administration concerned a report containing inter alia-

(a) brief description of the accident.
(b) description of the locality of the accident.
(c) detailed statement of the evidence taken.
(d) the conclusions arrived at together with a note of dissent, if any.
(e) reasons for conclusions arrived at.
(f) the nature and extent of the damage done.
(g) when necessary, a sketch illustrative of the accident.
(h) the number of railway servants killed or injured.
(i) the number of passengers skilled or injured.
(j) an appendix containing extracts of the rules violated by the staff ible responsible for the accidents.

(2) The Head of the Railway Administration concerned shall forward, with his remarks as to the action that is intended to be taken in regard to the staff responsible for the accident or for the revision of the rules or the system of working, a copy of the report referred to in sub-rule (1)-

(a) to the Commissioner of Railway Safety for the section of the railway on which the accident occurred.
(b) if no inquiry or investigation has been made under Rule 17 or if a joint or departmental inquiry has been held, first, to the District Magistrate or the officer appointed under clause (a) of sub-rule (1) of Rule 14, and
(c) if any judicial inquiry is being made, to the Magistrate making such inquiry.

(3) The copy of the report aforesaid shall be accompanied-

(a) in the case referred to in clause (b) of sub-rule (2), by a statement of the persons involved in the accident whose prosecution the Head of the Railway Administration concerned considers to be desirable.
(b) in the case referred to in clause (c) of sub-rule (2), by a copy of the evidence taken at the inquiry.

16. Reports of inquiries into accidents not covered by section 113 to be forwarded to Commissioner of Railway Safety-

(1) Whenever any accident, not of the nature specified in section 113 of the Act, such as averted collisions, breaches of block rules or other technical accidents, occurs in the course of working a railway, the Railway Administration concerned may cause an inquiry, either a joint inquiry or a departmental inquiry, to be held into the accident.

(2) Where an inquiry is held as provided under sub-rule (1), the Head of the Railway Administration concerned shall forward a copy of the report of the inquiry to the Commissioner of Railway Safety for the section of the railway on which the accident occurred.

17. Magisterial inquiry- Whenever an accident, such as is described in section 113 of the Act, has occurred in the course of working a railway, the District Magistrate or any other Magistrate who may be appointed in this behalf by the State Government, may either-

(a) himself make an inquiry into the causes which led to the accident; or

(b) depute a subordinate Magistrate, who if possible, should be a Magistrate of the first class, to make such an inquiry; or

(c) direct investigation into the causes which led to the accident, to be made by the police:

Provided that where, having regard to the nature of the accident, the Central Government has appointed a Commission of Inquiry to inquire into it under the Commission of Inquiry Act, 1952 (60 of 1952), or has appointed any other authority to inquire into it and for that purpose has made all or any of the provisions of the said Act applicable to that authority, a Magistrate or a police officer shall not make his inquiry or investigation under this rule and, where he has already commenced the inquiry or investigation, shall not proceed further with it; and such Magistrate or police officer shall hand over the evidence, records or other documents in his possession relating to the inquiry or investigation to such

authority as may be specified by the Central Government in this behalf.

18. Notice of Magisterial inquiry- Whenever it is decided to make an inquiry under clause (a) or clause (b) of Rule 17, the District Magistrate or other Magistrate appointed as aforesaid or the Magistrate deputed under clause (b) of Rule 17, as the case may be, shall at once inform the Head of the Railway Administration concerned and the Divisional Railway Manager by telegraph, of the date and hour at which the inquiry will commence so as to enable the Railway Administration to summon the requisite expert evidence, and thereafter, he shall proceed to the scene of the accident and conduct the inquiry.

19. Judicial Inquiry- A Magistrate, making an inquiry under Rule 17, may summon any railway servant, and any other person whose presence he may think necessary, and after taking the evidence and completing the inquiry shall, if he considers that there are sufficient grounds for holding a judicial inquiry, take the requisite steps for bringing to trial any person whom he may consider to be criminally liable for the accident.

20. The result of magisterial inquiry to be communicated to the Head of the Railway Administration- The result of every inquiry or investigation made under Rule 17 shall be communicated by the Magistrate who has held such inquiry or investigation, to the Head of the Railway Administration concerned and to the Commissioner of Railway Safety.

21. Procedure for summoning railway servants to assist the Magistrate holding judicial inquiry- (1) If in the course of any judicial inquiry into an accident occurring in the course of working a railway, the Magistrate holding such inquiry desires the assistance of the Commissioner of Railway Safety or Head of the Railway Administration concerned, he shall issue a requisition to the Chief Commissioner of Railway Safety or the Railway Board, for the presence of the Commissioner of Railway Safety or the Head of the Railway Administration, stating at the same time the

nature of the assistance required, and if the assistance of any Railway Officer is required the Magistrate shall issue a requisition to the Head of the Railway Administration for his attendance in the court.

(2) The requisition referred to in sub-section (1) shall state the nature of the assistance required. In summoning railway officials, the Magistrate shall take care not to summon on the same day so large a number of the employees, especially of one class, as to cause inconvenience to the working of the railway. In the case of serious accidents the Magistrate may obtain reports from the Commissioner of Railway Safety and the Head of the Railway Administration concerned in regard to the accident, before finally concluding the judicial inquiry.

22. Communication of the decision of judicial inquiry to the Railway Administration, Commissioner of Railway Safety and the State Government- On the conclusion of the judicial inquiry the Magistrate shall send a copy of his decision to the Head of the Railway Administration concerned and to the Commissioner of Railway Safety, and shall, unless in any case he thinks it unnecessary to do so, report the result of the inquiry to the State Government.

23. Police investigation-w to be dispensed with-report on loss of life, grievous hurt, or damage to railway property- (1) The Railway Police may make an investigation into the causes which led to any accident occurring in the course of working a railway and shall do so whenever-

(a) any such accident is attended with loss of human life or with grievous hurt, or with serious damage to railway property of the value exceeding [rupees two crore] or has prima facie been due to any criminal act or omission; or

(b) the District Magistrate or the Magistrate appointed under Rule 17 has given a direction under clause (c) of that rule:

Provided that where, having regard to the nature of the accident, the Central Government has appointed a Commission of Inquiry to

inquire into it under the Commissions of Inquiry Act, 1952 (60 of 1952), or has appointed any other authority to inquire into it and for that purpose has made all or any of the provisions of the said Act applicable to that authority, or where a magisterial inquiry is being held under clause (a) or clause (b) of Rule 17, the Railway Police shall not make an investigation under this rule, and, where they have already commenced their investigation shall not proceed further with it; and shall hand over the records or other documents in their possession relating to the investigation to such authority as may be specified by the Central Government in this behalf.

(2) The Railway Police shall report, with as little delay as possible to the nearest Station Master, or where there is no Station Master, to the railway servant in charge of the section of the railway, on which the accident has occurred, every accident which may come to their notice occurring in the course of working a railway attended with loss of human life, or with grievous hurt or with serious damage to railway property of the value exceeding [rupees two crore] or which has prima facie been due to any criminal act or omission.

24. Status of police officer investigating the accident- (1) Whenever an investigation is to be made by the Railway Police

(a) in a case in which an accident is attended with loss of human life (or with grievous hurt, or with serious damage to railway property of the value exceeding [rupees two crore]; or

(b) in pursuance of a direction given under clause (c) of Rule 17,

the investigation shall be conducted by the Head of the Railway Police of the area in which the accident has occurred, or if that officer is unable to conduct the investigation himself, by an officer to be deputed by him.

(2) The officer deputed under sub-rule (1) shall ordinarily be the senior officer available, and shall whenever possible be a Gazetted Officer, and shall in no case be of a rank lower than that of an Inspector:

Provided that the investigation may be carried out by an officer-in-charge of a police station: -

(i) in a case such as is referred to in clause (a) of sub-rule (1), if no loss of life or grievous hurt has been caused to more persons than one or no damage to railway property of value exceeding [rupees two crore] has been caused or there is no reason to suspect that any servant of the railway has been guilty of neglect of any rule relating to the working of the railway;

(ii) in the case referred to in clause (b) of sub-rule (1), if the District Magistrate so directs.

25. Notice of police investigation- The officer who is to conduct an investigation in pursuance of Rule 24 shall at once inform the Head of the Railway Administration concerned and the Divisional Railway Manager by telegraph of the date and hour at which the investigation will commence so that, if possible, the presence of a railway official may be arranged for to watch the proceedings and to aid the officer making the investigation, and thereafter, he shall proceed without delay to the scene of the accident and conduct the investigation there; so, however, that the absence of a railway official shall not be allowed to delay the investigation which shall be conducted as soon as possible after the accident has taken place.

26. Assistance by the District Police- (1) In every case to which Rule 24 applies, immediate information shall be given by the Railway Police of the area to the District Police. Who, if so, required, shall afford all necessary assistance and shall, if occasion arises, carry the investigation beyond the limits of the railway premises. But the Railway Police of the area shall primarily be responsible for carrying on the investigation within such limits.

(2) Subject to the provisions of these rules, the further prosecution of the case, on the conclusion of the police investigation, shall rest with the Railway Police.

27. Communication of the result of police investigation- The result of every police investigation shall be reported at once to the District Magistrate or other officer appointed in this behalf by the State Government to the Head of the Railway Administration concerned or other officer appointed by him, and to the Commissioner of Railway Safety.

28. District Police to discharge duties of Railway Police- Where there is no Railway Police in the area, the duties imposed by Rules 23, 24 and 25 sub-rule (2) of Rule 26, and Rule 27 on the Railway Police of the area, or on the Head of such Railway Police, shall be discharged by the District Police or by the District Superintendent of Police, as the case may be.

29. Repeal and saving- (1) The Railway (Notices of and Inquiries into Accidents) Rules, 1973, are hereby repealed.

(2) Notwithstanding such repeal, anything done, or any action taken under the rules hereby repealed shall be deemed to have been done or taken under the corresponding provisions of these rules.



THE RAIL LAND DEVELOPMENT AUTHORITY (DEVELOPMENT OF LAND AND OTHER WORKS) REGULATIONS, 2012

23

In exercise of the powers conferred by sub-section (1) of section 4-1 read with section 4F of the Railways Act, 1989 (24 of 1989) the Rail Land Development Authority, with the previous approval of the Central Government, hereby makes the following regulations, namely:

CHAPTER 1
PRELIMINARY

1. Short title and commencement. –

(1) These regulations may be called the Rail Land Development Authority (Development of Land and Other Works) Regulations, 2012.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. Definitions. -

(1) In these regulations, unless the context otherwise requires, -

(a) **"Act"** means the Railway Act, 1989 (24 of 1989).

(b) **"Authority"** means the Rail Land Development Authority constituted under section 4A of the Act.

(c) **"Central Government"** means the Ministry of Railways.

(d) **"Consultant"** means a consultant appointed by the Authority to assist it in feasibility studies and other development activities.

(e) **"Executive Board"** means the Board consisting of the Chairman, the Vice-Chairman and four Members appointed under section 4B of the Act

(f) **"Member"** means a Member of the Authority and includes its Chairman and Vice-Chairman.

(g) **"section"** means the section of the Act.

(h) **"Vice-Chairman"** means the Vice-Chairman of the Authority.

(2) The words and expressions used herein and not defined but defined in the Act or Rail Land Development Authority (Constitution) Rules, 2007, shall have the same meanings respectively as assigned to them in the Act or the said rules and the meaning of words 'lease', 'lessee', 'sub-lessee' used in these regulations shall also include 'license', 'licensee' and 'sub-licensee' respectively.

3. Manner of Development of Railway Land. -

Subject to directions as may be given by the Central Government in this behalf from time to time, the development of any railway land shall be effected by-

1. Vule G.S.R. 57(E), dated 30th January 2013, published in the Gazette of India, Extra. Pt. II, Sec. 3(1), No. 50, dated 31st January 2013.
2. Came into force on 31-1-2013.

(a) grant of lease of the railway land to developers who shall bear the cost of the development, or

(b) developing built-up area at the Authority's own cost and leasing the same.

4. Administration of Regulations and Delegation of Powers. –

(1) These regulations shall be administered by the Executive Board.

(2) The Executive Board referred to in sub-regulation (1) may-

(a) constitute Committees and Sub-Committees of Members and delegate to them any powers (excluding the power to make regulations); and

(b) delegate powers to Vice-Chairman, Members and other officers at various levels including delineation of responsibilities and authorities of each for efficient functioning of the Authority.

CHAPTER II
IDENTIFICATION AND ENTRUSTMENT OF RAILWAY LAND

5. Identification of Railway Land. -

The vacant railway land with potential for development shall be entrusted by the Central Government to the Authority: Provided that the Authority may from time to time, in consultation with the concerned Railway Administration, identify a railway land and send a proposal to the Central Government for considering its entrustment to the Authority in terms of the Act.

6. Review of the Entrusted Railway Land. –

(1) Based on pre-feasibility or feasibility study carried out by the Authority, the Authority may seek a review from the Central Government of its decision regarding any railway land entrusted to it by giving reasons for such a review.

Explanation. - The expression "review" shall also include the review for cancellation of the entrustment or change in size of the entrusted railway land or change in the location of the

railway land or removal by the Railway Administration of any encumbrance existing on the railway land.

(2) In case the Railway Administration is not in full possession of unimpaired title of land, the title records, plans etc., or the requisite mutation does not exist in Revenue or Municipal records in favour of the Central Government, the Authority may seek a review of the entrustment made by the Central Government.

CHAPTER III
TERMS AND CONDITIONS OF DEVELOPMENT OF RAILWAY LAND

7. Written Agreement before usage of Railway Land. -
The usage of railway land under these regulations shall be permitted only after a written agreement is executed between the Authority and the lessee on the terms and conditions as determined by the Authority under these regulations.

8. No Transfer of Ownership of Railway Land. –

(1) The ownership or title of the railway land shall continue to vest with the Railway Administration at all times and only the lease rights for the use of the land or the structures built on it shall be transferred by the Authority.

(2) The mortgage of railway land shall not be permitted at any time and the land shall be in capabale of conversion from leasehold to freehold.

(3) The transfer of ownership of railway land shall not be allowed at any time unless it is specifically instructed by the Central Government.

9. Possession of Railway land until Transfer to the Developer
The Railway land entrusted to the Authority shall continue to be in the possession and control of the Railway Administration until the Authority decides to give possession of land to any Developer after concluding of a contract for developing the railway land.

10. Feasibility Study and Market Survey. –

(1) A feasibility study and market survey shall be carried out by the Authority for each land to assess the revenue potential of the land and to select the best mode' of development from the point of view of revenue generation.

(2) The studies referred to in sub-regulation (1) shall be carried out either in house by its own employees or through the consultants and shall include the following, namely: -

(a) verifications of boundaries, title and permitted land use of the land.

(b) survey of encumbrances, encroachments and need for their rehabilitations.

(c) possible usages of land.

(d) best model of development for maximizing returns.

(e) period of lease; and

(f) valuation of the returns expected from the development of the railway land.

11. Fixation of Guidance or Reserve Price. -

(1) Based on the feasibility study and market survey a guidance or reserve price of each land shall be determined by the Authority which shall act as guidance for determining the reasonableness and acceptability of any offer.

(2) The guidance price shall be fixed prior to opening of bids and it shall be reviewed by the Authority in cases of significant changes in market conditions, scope or terms of development, government policies etc.

(3) The guidance price may or may not be disclosed to the bidders as may be decided by the Authority from case-to-case basis.

12. Period of Lease.

Based on the feasibility study and market survey, the Authority may decide the period of lease for each railway land, subject to the direction issued by Central Government in this regard.

13. Return of Railway land to Railway Administration.

Unless the Authority decides to offer the railway land and the buildings or structures existing on it on a fresh lease, on expiry or termination of the lease period, as the case may be, the entire railway land together with the buildings or structures existing thereon shall revert and vests upon the Railway Administration.

14. Types of Development.

(1) Subject to directions from Central Government, railway land can be developed for any purpose including but not limited to residential, commercial, institutional, hospitality, entertainment consisting of developments including but not limited to offices, shops, hotels, shopping malls, theatres, etc., as may be decided by the Authority based on the feasibility and market study:
Provided that specific Approval of Central Government shall be required for residential development on railway land.

(2) The Authority may also decide to develop the railway land in a phased manner, in case the phased development is considered to be more beneficial based on market assessment.

15. Local Master Plan and Building Byelaws.

The development of the railway land shall confirm to the local master plan under building byelaws of the area where such land is located:
Provided that where such local master plan or building byelaws are not available, the development for the land shall be decided by the Authority in accordance with the provisions of the National Building Code.

16. Selection of Developers.

(1) The selection of developers for lease of railway land shall be through a transparent, open, fair, and competitive bidding process by inviting tenders by the Authority and the bidder offering the highest financial bid shall be declared selected subject to the fulfillment of all the terms and conditions of the tender.

(2) The Authority shall endeavour to standardize the tender documents containing guidelines for inviting and finalizing tenders and terms and conditions of agreements for development under these regulations.

(3) In case the development is proposed to be carried out jointly with Central or the State public sector entities, the Authority may directly negotiate with the party concerned for finalizing the agreement based on the terms and conditions prepared under these regulations and in such a case, a memorandum of understanding (MOU) may precede the agreement with the developer.

17. Lease of Built-Up Area.

(1) In case the development of land is carried out with the cost being met by the Authority, the built-up area shall be leased either to a single party or to multiple parties, as may be determined by the Authority.

(2) The selection by the Authority of a single party for lease of an entire building or several buildings on the land shall be carried out in the manner as provided for the selection of a developer for developing land in these regulations.

(3) The leasing by the Authority of built-up areas, existing or proposed on land, to multiple parties shall be carried out either directly or through an estate agency appointed by the Authority.

(4) The eligibility criteria for lessees and the minimum annual lease rent per unit of built-up area under sub-regulation (3) shall be determined by the Authority for each site prior to accepting applications for such leasing.

18. Eligibility of Bidder.

A Bidder who meets the financial and technical eligibility criteria as per terms and conditions of the tender documents shall be eligible for participating in the bids.

19. Manner of Payment. –

(1) The selected developer or lessee or sub-lessee shall have to make payments to the Authority in consideration of the lease rights on the land as may be specified in the payment schedule in the tender documents or incorporated in the agreement with the Authority, as the case may be.

(2) The payments referred in sub-regulation (1) may involve one or more among following as may be specified in the tender documents-

(a) upfront lease premium.
(b) annual lease rent.
(c) percentage revenue share.
(d) any other form of payment.

(3) The upfront lease premium shall have to be paid in one or more instalments with or without interest and on such dates and within such time frame as may be determined by the Authority.

(4) The annual rent shall have to be paid in advance before a specified date each year for the entire period of lease and the same shall be subject to a periodic increase as may be determined by the Authority.

(5) The percentage revenue share shall have to be paid for the entire period of lease in such form and in such instalments as may be specified for each lessee and shall be subject to a minimum guaranteed annual payment, which shall be further subject to a periodic increase, as may be determined by the Authority.

20. Security and Guarantee. -

(1) Each bidder, for the due fulfillment of its obligations specified in the tender documents, shall have to deposit a bid security along with its bid for each development project for an amount and in the form as may be decided by the Authority and shall have to keep it valid until one month beyond the validity of its bid.

(2) Each lessee, for the due fulfillment of its obligations contained in the agreement, shall have to deposit a performance guarantee towards fulfillment of obligations of the agreement including successful completion of the development and payment of all dues.

(3) The performance guarantee shall continue until successful completion of the development of project and payment of all instalments for upfront lease premium.

(4) Each lessee or sub-lessee, for the due fulfillment of its obligations contained in the agreement, shall have to deposit a security deposit towards payment of annual rent or percentage revenue share as may be determined by the Authority.

(5) In case the upfront lease premium payment is to be paid in one or more instalments, the Authority may require the lessee to deposit bank guarantees to secure the payment of outstanding instalments.

(6) In case the selected developer or the lessee, as the case may be, fails to fulfil its respective obligations in terms of the tender conditions or agreement, the respective bid security, performance guarantee and security deposit shall be partly or fully forfeited, as determined by the Authority.

(7) In case the selected developer or the lessee or sub-lessee, as the case may be, fulfils its respective obligations in terms of the tender conditions or agreement, the respective bid security, performance guarantee and security deposit shall be refunded or returned without interest.

(8) The Authority shall have the sole and exclusive right over the bid security, performance guarantee and security deposit till it deduction or part forfeiture. is refunded with or without.

21. Escrow Account. -

(1) In addition to the securities and guarantees specified in these regulations, the lessee may also be required to open an escrow account with a scheduled Indian bank for crediting and routing

cash flows from the capital raised, revenues as well as expenditures of the lessee in respect of the development project and such escrow account shall be operated jointly by the Authority and the jessee under a tripartite escrow agreement signed with the escrow bank.

(2) The escrow account shall be closed only after fulfillment of conditions specified in the lease agreement and in case of projects where escrow account is not necessary, the lessee shall be required to route all its cash flows through designated bank accounts only.

22. Redevelopment Works by Developer.

Wherever a development project involves re-building of staff quarters, office complexes, station buildings and other railway assets either at the same location or at different location(s), as agreed in consultation with the Railway Administration, the same shall be developed in following manner as may be determined by the Authority-

(a) by the developer free of cost as a part of consideration for the lease rights; or

(b) by the Authority at its own cost.

23. Joint Partnership with the Developer.

The Authority may enter into partnership or joint venture with the developer selected in terms of these regulations for development of land as may be determined by the Authority prior to inviting the bids or signing the Memorandum of Understanding, as the case may be, and the form of such partnership shall be any one of but not limited to the following arrangements, namely: -

(a) revenue sharing or development sharing arrangement.

(b) equity partnership in a special purpose vehicle (SPV) created for the purpose of developing the land, or,

(c) any other manner decided by the Authority.

24. Extension of Time for Payment and Development.

(1) The lessee shall have to make the specified payments to the Authority and complete the development works within the time as may be determined by the Authority.

(2) The extension of time may be granted for payment of dues to Authority provided the lessee applies for it in writing and agrees to pay an additional interest at three per cent per annum, over and above the interest rate specified for the scheduled payment, on the overdue amount of payment as may be determined by the Authority.

(3) The Extension of time may be granted for completing the development works provided the lessee applies for it in writing and agrees to pay the liquidated damages as specified in the agreement.

25. Agreement with the company. -

(1) Except as may be determined by the Authority in special cases, the selected developer shall have to incorporate a company under the provisions of the Company's Act, 1956 for implementing the development project on the railway land and the development or lease agreement shall be executed only with such company and not with the selected developer.

(2) The said company shall take the position of the developer in the agreement and the said company shall be responsible for the design, construction, financing, marketing, operation, and maintenance of the project as specified in each agreement.

(3) The said company shall continue to exist until the expiry or termination of the agreement, but subject to equity lock-in conditions specified, shareholders, including the promoters can exit from the said company by disposing or transferring their shares to other parties in a manner as may be determined by the Authority.

26. Sub-lease by the Lessee.

(1) Except that under sub-regulation (3) of regulation 17, a lessee shall have the right to sub-lease either in part or in full the built-up area developed on the railway land to one or more parties in a manner and in forms of agreement as may be determined by the Authority and subject to

(a) the issue of completion certificate of a building by the nominated officer of the Authority.

(b) the terms and conditions specified in the lease agreement executed between the Authority and the lessee.

(c) sub-lease agreement being executed on a standard form specified by the Authority from time to time.

(d) the lessee maintaining a sub-lease register containing the details of all sub-lessees at any time in such forms and manner as may be determined by the Authority; and

(e) the sub-lease register being updated by the lessee periodically and a copy being submitted to the Authority in a manner as may be determined by the Authority.

(2) In case the development is proposed to be carried out jointly with Central or State public sector entities, the lessee shall have the right, in addition to the rights specified under sub-regulation (1), to sub-lease-

(a) the railway land in parts to several third parties or full to a single third party; or

(b) the built-up area developed on the railway land in full to a single third party,

(3) The third parties as referred in sub-regulation (2) may further sub-lease the build-up space as provided under sub-regulations (1) subject to the terms and conditions specified in the agreement between the lessee and third party.

27. Transfer of lease and sub-lease. –

(1) The lessee cannot transfer or assign the lease except by way of sub-leasing as permitted under these regulations:

Provided that a lessee under sub-regulation (3) of regulation 17 cannot further sub-lease the built-up area.

(2) Except as permitted under sub-regulation (3) of regulation 26, a sub-lessee cannot further sub-lease the built-up area to any other person or entity:

Provided that such a lessee or a sub-lessee shall be permitted to transfer the sub-lease to another person or entity with prior permission of the Authority and the lessee, respectively, and after making a one-time transfer charge to the Authority, through the lessee in case of a sub-lessee, in a manner as may be determined by the Authority.

28. Purposes of Use of Land. -

The lessee or sub-lessee shall not use the railway land and the built-up area on the railway land for any purpose not permitted in the agreement or lease agreement and if at any time the lessee or sub-lessee is found violating this, the agreement or lease agreement shall be liable to be terminated by the Authority.

29. Usage within Railway Station Premises. -

(1) The lessees and sub-lessees of a railway land situated within a railway station premises shall comply with the extant policies of the Central Government and Railway Administration with regard to maintaining cleanliness, hygiene, quality of food or beverages being sold, crowd control and public order.

(2) The authorized representatives of the Railway Administration may from time to time inspect the areas under the control of lessee or sub-lessee and issue instructions if any violation is observed.

(3) The lessee or sub-lessee concerned shall have to comply with such instructions within a reasonable time and advise the Railway Administration of the action taken and refusal to comply with such instructions or repeated violations shall be considered as a default on the part of the lessee or sub-lessee and

action may be initiated by the Authority for termination of lease or sub-lease.

30. Maintenance of Railway land and Buildings. –

(1) The lessee shall be responsible for maintenance and upkeep of the railway land and the buildings or structures developed on it at all times during the entire period of lease and until they are transferred to the Authority at the expiry or termination of the lease.

(2) The buildings or structures shall have to be maintained by the lessee in good working condition and to the satisfaction of the sub-lessees and the Authority as may be specified in the agreement and further the buildings and the land shall have to be kept free from all encroachments and illegal occupation.

31. Termination of Lease.

(1) A lease agreement may be terminated; -

(a) by the Authority-

(i) in case of default by the lessee in fulfilling the specified obligations as provided in the Agreement; or

(ii) if the Railway Land is required by the Railway Administration for operational purposes.

(b) by the lessee in case of default by the Authority in fulfilling the (b specified obligations as provided in the agreement.

(2) In case of termination, the lessee shall be entitled to a termination payment as specified in the respective lease agreement and the termination payment shall be paid by the Authority in the manner specified in the lease agreement.

32. Substitution of Lessee. –

(1) A lessee may be substituted by the Authority

(a) in case of default by the lessee in making payments to its lenders in terms of financing agreement signed between them, by the party recommended by the lender; or

(b) in case of default by the lessee under the lease agreement, by bringing in another party to take over the rights and responsibilities of the lessee in terms of the lease agreement.

(2) In case of such substitution, all the contracts and agreements with the sub- lessees and contractors entered into by the lessee in terms of the lease agreement shall stand transferred and novated to the new entity and the lessee shall be entitled to a substitution payment as determined by the Authority or provided in the lease agreement.

33. Rights of sub-lessee on termination or expiry of Lease. –

(1) All sub-lease agreements shall be co-terminus with the lease agreement.

(2) Unless otherwise specified by the Authority, in the event of termination of the lease agreement by the Authority, all sub-lease agreements shall stand terminated and sub-lessees shall have to vacate the railway premises within the period specified.

(3) In case of termination of lease agreement resulting into premature termination of sub-lease a sub-lessee shall be entitled to refund of payments of rent made to the lessee in terms of the lease agreement for the period of sub-lease not availed by it.

34. Unforeseen Situations. -

Any unforeseen situation which may arise after issue of letter of acceptance or execution of lease agreement at any time during the period of lease which has not been foreseen in the tender document or the agreement, in such case the Authority shall address such conditions or situations as per the procedure provided in the tender document or the lease agreement in the mutual interest of both the parties to the agreement and the same shall be incorporated in the agreement as a modification to the contract or agreement.

CHAPTER IV
PROCEDURE FOR DEVELOPMENT

35. Appointment of Consultants and Estate Agencies. –

(1) The Authority may appoint Consultants for feasibility studies, marketing, bid process management, legal services, verification or validation of land records and such other services or activities as and when required by the Authority and such Consultants may be appointed through single, limited, open tender or as per the tendering system decided by the Authority.

(2) The Authority may appoint estate agencies for assisting the Authority in sub-leasing of built-up spaces to multiple parties or monitoring the various lease agreements and such other activities as may be required for successful development of the railway land as may be determined by the Authority and such estate agencies may be appointed as may be decided by the Authority.

36. Issue of Tender and Public Notice. -

(1) In case of selection of a developer or lessee through an open tender, Vice-chairman or the officer authorized by him in this behalf shall cause a tender notice to be issued, in the manner as determined by the Authority.

(2) In case of lease of built-up areas to multiple parties, Vice-chairman or the officer authorized by him in this behalf shall cause a public notice to be issued, in the manner as determined by the Authority, inviting applications for the allotment of the built-up areas.

37. Tender Document Fee. -

(1) A bidder can obtain tender documents from the office of the Authority on payment of a document fee as may be determined by the Authority and in case a bidder decides to download the tender document from the Authority's official website, it shall

have to deposit document fee together with its bid at the time of bid submission.

(2) A tender shall be liable to be rejected by the Authority unless it is accompanied with the requisite document fee or evidence of payment of such fee.

38. Right of Rejection of Bid and Cancellation of Bidding Process- A bid not meeting the requirements specified in the tender conditions shall be rejected by the Authority and the Authority may cancel a tender process without assigning any reason.

39. Opening of Financial Bid. -

The financial bids of only those bidders shall be opened who are found eligible in terms of the requirements specified in the tender document and the financial bids of those bidders who are found to be ineligible shall be returned to them unopened.

40. Letter of Acceptance. -

(1) The selected bidder shall be issued a letter of acceptance (LOA) in duplicate by the Authority.

(2) One copy of the LOA shall have to be signed and returned by the selected bidder as a token of acceptance.

(3) The LOA shall form the agreement between the selected bidder and the Authority for fulfillment of the terms and conditions specified in the LOA.

(4) The lessee shall not have any other right until a lease agreement is signed and the conditions precedent, if any specified therein, have been fulfilled

41. Execution of Agreement. -

(1) The selected bidder shall have to fulfill the pre-conditions within the time period specified in the tender document or LOA before execution of the lease agreement.

(2) The pre-condition referred to in the sub-regulation (1) shall be but not limited to the following, namely: -

(a) payment of the specified amount of the lump sum payment.

(b) creation of a company as per the provisions of the Companies Act, 1956, if required.

(c) submission of Performance Guarantee, etc.

(3) All agreements made under these regulations shall be executed on behalf of the Authority by the Vice-Chairman or such officer as may be authorised by him in this behalf.

(4) The selected developer shall execute an agreement in such form as may be specified by the Authority.

42. Possession of the Railway Land. –

(1) The lessee shall be provided the possession of the railway land only after it fulfills the conditions precedent, if so, specified in the lease agreement.

(2) Subject to any phasing plan and time bound removal of an existing encumbrance, if any, as specified in the lease agreement, encumbrance free railway land shall be provided to the lessee.

(3) A joint demarcation of the site shall be carried out by the Authority, the Railway Administration, and the lessee and a proper "land plan with schedule" shall be prepared and signed jointly between the Authority, Railway Administration, and the lessee.

(4) The physical handing over of the railway land shall be effected from the date of signing of "land plan with Schedule".

43. Copy of Agreement. –

(1) The Authority shall make available a copy of the agreement to Railway Administration for information and record.

(2) The Authority shall carry out periodic reviews of the projects along with Railway Administration and the lessee.

44. Assistance from Railway Administration.

(1) The Authority shall seek assistance of the Railway Administration in facilitating the lessee in obtaining access to all necessary facilities and utilities (subject to availability) during

the project execution stage, including water, electricity, telecom facilities at the rates and on terms of the Central Government.

(2) The Authority shall seek assistance of the Railway Administration, wherever required, in obtaining various clearances and authorizations in connection with development of railway land by the lessee from local municipal and other concerned authorities.

(3) The Authority with the assistance of the Railway Administration shall provide support to lessee on best effort basis in obtaining clearances and connection to utility services from local authorities for the development of the project.

CHAPTER V
MISCELLANEOUS

45. Re-Development Work of Railway Administration.

The Authority in consultation with Railway Administration shall get a "Phasing Plan" prepared, which shall indicate the time wise schedule of construction of the assets.

46. Project Management.

The Authority may engage Project Management Consultants for ensuring supervision and quality of the development of land, re-development works and execution of other works.

47. Enabling Works for Development Project.

The ancillary works like construction of boundary walls, removal of encumbrances or structures existing on railway land, construction of rehabilitation works for the Railway Administration etc., that are necessary for the development of a railway land may be carried out by the Authority at its cost to enhance the value of the land prior to invitation of bids, if the Authority so decides.

48. Works entrusted by the Central Government. -

Works entrusted by the Central Government under clause (iv) of sub-section (2) of section 4D of the Act may consist of any railway work

which shall be executed the Authority as per directions given by the Central Government and as per terms and conditions decided by the Authority and such works may include development of new railway stations, re-development of existing railway stations, development of staff colonies, development of offices and such other works including maintenance thereof.

49. Methods of Execution.

(1) The railway works entrusted by the Central Government shall be executed either through funds provided by the Central Government by appointing a contractor or by exploiting the revenue potential of the railway land available at the site by appointing a developer as may be determined by the Authority.

(2) In case the work is to be executed by exploiting the revenue potential of the railway land, such railway land shall be identified, the schemes and plans shall be prepared, and the Central Government shall be approached for entrustment of the proposed railway land to the Authority.

50. Consultancies under clause (iii) sub-section (2) of section 4D.-The Authority may carry out consultancies, professional services, and such other works for the Government, any local authority, or any other organization on such terms and conditions as may be agreed upon between the Authority and such an entity and the Authority may create a specialized wing within its organization for undertaking such activities.

51. Relaxation of Regulations.

The Authority may in public interest and for reasons to be recorded in writing relax generally or specifically any of these regulations with the approval of the Central Government.

52. Interpretation.

In case of any ambiguity on the meaning of any clause of this regulation, the interpretation of the Authority shall be final.

THE RAILWAYS (PUNITIVE CHARGES FOR OVERLADING OF WAGON) RULES, 2012 AS AMENDED BY (AMENDMENT) RULES, 2022

24

GOVERNMENT OF INDIA
MINISTRY OF RAILWAYS
(RAILWAY BOARD)

NOTIFICATION

New Delhi, the 23rd March, 2022

In exercise of the powers conferred by sub-section (1) read with clause (d) of sub- section (2) of section 87 of the Railways Act, 1989 (No. 24 of 1989), the Central Government hereby makes the following rules further to amend the Railways (Punitive Charges for overloading of wagon) Rules, 2012, namely: -

1.(1) These rules may be called the **Railways (Punitive Charges for overloading of wagon) (Amendment) Rules, 2022.**

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Railways (Punitive Charges for overloading of wagon) Rules, 2012, for the Schedule, the following Schedule shall be substituted, namely: -

"SCHEDULE

(for loading on excepted CC+6, CC+6, CC+8 and 25 tonne axle load routes)

Situation-A

If the aggregated pay load in a rake does not exceed the combined permissible carrying capacity of the rake, the punitive charges shall be levied as per following, namely: -

Part-I

For wagons other than BCNHL, BCCW, BFNSM22.9, BCFC and BCFCM

Extent of overloading	***Punitive charges leviable on the entire weight of commodity loaded in excess of permissible carrying capacity and loading tolerance of one tonne**
If the weight of the commodity exceeds the permissible carrying capacity of wagon	
(a) up to one tonne	Nil
(b) by more than one tonne but not more than four tonnes	Two times of the freight rate applicable to that commodity.
(c) by more than four tonnes	Two and half times of the freight rate applicable to that commodity.

***Explanation.** It is hereby clarified that on the weight exceeding the permissible carrying capacity up to one tonne, the normal freight at the rate applicable to the commodity shall be recoverable and punitive charges shall be recovered for the entire weight of the commodity in excess of permissible carrying capacity and loading tolerance of one tonne.

Part- II

For BCNGL, BCCW, BFNSM22.9 BCFC and BCFCM wagons

Extent of overloading	***Punitive charges leviable on the entire weight of commodity loaded in excess of permissible carrying capacity and loading tolerance of one tonne**
If the weight of the commodity exceeds the permissible carrying capacity of wagon	
(a) up to half tonne	Nil
(b) by more than half tonne but not more than three and half tonnes	Two times of the freight rate applicable to that commodity.
(c) by more than three and half tonnes	Two and half times of the freight rate applicable to that commodity.

*Explanation- It is hereby clarified that on the weight exceeding the permissible carrying capacity up to half tonne, the normal freight at the rate applicable to the commodity shall be recoverable and punitive charges shall be recovered for the entire weight of the commodity in excess of permissible carrying capacity and loading tolerance of half tonne.

Part- III

For Container Trains

Extent of overloading	***Punitive charges leviable on the entire weight of commodity loaded in excess of permissible carrying capacity and loading tolerance of one tonne**
If the weight of the commodity exceeds the permissible carrying capacity of wagon	
(a) up to one tonne	Nil
(b) by more than one tonne but not more than four tonnes	Two times of the freight rate applicable to that commodity.

(c) by more than four tonnes	Two and half times of the freight rate applicable to that commodity.

***Explanation-** It is hereby clarified that on the weight exceeding the permissible carrying capacity up to one tonne, the normal freight at the rate applicable to the commodity shall be recoverable and punitive charges shall be recovered for the entire weight of the commodity in excess of permissible carrying capacity and loading tolerance of one tonne.

Situation-B

If the aggregated pay load in a rake exceeds the combined permissible carrying capacity of the rake, the punitive charges shall be levied as per following, namely: -

Part-I

For wagons other than BCNHL, BCCW, BFNSM22.9, BCFC and BCFCM

Extent of overloading	***Punitive charges leviable on the entire weight of commodity loaded in excess of permissible carrying capacity and loading tolerance of one tonne**
If the weight of the commodity exceeds the permissible carrying capacity of wagon	
(a) up to one tonne	Nil
(b) by more than one tonne but not more than four tonnes	Three times of the freight rate applicable to that commodity.
(c) by more than four tonnes	Four times of the freight rate applicable to that commodity.

***Explanation-** It is hereby clarified that on the weight exceeding the permissible carrying capacity up to one tonne, the normal freight at the rate applicable to the commodity shall be recoverable. However, in case of the weight exceeds the permissible carrying capacity by more than one tonne, punitive charges shall be recovered for the entire weight of the commodity in excess of permissible carrying capacity.

Part-II

For BCNHL, BCCW, BFNSM22.9, BCFC and BCFCM wagons

Extent of overloading	***Punitive charges leviable on the entire weight of commodity loaded in excess of permissible carrying capacity and loading tolerance of one tonne**
If the weight of the commodity exceeds the permissible carrying capacity of wagon	
(a) up to half tonne	Nil
(b) by more than half tonne but not more than three and half tonnes	Three times of the freight rate applicable to that commodity.
(c) by more than three and half tonnes	Four times of the freight rate applicable to that commodity.

***Explanation-** It is hereby clarified that on the weight exceeding the permissible carrying capacity up to half tonne, the normal freight at the rate applicable to the commodity shall be recoverable. However, in case of the weight exceeds the permissible carrying capacity by more than half tonne, punitive charges shall be recovered for the entire weight of the commodity in excess of permissible carrying capacity.

Part-III

For Container Trains

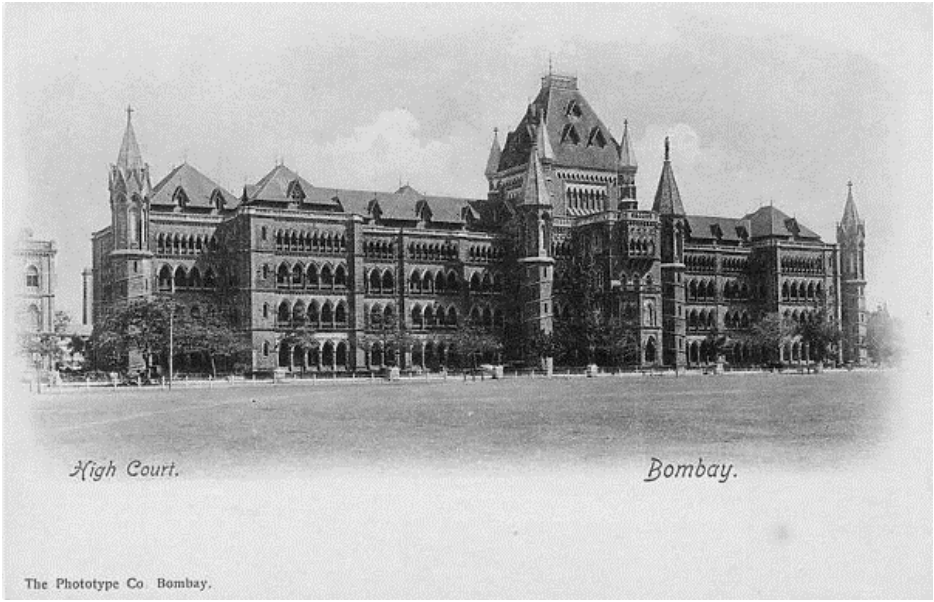
Extent of overloading	***Punitive charges leviable on the entire weight of commodity loaded in excess of permissible carrying capacity and loading tolerance of one tonne**
If the weight of the commodity exceeds the permissible carrying capacity of wagon	
(a) up to one tonne	Nil
(b) by more than one tonne but not more than four tonnes	Three times of the freight rate applicable to that commodity.

(c) by more than four tonnes	Four times of the freight rate applicable to that commodity.

***Explanation-** It is hereby clarified that on the weight exceeding the permissible carrying capacity up to one tonne, the normal freight at the rate applicable to the commodity shall be recoverable. However, in case of the weight exceeds the permissible carrying capacity by more than one tonne, punitive charges shall be recovered for the entire weight of the commodity in excess of permissible carrying capacity."

[File No. TC-112022/109/efile/2(3382093)]
(Barjesh Dharmani)
Executive Director, Traffic Commercial (Rates)

Note. - The principal rules were published in the Gazette of India Extraordinary, Part II Section 3, Sub-section (i) vide number G.S.R. 570(£), dated the 17th July, 2012 and was last amended vide notification number G.S.R.566(E), dated the 17th September 2020.



INDIAN RAILWAYS (PENALTIES FOR ACTIVITIES AFFECTING CLEANLINESS AT RAILWAY PREMISES) RULES, 2012

25

Government of India
Ministry of Railways
Railway Board

No. 2010/TG-IV/16/SAN/14/Fine New Delhi, dated 14.12.2012.

The General Managers,
All Zonal Railways,

Commercial Circular No. 76 of 2012

Sub: Indian Railways (Penalties for activities affecting cleanliness at railway premises) Rules, 2012- Gazette Notification No. GSR 846(E) dt. 26.11.2012.

1. The 'Indian Railways (Penalties for activities affecting cleanliness at railway premises) Rules, 2012' have been notified in the Extraordinary Gazette of India, Part II, Section 3, Sub Section (i) vide Gazette Notification No. GSR 846(E) dt. 26.11.2012. A copy of the notification is enclosed.

2. In view of the provisions available in the above-mentioned rules, the following action should be taken by the Zonal Railways:

(i) Wide publicity should be given to the rules through advertisements in various newspapers (including vernacular ones), pasting of posters at all railway stations, putting up of notices inside the coaches, announcement through public address system at stations, advertisement over Radio/TV etc.

(ii) Zonal Railways should frame the procedure for guiding the authorised officials keeping in view the local conditions and accordingly nominate officials for the purpose.

3. Realisation of fine amount would be chargeable to the Head Abstract Z-Sundry Other Earnings, Z-652- Other Sundry Receipts as per Board's letter No. 2012/ACII/45/15 Dated 12.12.2012.
4. CCMs should indicate the amount of fine collected on this account in the MCDO to Railway Board.
5. This issues with the concurrence of finance directorate of Ministry of Railways.
6. Hindi version is enclosed.
7. Kindly acknowledge receipt of the letter.

(Vaidehi Gopal)
Joint Director Traffic Commercial/G
Railway Board.

No. 2010/TG-IV/16/SAN/14/Fine New Delhi, dated 14.12.2012.

Copy to Deputy Comptroller and Auditor General of India (Railways) Room No. 222, Rail Bhavan, New Delhi (40 spares)

For Financial Commissioner/Railways

No. 2010/TG-IV/16/SAN/14/Fine New Delhi, dated 14.12.2012.

Copy to:

1. The G.M, N.F. Railway(const.), Southern Railway(const.) and Central Railway(const.)
2. CCMs, CPROS, FA&CAOs, All Zonal Railways.
3. The Director General and Ex.-Officio General Manager, RDSO/Lucknow.
4. GM, Metro Railway, Kolkata.
5. The CAO and FA&CAO, COFMOW/New Delhi
6. The General Manager and FA&CAO, CORE/Allahabad.
7. The Chairman and Managing Director, Konkan Railway Corporation Limited, Belapur Bhavan, Sector-II, Navi Mumbai-400614.
8. Managing Director, Centre for Railway Information systems, Chanakyapuri, New Delhi.
9. The Managing Director, IRCON, IRFC, MRVC, IRWO, IRCTC, CONCOR, Executive Director, CRIS/
10. The Pay & Accounts Officer, Ministry of Railways (Railway Board).
11. The General Secretary, IRCA/New Delhi.

12. The Chief Commissioner of Railway Safety/Lucknow
13. The Editor, "Bharatiya Rail".
14. The Editor, "Indian Railways'.
15. Chairman, RITES.
16. Chairman, CAT.
17. The Managing Director, Rail Vikas Nigam Ltd., plot No.25, First Floor, August Kranti Bhawan, Bhikaji Cama Place, New Delhi-110066.
18. CAO, SEC Railway, Bilaspur-495004.
19. Railway Staff College, Vadodara.
20. Indian Railway Institute of Transport Management, Lucknow.
21. Chief Vigilance Officer, All Zonal Railways.
22. Chief Security Commissioner, All Zonal Railways

(Vaidehi Gopal)
Joint Director Traffic Commercial/G
Railway Board.

Copy to:- PPS/PS/PAs to: CRB, FC, MS, MT, ME, ML, MM, DG(RHS), DG(RPF), All Additional Members/ Advisors/Executive Directors/Directors,
IG/RPSF,JS,JS©,JS(G),JS(E)JS(P),JD(P),JDF(E),JDE(N),JDE(P&A),JDE(W),DS(G),
DDF(E)I,DDF(E)III,DDE(LR)I,DDE(LR)-II,DDE(Rep), US(Protocol) and DDE II (with 2 spares).
All Officers & Branches in Board's office

****

रजिस्ट्री सं० डी० एल० – 33004/99 REGD. NO. D.L. – 33004/99

भारत का राजपत्र
The Gazette of India

असाधारण

EXTRAORDINARY

भाग II - खण्ड 3 - उप-खण्ड (ii)

PART II – Section 3 – Sub-section (i)

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं. 600] नई दिल्ली, सोमवार, नवंबर 26, 2012/अग्रहायण 5, 1934

No. 600] NEW DELHI, MONDAY, NOVEMBER 26, 2012/AGRAHAYANA 5, 1934

MINISTRY OF RAILWAY

(Railway Board)

NOTIFICATION

New Delhi, the 26th November, 2012

G.S.R. 846(E). - In exercise of the powers conferred by Clause (g) of sub-section (2) and sub-section (3) of Section 60 read with Section 198 of the Railways Act, 1989 (24 of 1989) the Central Government hereby makes the following rules, namely: -

1. Short title and Commencement. –

(1) These rules may be called the Indian Railways (Penalties for activities affecting cleanliness at railway premises) Rules, 2012.

(2) They shall come into force on the date of their publication in the Official Gazette

2. Definitions. –

In these rules unless the context otherwise requires, -

(a) '**Act**' means the Railways Act, 1989.

(b) '**litter**' means all refuse and include any other waste material which, if thrown or deposited. tends to create unclean or unhygienic conditions or a danger to life, environment pollution. public health, safety, and welfare.

(c) '**littering**' means, -

(i) putting litter in a location from where it fails, descends, blows, is washed, percolates, or otherwise escapes; or is likely to fall, descend, blow, be washed, percolate or otherwise escape into or onto any public place; or

(ii) causing, permitting, or allowing litter to fall, descend, blow, be washed, percolate or otherwise escape into or onto any public place.

(d) '**Railway premises**' means station building, platforms, railway track and other property belonging to railways including trains.

(e) '**person**' means any person or persons coming to railway premises with or without the intention of travelling.

(f) '**carriage**' means the carriage of passengers or goods by a railway administration.

3. Prohibition of activities affecting cleanliness and hygiene in the railway premises. –

(1) No person shall, -

(a) throw or deposit litter in any occupied or unoccupied railway premises or the carriage except in authorized places.

(b) cook, bathe, spit, urinate, defecate, feed animal or birds, repair, or wash vehicles, washing utensils or clothes or any other objects or keep any type of storage in any railway premises except in such facilities or conveniences specifically provided for any of these purposes.

(c) paste or put up any poster or write or draw anything or matter in any compartment or carriage of the railway or any premises thereof, without any lawful authority.

(d) indulge in defacing railway property.

(2) Authorised Vendors/hawkers will make necessary arrangement to keep the container or waste basket for collecting litter and proper disposal of its contents.

4. Penalties for contravention of these rules. –
Whosoever contravenes any of the provisions of these rules or fails to comply with such provisions shall be punished with a fine which shall not exceed five hundred rupees.

5. Officials authorized to collect penalties under these rules. –
The following officials are authorized to collect fine mentioned in these rules, namely: -

(a) The Station Master or Station Manager.

(b) An officer not below the rank of ticket Collector of the Commercial Department or an officer of equivalent rank of the Operating Department.

(c) Any other official (s) authorized by the Railway Administration for the purpose of implementing these rules.

[F. No. 2010/TG-IV/16/SAN/14/Fine]

A. MADHUKUMAR REDDY, Executive Director, Passenger Marketing

THE LAND ACQUISITION (SPECIAL RAILWAY PROJECTS) RULES, 2016

26

In exercise of powers conferred by section 20-P of the Railways Act, 1989 (24 of 1989), the Central Government hereby makes the following rules, namely: -

1. **Short title, commencement, and application. -**
   (1) These rules may be called the Land Acquisition (Special Railway Projects) Rules, 2016.
   (2) They shall come into force on the date of their publication in the Official Gazette.
   (3) These rules shall apply to the acquisition of land for the special railway project under Chapter IVA of the Act.
2. **Definitions.**
   (1) In these rules, unless the context otherwise requires, -
   (a) **"Act"** means the Railways Act, 1989 (24 of 1989),
   (b) **"Section"** means section of the Act.

(2) Words and expressions used herein and not defined but defined in the Act shall have the meanings respectively assigned to them in the Act.

3. Appointment of arbitrator.

The Central Government shall, by the notification, appoint an officer of the rank of a Gazetted Officer of the State Government as Arbitrator for the purposes of sub-section (6) of section 20-F.

4. Manner of depositing amount with competent authority

(1) The Central Government shall deposit. -

(a) the amount referred to in sub-section (1) of section 20-H; and

(b) the amount determined under sub-section (6) of section 20-H, with the competent authority.

(2) Subject to the provisions of section 20-H, the competent authority shall deposit the amount received under sub-rule (1) in an account opened by the competent authority in a nationalised bank for acquisition of land under the Act. The Fund shall be under the control of the competent authority and shall be operated by the competent authority jointly with the Account Officer nominated by the Central Government for this purpose.

5. Maintenance of fund. –

(1) A separate fund shall be maintained in the separate account opened in a nationalised bank by the competent authority for purpose of section 20-M.

(2) The Fund shall be under the control of the competent authority and shall be operated by the competent authority jointly with the Account Officer nominated by the Central Government for this purpose.

1. Vide G.S.R. 631(E), dated 23rd June 2016, published in the Gazette of India, Extra., Pt. II, Sec. 3(i), No. 441, dated 23rd June 2016.
2. Came into force on 24-6-2016.

THE AUTHORISATION OF RAIL TRAVELLERS SERVICE AGENTS RULES, 2014 AS AMENDED BY (AMENDMENT) RULES, 2019

27

THE AUTHORISATION OF RAILWAY TRAVELLER'S SERVICE AGENTS RULES, 1985[1]

In exercise of the powers conferred by Clause (g) of sub-section (1) of Section 47 of the Indian Railways Act, 1980 (9 of 1890) the Central Government hereby makes the following rules, namely: -

1. **Short title and commencement. –**
   (1) These rules may be called the Authorisation of Railway Traveller's Service Agents Rules, 1985.
   (2) They shall come into force on the date of their publication in the official Gazette.
2. **Definitions**
   In these rules, unless the context otherwise requires, -
   (a) **"agent"** means a person authorised to act as a rail travellers' service agent under Rule 4 and shall include an employee of such person to whom an identity card under Rule 5 (viii) has been issued.
   (b) **"licence"** means a licence issued under Rule 4.

(c) **"Competent authority"** means the Central Manager of the Zonal Railway, or any officer authorised by him to discharge his function under these rules; and

(d) **"station"** means the area within which the main railway station and the Reservation Booking Officers pertaining to a railway are situated such as New Delhi and Old Delhi areas together for Northern Railway, Sealdah and Howrah for Eastern and South-Eastern Railways, Bombay for Western Central Railways and Madras for the Southern Railway.

3. Conditions for appointment of an agent. -

(i) in possession of the latest income tax clearance certificate.

(ii) having office and premises properly maintained with adequate convenience and amenities in the city so as to accommodate visit of sufficient number of customers; and

(iii) not convicted in a criminal case involving moral turpitude, may apply for issue of a licence under Rule 4 to act as an agent.

(2) The fees on payment of which the licence shall be issued or renewed shall be Rs. 1,200 and Rs. 600 for any additional licence for a Railway in the same station.

(3) The security deposit on furnishing of which the licence shall be issued or renewed shall be Rs. 5,000 in cash and bank guarantee for Rs. 15,000. There shall be no accrual of interest on the said deposit.

[1]S.O. 881 (E), dated 5th December 1985, published in Gazette of India (Extra) Part II, Section 3 (ii), dated 5th December 1985.

(4) The number of agents for each station and railway shall be such as may be determined by the competent authority.

4. **Issue of a licence.**

(1) An application for issue of a licence shall be made to the competent authority in Form 1 (Annexed).

(2) On receipt of an application, the competent authority after making such inquiry, if any, as it may consider necessary, shall

order to issue the licence authorising the applicant to act as a rail travellers' service agent or for reasons to be recorded in writing refuse to issue the same.

(3) If the applicant deposits fee specified in sub-rule (2) of Rule 3 and furnishes security deposit under sub-rule (3) of Rule 3 within a period of one month from the date on which the competent authority requires him to deposit fee and furnish security, he shall be issued the licence in Form II (Annexed).

(4) If an applicant fails to deposit the fee and furnish the security within the period specified in sub-rule (3), his application shall be deemed to have been rejected.

5. The condition on which the licence may be granted.

The licence issued under Rule 4 shall be subject to the following conditions, namely. -

(i) the licence shall be valid for a period of three years from the date of its issue.

(ii) the licence shall not be transferable.

(iii) the agent shall not charge more than Rs. 15 per passenger as service charges for securing reservation in classes other than second class[1] [and Rs. 10 in the second class), but in case, where the reservation for more than one passenger is secured on the same requisition slip, the service charges shall not exceed Rs. 8 per passenger in excess of the first passenger in the case of classes other than second class and Rs. 5 per passenger for second class.

[1]Subs by S.O. 331 (E), dated 1.7.1992.

(iv) the agent shall conduct the business himself or through his employee approved by the competent authority for this purpose.

(v) the licence and the service charges shall be displayed at a conspicuous place of business.

(vi) a receipt showing money received from his client for purchase of tickets, reservation charges and service charges separately shall be issued by the agent.

(vii) a register showing names, sex, age and address of his employee shall be maintained by the agent.

(viii) an identity card with a photograph countersigned by the competent authority for purchase of tickets and securing reservation shall be issued by the agent to each of his employees.

(ix) the purchase of tickets and securing of reservation by the agent shall be on a written request from his client. In case the agent acts on a telephone call, a written request shall be obtained by him from the client before delivering the railway ticket to his client.

(x) a register indicating the name, sex, age, address and journey particulars together with ticket number of his clients shall be maintained by the agent.

(xi) a request for reservation by the agent or his employee shall be made on a reservation requisition form indicating the licence number and its validity period. The requisition form shall be signed by the agent or his employee and shall be presented with his identity card. Not more than one requisition from shall be presented by the agent or his employee at a time.

(xii) there shall be no canvassing for booking and reservation by the agent or any person on his behalf within the railway premises and within the distance of 100 metres from the railway reservation office.

(xiii) the competent authority or an officer authorised by him shall be allowed access to the premises and records any time during the business hours by the agents who shall renders necessary assistance for inspection; and

(xiv) no requisition for the purchase of tickets or reservations where round-the-clock counters are functioning shall be entertained from the agent or his employee between the hours of midnight and 7 a.m.

6. Suspension/Cancellation of the Licence. -

(a) Without prejudice to any other provisions under the Indian Railways Act. 1890 and these rules the competent authority shall have the right to suspend or cancel at any time the licence for violation of or for ceasing to fulfil any of the conditions under these rules or any other rules or regulation applicable with regard to purchase of ticket and securing reservation or for any other reason which the competent authority deems to be expedient in the public Interest:

Provided that no action under this rule shall be taken unless an opportunity to show cause is given to the agent.

(b) Any breach of these rules shall also be liable to attract punishment as laid down in Section 47(2) of the Indian Railways Act, 1890.

7. Renewal of licence

A licence shall, unless the competent authority for reasons to be recorded in writing otherwise decides in any case be renewable for three years and shall be so renewable from time to time and the provisions of Rule 4 shall apply to the renewal of the licence as they apply to the grant thereof.

8. Utilisation of Security Deposit.

Where the regents fail to per- form the service for his client and refuses to refund the amount charged by him, the competent authority shall in addition to any other action taken under these rules, utilise the amount of security deposited under sub-rule (3) of Rule 3 for refund of the amount charged by the agent from his clients.

9. Appeal

(1) An appeal shall lie against every order of the competent authority made under these rules to the Central Government.

(2) The appeal under sub-rule (1) shall be preferred within thirty days from the date on which the order appealed against is communicated to the appellant.

10. Liability of Railways.

The Railway administration shall not be liable for any loss or damage suffered or likely to be suffered by a client on account of any act or omission of the agent.

FORM I

[See Rule 4]

Application for Administration of Railway Travellers' Service Agent

1. Name.
2. Business Address:
3. Status (whether proprietorship, firm, or company)-if firm, copy of registration certificate and partnership deed and if company, copy of registration certificate and memorandum of association and articles of association to be attached
4. Station and Railway for which authorisation is sought.
5. Financial status (latest income tax clearance certificate to be attached).
6. Whether business premises are owned or on hire/lease (supporting documents to be attached).
7. Whether business premises are easily accessible for the public.
8. Details of accommodation in the business premises with dimensions.
9. Amenities available at the business premises-Telephone/Telex etc.
10. Facilities available for the clients at the business premises (seats/toilet etc.).
11. Whether as Proprietor/Partner/Director has ever been convicted? If so, give the details thereof.
12. Any other relevant information.

I undertake that in the event of any information given above being found to be false or inaccurate in any respect, the licence issued shall be liable to be cancelled.

Place:

Dated:

Signature of applicant

FORM II
[See Rule 5]
Licence

No.

M/s……is hereby issued by the licence authorising him to act as an agent to purchase, cancel, obtain refunds and journey postponement of tickets and secure reservation on behalf of intending rail travellers from the reservation/booking office located at.....station.....Railway.

The agent shall conduct the business from (address of the business) subject to the following conditions:

(i) the licence shall be valid for a period of three years from the date of its issue.

(ii) the licence shall not be transferable.

(iii) the agent shall not charge more than Rs. 15 per passenger as service charges for securing reservation in classes other than IInd class and Rs. 8 in the IInd class, but in cases where the reservation for more than one passenger is secured on the same requisition slip, the service charges shall not exceed Rs. 8 per passenger in excess of the first passenger in the case of classes other than IInd class and Rs. 5 per passenger for IInd class.

(iv) the agent shall conduct the business himself or through his employee approved by the competent authority for this purpose.

(v) the licence and the service charges shall be displayed at a conspicuous place of business.

(vi) a receipt showing money received from his client for purchase of tickets, reservation charges and service charges separately shall be issued by the agent.

(vii) a register showing names, sex, age and address of his employee shall be maintained by the agent.

(viii) an identity card with a photograph countersigned by the competent authority for purchase of tickets and securing reservation shall be issued by the agent to each of his employees.

(ix) the purchase of ticket and securing of reservation by the agent shall be on a written request from his client. In case the agent acts on a telephone call, a written request shall be obtained by him from the client before delivering the railway ticket of his client.

(x) a register indicating the name, age, sex, address, and journey particulars together with ticket number of has client shall be maintained by the agent.

(xi) a request for reservation by the agent or his employee shall be made on a reservation requisition form investigating the licence number and its validity period. The requisition form shall be signed by the agent or his employee and shall be presented with his identity card. Not more than one requisition form shall be presented by the agent or his employee at a time.

(xii) there shall be no canvassing for booking and reservation by the agent or any person on his behalf within the railway premises and within the distance of 100 metres from the railway reservation office.

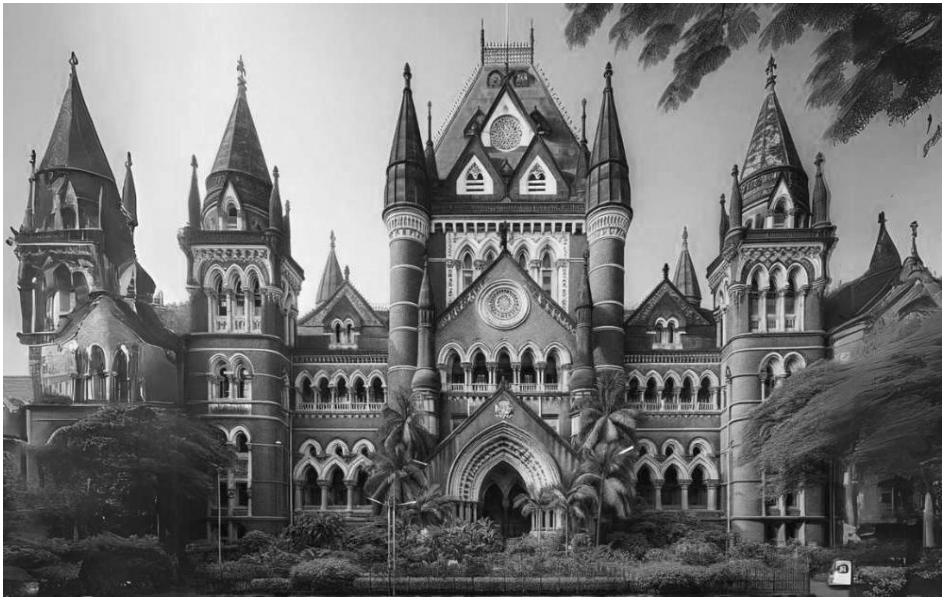
(xiii) the competent authority or an office authorised by him shall be allowed access to the premises and records any time during the business hours by the agent who shall render all necessary assistance for inspection; and

(xiv) no requisition for the purchase of tickets or reservations where round the clock counters are functioning shall be entertained from the agent or his employee between the hours of midnight and 7 a.m.

Given under my hand and seal on this……. day of.....19.

Place:

Signature.



THE RAILWAY CLAIMS TRIBUNAL ACT, 1987
ACT NO. 54 OF 1987

[6th June 2022 [21/933]]

An Act to provide for the establishment of a Railway Claims Tribunal for inquiring into and determining claims against a railway administration for loss, destruction, damage, deterioration or non-delivery of animals or goods entrusted to it to be carried by railway or for the refund of fares or freight or for compensation for death or injury to passengers occurring as a result of railway accidents 1[or untoward incidents] and for matters connected therewith or incidental thereto.

Be it enacted by Parliament in the Thirty-eighth Year of the Republic of India as follows: —

CHAPTER I
PRELIMINARY

1. Short title, extent, and commencement. —

(1) This Act may be called the Railway Claims Tribunal Act, 1987.

(2) It extends to the whole of India.

(3) It shall come into force on such date3 as the Central Government may, by notification, appoint.

2. Definitions. —

In this Act, unless the context otherwise requires, —

(a) **"Application"** means an application made under section 16.

(b) **"Appointed day"** means the date with effect from which the Claims Tribunal is established under section 3.

(c) **"Bench"** means a Bench of the Claims Tribunal.

(d) **"Chairman"** means the Chairman of the Claims Tribunal.

(e) **"Claims Tribunal"** means the Railway Claims Tribunal established under section 3.

(f) **"Judicial Member"** means a Member of the Claims Tribunal appointed as such under this Act and includes the Chairman or Vice-Chairman who possesses any of the qualifications specified in sub-section (3) of section 5.

(g) **"Member"** means a Member (whether Judicial or Technical) of the Claims Tribunal and includes the Chairman and Vice-Chairman.

(h) **"notification"** means a notification published in the Official Gazette.

(i) **"prescribed"** means prescribed by rules.

(j) **"Railways Act"** means the Indian Railways Act, 1890 (9 of 1890).

(k) **"rules"** means rules made under this Act.

(l) **"Technical Member"** means a Member of the Claims Tribunal who is not a Judicial Member and includes the Chairman or a Vice-Chairman who possesses any of the qualifications specified in sub-section (4) of section 5.

(m) **"Vice-Chairman"** means a Vice-Chairman of the Claims Tribunal.

Explanation. - References to the Vice-Chairman in this Act shall be construed as references to each of the Vice-Chairman.

[(n) *"untoward incident"* shall have the meaning assigned to it in clause (c) of section 123 of the Railways Act, 1989 (24 of 1989);]

[(o)] words and expressions used and not defined in this Act but defined in the Railways Act or the rules made thereunder shall have the meanings respectively assigned to them in that Act or the said rules.

CHAPTER II
ESTABLISHMENT OF RAILWAY CLAIMS TRIBUNAL AND BENCHES THEREOF

3. Establishment of Railway Claims Tribunal. —

The Central Government shall, by notification, establish a Claims Tribunal, to be known as the Railway Claims Tribunal, to exercise the jurisdiction, powers and authority conferred on it by or under this Act [3][and under Chapter VII of the Railways Act,1989].

4. Composition of Claims Tribunal and Benches thereof. —

(1) The Claims Tribunal shall consist of a Chairman, four Vice-Chairmen and such number of Judicial Members and Technical Members as the Central Government may deem fit and, subject to the other provisions of this Act, the jurisdiction, powers, and authority of the Claims Tribunal may be exercised by Benches thereof.

(2) Subject to the other provisions of this Act, a Bench shall consist of one Judicial Member and one Technical Member.

(3) Notwithstanding anything contained in sub-section (1), the Chairman—

(a) may, in addition to discharging the functions of the Judicial Member or the Technical Member of the Bench to which he is appointed, discharge the functions of the Judicial Member or, as the case may be, the Technical Member, of any other Bench.

(b) may transfer a Vice-Chairman or other Member from one Bench to another Bench.

(c) may authorise the Vice-Chairman or the Judicial Member or the Technical Member appointed to one Bench to discharge also the functions of the Vice-Chairman or, as the case may be, the Judicial Member or the Technical Member of another Bench.

(4) Notwithstanding anything contained in the foregoing provisions of this section, it shall be competent for the Chairman or any other Member authorised by the Chairman in this behalf to function as a Bench consisting of a single Member and exercise the jurisdiction, powers and authority of the Claims Tribunal in respect of such classes of cases or such matters pertaining to such classes of cases as the Chairman may, by general or special order, specify:

Provided that if at any stage of the hearing of any such case or matter, it appears to the Chairman or such Member that the case or matter is of such a nature that it ought to be heard by a Bench consisting of two Members, the case or matter may be transferred by the Chairman or, as the case may be, referred to him for transfer, to such Bench as the Chairman may deem fit.

(5) Subject to the other provisions of this Act, the Benches shall sit at such places as the Central Government may, by notification, specify.

5. Qualifications for appointment as Chairman, Vice-Chairman or other Member. —

(1) A person shall not be qualified for appointment as the Chairman unless he—

(a) is, or has been, a Judge of a High Court; or

(b) has, for at least two years, held the office of a Vice-Chairman.

(2) A person shall not be qualified for appointment as the Vice-Chairman unless he—

(a) is, or has been, or is qualified to be, a Judge of a High Court; or

(b) has been a member of the Indian Legal Service and has held a post in Grade I of that Service or any higher post for at least five years; or

(c) has, for at least five years, held a civil judicial post carrying a scale of pay which is not less than that of a Joint Secretary to the Government of India; or

(d) has, for at least five years, held a post under a railway administration carrying a scale of pay which is not less than that of a Joint Secretary to the Government of India and has adequate knowledge of rules and procedure of, and experience in, claims and commercial matters relating to railways; or

(e) has, for a period of not less than three years, held office as a Judicial Member or a Technical Member.

(3) A person shall not be qualified for appointment as a Judicial Member unless he—

(a) is, or has been, or is qualified to be, a Judge of a High Court; or

(b) has been a Member of the Indian Legal Service and has held a post in Grade I of that Service for at least three years; or

(c) has, for at least three years, held a civil judicial post carrying a scale of pay which is not less than that of a Joint Secretary to the Government of India.

(4) A person shall not be qualified for appointment as a Technical Member unless he has, for at least three years, held a post under a railway administration carrying a scale of pay which is not less than that of a Joint Secretary to the Government of India and has adequate knowledge of rules and procedure of, and experience in, claims and commercial matters relating to railways.

(5) Subject to the provisions of sub-section (*6*), the Chairman, Vice-Chairman and every other Member shall be appointed by the President.

(6) No appointment of a person as the Chairman shall be made except after consultation with the Chief Justice of India.

6. Vice-Chairman to act as Chairman or to discharge his functions in certain circumstances. —

(1) In the event of the occurrence of any vacancy in the office of the Chairman by reason of his death, resignation or otherwise, such one of the Vice-Chairmen as the Central Government may, by

notification, authorise in this behalf, shall act as the Chairman until the date on which a new Chairman, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office.

(2) When the Chairman is unable to discharge his functions owing to absence, illness, or any other cause, such one of the Vice-Chairmen as the Central Government may, by notification, authorise in this behalf, shall discharge the functions of the Chairman until the date on which the Chairman resumes his duties.

7. Term of office. —

The Chairman, Vice-Chairman or other Member shall hold office as such for a term of five years from the date on which he enters upon his office or until he attains, —

(a) in the case of the Chairman, the age of sixty-five years; and

(b) in the case of the Vice-Chairman or any other Member, the age of sixty-two years, whichever is earlier.

8. Resignation and removal. —

(1) The Chairman, Vice-Chairman or other Member may, by notice in writing under his hand addressed to the President, resign his office:

Provided that the Chairman, Vice-Chairman, or other Member shall, unless he is permitted by the President to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.

(2) The Chairman, Vice-Chairman or any other Member shall not be removed from his office except by an order made by the President on the ground of proved misbehaviour or incapacity after an inquiry made by a Judge of the Supreme Court in which such Chairman, Vice-Chairman or other Member had been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

(3) The Central Government may, by rules, regulate the procedure for the investigation of misbehaviour or incapacity of the Chairman, Vice-Chairman or other Member referred to in sub-section (*2*).

9. Salaries and allowances and other terms and conditions of service of Chairman, Vice-Chairman, and other Members. —The salaries and allowances payable to, and the other terms and conditions of service (including pension, gratuity, and other retirement benefits) of, the Chairman, Vice-Chairman and other Members shall be such as may be prescribed:

Provided that neither the salary and allowances nor the other terms and conditions of service of the Chairman, Vice-Chairman or other Members shall be varied to his disadvantage after his appointment.

[9A. Qualifications, terms, and conditions of service of Chairman, Vice-Chairman and Member. —

Notwithstanding anything contained in this Act, the qualifications, appointment, term of office, salaries and allowances, resignation, removal and other terms and conditions of service of the Chairman, Vice-Chairman and other Members of the Tribunal appointed after the commencement of Part XIV of Chapter VI of the Finance Act, 2017 (27 of 2017), shall be governed by the provisions of section 184 of that Act]:

Provided that the Chairman, Vice-Chairman and Members appointed before the commencement of Part XIV of Chapter VI of the Finance Act, 2017 (27 of 2017), shall continue to be governed by the provisions of this Act, and the rules made thereunder as if the provisions of section 184 of the Finance Act, 2017, had not come into force.]

10. Provision as to the holding of offices by Chairman, Vice-Chairman, etc., on ceasing to be such Chairman or Vice-Chairman, etc.—

On ceasing to hold office—

(a) the Chairman of the Claims Tribunal shall be ineligible for further employment either under the Government of India or under the Government of a State.

(b) a Vice-Chairman shall, subject to the other provisions of this Act, be eligible for appointment as the Chairman of the Claims Tribunal, or as the chairman, vice-chairman or member of any other Tribunal established under any law for the time being in force, but not for any other employment either under the Government of India or under the Government of a State.

(c) a Member (other than the Chairman or Vice-Chairman) shall, subject to the other provisions of this Act, be eligible for appointment as the Chairman or Vice-Chairman or as the chairman, vice-chairman or member of any other Tribunal established under any law for the time being in force, but not for any other employment either under the Government of India or under the Government of a State.

(d) the Chairman, Vice-Chairman or other Member shall not appear, act, or plead before the Claims Tribunal.

Explanation. — For the purposes of this section, employment under the Government of India or under the Government of a State includes employment under any local or other authority within the territory of India or under the control of the Government of India or under any corporation or society owned or controlled by the Government.

11. Financial and administrative powers of Chairman. —

The Chairman shall exercise such financial and administrative powers over the Benches as may be vested in him under the rules:

Provided that the Chairman shall have authority to delegate such of his financial and administrative powers as he may think fit to the Vice-Chairman or any other officer of the Claims Tribunal, subject to the condition that the Vice-Chairman or such officer shall, while exercising such delegated powers, continue to act under the direction, control, and supervision of the Chairman.

12. Staff of Claims Tribunal. —

(1) The Central Government shall determine the nature and categories of the officers and other employees required to assist the Claims Tribunal in the discharge of its functions and provide the Claims Tribunal with such officers and other employees as it may think fit.

(2) The officers and other employees of the Claims Tribunal shall discharge their functions under the general superintendence of the Chairman.

(3) The salaries and allowances and conditions of service of the officers and other employees of the Claims Tribunal shall be such as may be prescribed.

CHAPTER III
JURISDICTION, POWERS, AND AUTHORITY OF CLAIMS TRIBUNAL

13. Jurisdiction, powers, and authority of Claims Tribunal. —

(1) The Claims Tribunal shall exercise, on and from the appointed day, all such jurisdiction, powers, and authority as were exercisable immediately before that day by any civil court or a Claims Commissioner appointed under the provisions of the Railways Act, —

(a) relating to the responsibility of the railway administrations as carriers under Chapter VII of the Railways Act in respect of claims for—

(i) compensation for loss, destruction, damage, deterioration or non-delivery of animals or goods entrusted to a railway administration for carriage by railway.

(ii) compensation payable under section 82A of the Railways Act or the rules made thereunder; and

(b) in respect of the claims for refund of fares or part thereof or for refund of any freight paid in respect of animals or goods entrusted to a railway administration to be carried by railway.

[(*1A*) The Claims Tribunal shall also exercise, on and from the date of commencement of the provisions of section 124A of the Railways Act, 1989 (24 of 1989), all such jurisdiction, powers and authority as were exercisable immediately before that date by any civil court in respect of claims for compensation now

payable by the railway administration under section 124A of the said Act or the rules made thereunder.]

[(*1B*) The Claims Tribunal shall also exercise, on and from the commencement of Part XIV of Chapter VI of the Finance Act, 2017 (7 of 2017), the jurisdiction, powers and authority conferred on the Tribunal under Chapter VII of the Railways Act,1989 (24 of 1989).]

(2) The provisions of the Railways Act, 1989 (24 of 1989) and the rules made thereunder shall, so far as may be, be applicable to the inquiring into or determining, any claims by the Claims Tribunal under this Act.

14. Distribution of business amongst Benches. —

(1) Where any Benches are constituted, the Central Government may, from time to time, by notification, make provisions as to the distribution of the business of the Claims Tribunal amongst the Benches and specify the matters which may be dealt with by each Bench.

(2) If any question arises as to whether any matter falls within the purview of the business allocated to a Bench, the decision of the Chairman shall be final.

Explanation. — For the removal of doubts, it is hereby declared that the expression "matters" includes an application under section 20.

15. Bar of jurisdiction. — On and from the appointed day, no court or other authority shall have, or be entitled to, exercise any jurisdiction, powers, or authority in relation to the matters referred to in [sub-sections (*1*), (*1A*) and (*1B*)] of section 13.

CHAPTER IV
PROCEDURE

16. Application to Claims Tribunal. —

(1) A person seeking any relief in respect of the matters referred to in sub-section (*1*) 1[or sub-section (*1A*)] of section 13 may make an application to the Claims Tribunal.

(2) Every application under sub-section (*1*) shall be in such form and be accompanied by such documents or other evidence and

by such fee in respect of the filing of such application and by such other fees for the service or execution of processes as may be prescribed:

Provided that no such fee shall be payable in respect of an application under sub-clause (*ii*) of clause (*a*) of sub-section (*1*) or, as the case may be, sub-section (*1A*) of section 13.

17. Limitation. —

(1) The Claims Tribunal shall not admit an application for any claim—

(a) under sub-clause (*i*) of clause (*a*) of sub-section (*1*) of section 13 unless the application is made within three years from the date on which the goods in question were entrusted to the railway administration for carriage by railway.

(b) under sub-clause (*ii*) of clause (*a*) of sub-section (*1*) or, as the case may be, sub-section (*1A*) of section 13 unless the application is made within one year of occurrence of the accident.

(c) under clause (*b*) of sub-section (*1*) of section 13 unless the application is made within three years from the date on which the fare or freight is paid to the railway administration:

Provided that no application for any claim referred to in sub-clause (*i*) of clause (*a*) of sub-section (*1*) of section 13 shall be preferred to the Claims Tribunal until the expiration of three months next after the date on which the intimation of the claim has been preferred under section 78B of the Railways Act.

(2) Notwithstanding anything contained in sub-section (*1*), an application may be entertained after the period specified in sub-section (*1*) if the applicant satisfies the Claims Tribunal that he had sufficient cause for not making the application within such period.

18. Procedure and powers of Claims Tribunal. —

(1) The Claims Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908), but shall

be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules, the Claims Tribunal shall have powers to regulate its own procedure including the fixing of places and times of its enquiry.

(2) The Claims Tribunal shall decide every application as expeditiously as possible and ordinarily every application shall be decided on a perusal of documents, written representations, and affidavits and after hearing such oral arguments as may be advanced.

(3) The Claims Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely:

(a) summoning and enforcing the attendance of any person and examining him on oath.

(b) requiring the discovery and production of documents.

(c) receiving evidence on affidavits.

(d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), requisitioning any public record or document or copy of such record or document from any office.

(e) issuing commissions for the examination of witnesses or documents.

(f) reviewing its decisions.

(g) dismissing an application for default or deciding it *ex parte*.

(h) setting aside any order of dismissal of any application for default or any order passed by it *ex parte*.

(i) any other matter which may be prescribed.

19. Right to legal representation and presenting officers. —

(1) A person making an application to the Claims Tribunal may either appear in person or take the assistance of a legal practitioner of his choice to present his case before the Claims Tribunal.

(2) A railway administration may authorise one or more legal practitioners or any of its officers to act as presenting officers and every person so authorised by it may present its case with respect to any application before the Claims Tribunal.

20. Power of Chairman to transfer cases from one Bench to another- On the application of any of the parties and after notice to the parties, and after hearing such of them as he may desire to be heard, or on his own motion without such notice, the Chairman may transfer any case pending before one Bench, for disposal, to any other Bench.

21. Decision to be by majority. —
If the Members of a Bench differ in opinion on any point, they shall state the point or points on which they differ, and make a reference to the Chairman who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other Members and such point or points shall be decided according to the opinion of the majority of the Members who have heard the case, including those who first heard it.

22. Execution of orders of Claims Tribunal. —

(1) An order made by the Claims Tribunal under this Act shall be executable by the Claims Tribunal as a decree of civil court and, for this purpose, the Claims Tribunal shall have all the powers of a civil court.

(2) Notwithstanding anything contained in sub-section (*1*), the Claims Tribunal may transmit any order made by it to a civil court having local jurisdiction and such civil court shall execute the order as if it were a decree made by that court.

CHAPTER V
APPEALS

23. Appeals. —

(1) Save as provided in sub-section (*2*) and notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908) or in any other law, an appeal shall lie from every order, not being an interlocutory order, of the Claims Tribunal, to the

High Court having jurisdiction over the place where the Bench is located.

(2) No appeal shall lie from an order passed by the Claims Tribunal with the consent of the parties.

(3) Every appeal under this section shall be preferred within a period of ninety days from the date of the order appealed against.

CHAPTER VI
MISCELLANEOUS

24. Transfer of pending cases. —

(1) Every suit, claim or other legal proceeding (other than an appeal) pending before any court, Claims Commissioner or other authority immediately before the appointed day, [or the date of commencement of the provisions of sub-section (*1A*), or, as the case may be, the date of commencement of the provisions of sub-section (*1B*)] of section 13], being a suit, claim or proceeding the cause of action whereon it is based is such that it would have been, if it had arisen after the appointed day, [or the date of commencement of the provisions of sub-section (*1A*), or, as the case may be, the date of commencement of the provisions of sub-section (*1B*)] of section 13], within the jurisdiction of the Claims Tribunal, shall stand transferred on 3[that day or, as the case may be, date,] to the Claims Tribunal.

(2) Where any suit, claim or other legal proceeding stands transferred from any court, Claims Commissioner, or other authority to the Claims Tribunal under sub-section (1), —

(a) the court, Claims Commissioner or other authority shall, as soon as may be after such transfer, forward the records of such suit, claim or other legal proceeding to the Claims Tribunal.

(b) the Claims Tribunal may, on receipt of such records, proceed to deal with such suit, claim or other legal proceeding, so far as may be, in the same manner as an application, from the stage which was reached before such

transfer or from any earlier stage or de novo as the Claims Tribunal may deem fit.

25. Proceedings before Claims Tribunal to be judicial proceedings- All proceedings before the Claims Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193, 219 and 228 of the Indian Penal Code (45 of 1860).

26. Members and staff of Claims Tribunal to be public servants- The Chairman, Vice-Chairman and other Members and the officers and other employees of the Claims Tribunal shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860).

27. Protection of action taken in good faith. — No suit, prosecution, or other legal proceeding shall lie against the Central Government or against the Chairman, Vice-Chairman or other Member, or any other person authorised by the Chairman, Vice-Chairman, or other Member for anything which is in good faith done or intended to be done in pursuance of this Act or any rule or order made thereunder.

28. Act to have overriding effect. —The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

29. Power to remove difficulties. —

(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act, as appear to it to be necessary or expedient for removing the difficulty:
Provided that no such order shall be made after the expiry of a period of three years from the appointed day.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

30. Power to make rules. —

(1) The Central Government may, by notification, make rules to carry out the provisions of this Act.

(2) Without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely: —

(a) the procedure under sub-section (3) of section 8 for the investigation of misbehaviour or incapacity of the Chairman, Vice-Chairman, or other Member.

(b) salaries and allowances payable to, and the other terms and conditions of service (including pension, gratuity, and other retirement benefits) of, the Chairman, Vice-Chairman, and other Members under section 9.

(c) the financial and administrative powers which the Chairman may exercise over the Benches under section 11.

(d) the salaries and allowances and conditions of service of officers and other employees of the Claims Tribunal under sub-section (3) of section 12.

(e) the form of application, the documents and other evidence to be accompanied with such application and fee in respect of filing of such application and fee for the service or execution of processes under sub-section (2) of section 16.

(f) the rules subject to which the Claims Tribunal shall have powers to regulate its own procedure under sub-section (1) of section 18 and the additional matters in which the Claims Tribunal may exercise powers of civil court under clause (i) of sub-section (3) of that section.

(g) any other matter which is required to be, or may be, prescribed.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter

have effect only in such modified form or be of on effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

30A. Power to make rules retrospectively.— The power to make rules under clause (b) of sub-section (2) of section 30 shall include the power to make such rules or any of them retrospectively from a date not earlier than the date on which this Act received the assent of the President, but no such retrospective effect shall be given to any such rule so as to prejudicially affect the interests of any person to whom such rule may be applicable.

CHAPTER VII
AMENDMENTS TO THE RAILWAYS ACT

31. Amendment of section 3.-In section 3 of the Railways Act, after clause (18), the following clause shall be inserted, namely: -

"(19) "Claims Tribunal" means the Railway Claims Tribunal established under section 3 of the Railway Claims Tribunal Act, 1987.".

32. Amendment of section 78-A. - In section 78-A of the Railways Act, for the word "suit", the words "application before the Claims Tribunal" shall be substituted.

33. Substitution of new section for section 80.-For section 80 of the Railways Act, the following section shall be substituted, namely: -

"80. Application for compensation. - An application to the Claims Tribunal for compensation for loss of the life of, or personal injury to, a passenger or for loss, destruction, damage, deterioration or non-delivery of animals or goods may be made, -

(a) if the passenger was, or the animals or goods were, booked from one station to another on the railway of the same railway administration, against that railway administration.

(b) if the passenger was, or the animals or goods were, booked through over the railway of two or more railway administrations, against the railway administration from which the passenger obtained his pass or

purchased his ticket or to which the animals or goods were delivered for carriage, as the case may be, or against the railway administration on whose railway the destination station lies, or the loss, injury, destruction, damage or deterioration occurred."

34. Omission of sections 82-B, 82-D, and 82-F. - Sections 82-B, 82-D, and 82-F of the Railways Act shall be omitted.

35. Amendment of section 82-C- In section 82-C of the Railways Act, -

(a) in sub-section (1), for the words "Claims Commissioner", the words "Claims Tribunal" shall be substituted.

(b) sub-section (2) and the *Explanation* thereto shall be omitted.

36. Amendment of sections 82-E, 82-G and 82-HH. - In sections 82-E, 82-G and 82-HH of the Railways Act, for the words "Claims Commissioner", wherever they occur, the words "Claims Tribunal" shall be substituted.

37. Amendment of section 82-I. - In section 82-I of the Railways Act, for the words, figures and letters "sections 82-A to 82-HH", the words, figures and letters "sections 82-A, 82-C, 82-E and 82-G to 82-HH" shall be substituted.

38. Amendment of section 82-J.- In section 82-J of the Railways Act,

(a) in sub-section (1), for the words, figures and letters "sections 82-A to 82-H inclusive", the words, figures and letters "sections 82-A, 82-C, 82-E, 82-G and 82-H" shall be substituted.

(b) in sub-section (2), clause (i) and clauses (iv) to (vi) shall be omitted.

THE RAILWAY CLAIMS TRIBUNAL (PROCEDURE) RULES, 1989

29

The Railway Claims Tribunal (Procedure) Rules, 1989

Published vide Notification G.S.R. 842(E), dated 19.9.1989, published in the Gazette of India, Extraordinary, Part 2, Section 3(i), dated 19.9.1989

Last Updated 14th January 2020 [21/934]

G.S.R. 842(E). - In exercise of the powers conferred by clauses (c), (e), (f) and (g) of sub-section (2) of section 30 of the Railway Claims Tribunal Act, 1987 (54 of 1987), the Central Government hereby makes the following rules, namely: -

1. Short title and commencement. –

(1) These rules may be called The Railway Claims Tribunal (Procedure) Rules, 1989.

(2) They shall come into force on the "appointed day" within the meaning of clause (b) of section (2) of the Act.

2. Definitions. - In these rules, unless the context otherwise requires, -

(a) **"Act"** means the Railway Claims Tribunal Act, 1987 (54 of 1987).

(b) **"accident"** means an accident of the nature [described] in section 82-A of the [Indian Railways Act, 1890 (9 of 1890)].

(c) **"applicant"** means a person making an application to the Tribunal under section 16 of the Act.

(d) **"Form"** means a form appended to these rules.

(e) **"Legal practitioner"** shall have the meaning assigned to it under clause (i) of section 2 of the Advocates Act, 1961 (25 of 1961).

(f) **"Legal representative"** means a person who in law represents the estate of deceased.

(g) **"Registrar"** means the person who is for the time being discharging the functions of the Registrar of the Tribunal and includes an Additional and Assistant Registrar.

(h) **"Registry"** means the Registry of any Bench of the Tribunal.

(i) **"Schedule"** means a schedule to these rules.

(j) **"Section"** means a section of the Act.

(k) **"Transferred application"** means a suit, claim or other legal proceeding which has been transferred to the Tribunal under section 24 of the Act.

(l) **"Tribunal"** means the Railway Claims Tribunal established under section 3 of the Act.

(m) Words and expressions used and not defined in these rules but defined in the Act shall have the meanings respectively assigned to them in that Act.

3. Territorial jurisdiction of Benches. –

[(1) The number of Benches, the Headquarter of and the territorial jurisdiction of a Bench shall be as specified in Schedule I and Schedule I(A).]

(2) If an application is received by a Bench which does not have territorial jurisdiction to deal with the matter, the Registrar of the Bench shall return the application to the applicant.

(3) Notwithstanding anything contained in sub-rule (2) the applicant may apply to the Chairman and the Chairman may thereupon for

reasons to be recorded in writing direct a Bench other than the Bench before which an application has been filed to hear such application and issue such orders as may be necessary for the transfer of the application.

[4. Language of the Claims Tribunal. –

(1) The pleadings before the Claims Tribunal may, at the option of the respective parties, be either in English or in Hindi.

(2) All orders and judgments of the Claims Tribunal may, at the option of the Claims Tribunal, be either in Hindi or in English.]

5. Procedure for filing applications. –

(1) An application to the Tribunal shall be presented in Form I or Form II or Form III, as the case may be, either by the applicant in person or by an agent or by his duly authorized legal practitioner [in the office of the Registrar or the Additional Registrar, or the Assistant Registrar, as the case may be].

[(2) An application referred to sub-rule (1) may also be sent by registered post or electronic mail to the office of the Registrar or the Additional Registrar or the Assistant Registrar, as the case may be, of the Bench concerned].

[(2A) An application sent by post or electronic mail under sub-rule (2) shall be deemed to have been received on the day when the application is received by the Registrar, Additional Registrar or the Assistant Registrar, as the case may be].

(3) The application under sub-rule (1) or sub-rule (2) shall be presented in triplicate.

[(3A) The application sent by email by the applicant shall also make available hardcopies of the application along with originals or duly certified true copies of originals of enclosures relied by the applicant by registered post to the Registrar, Additional Registrar or the Assistant Registrar].

(4) Where the number of respondents is more than one, as many extra copies of the application as there are respondents, together with unused file size envelopes, bearing the full address of such respondents, shall be furnished by the applicant.

(5) The applicant may attach to and present with his application a receipt slip in [Form IV] which shall be signed by the Registrar of the office receiving the application on behalf of the Registrar in acknowledgement.

(6) Every application including any miscellaneous application, shall be typed legibly in double space on one side on thick paper of good quality.

6. Application fees for cases other than compensation for death or injury to passengers. –

(1) Every application made under sub-section (1) of section 16 for seeking relief in respect of matters, other than claim of compensation for death or injuries to passengers, shall be accompanied by a fee as specified in Schedule II.

(2) The amount of the fee as referred to in sub-rule (1) shall be payable by crossed demand draft on a nationalized bank drawn in favor of the Registrar of the concerned Bench or remitted through a crossed Indian Postal Order and drawn in favor of the Registrar of the concerned Bench.

7. Documents to accompany the application. –

(1) Every application for compensation in respect of loss, destruction, damage, deterioration or non-delivery of animals or goods or in respect of refund of fare or freight shall be accompanied by the following documents, namely:

(a) copy of the railway receipt/parcel waybill/luggage ticket.

(b) original sale invoice (Bijak), if any.

(c) copy of order or letter, if any, of the railway administration deciding the claim of the party.

(d) copy of the original certificate issued by the railway administration regarding loss, deterioration, or damage to the goods, at the time of granting open delivery or assessment delivery.

[(e) copy of notice under section 106 of the Railways Act, 1989 (24 of 1989);]

(f) copies of any other relevant document in possession of the applicant.

[(2) The documents referred to in sub-rule (1) may be attested by a legal practitioner or by a Gazetted Officer of the Central Government or a State Government.

(3) An application filed under sub-rule (1) of rule 5 by a legal practitioner shall be accompanied by a *vakalatnama* and that by an agent shall be accompanied by a document authorizing him to act as such.

(4) When any document accompanying an application or reply appears to be defaced, torn, or in any way damaged or otherwise its condition or appearance requires special notice, a mention regarding its condition and appearance shall be made by the party producing the same in the index of such application or reply, as the case may be, and the same shall be verified by the Registrar.]

[8. Place of filing application for compensation in accident or untoward incident claim. - An application for compensation payable under section 124 or 124-A of the Railways Act, 1989 (24 of 1989) may be filed before the Bench having territorial jurisdiction over the place where the accident or untoward incident occurs or where the claimant normally resides.]

9. Place of filing application for compensation for loss, damage, destruction, deterioration or non-delivery of goods or animals. - An application for compensation referred to in sub-clause (i) of clause (a) of sub-section (1) of section 13 of the Act may be filed before the Bench having territorial jurisdiction over the place where-

(a) the goods or animals were delivered for carriage; or

(b) where the destination station lies; or

(c) the loss, destruction, damage or deterioration of goods or animals occurred.

10. Place of filing application for refund of fare and freight. –

An application in respect of a claim for refund of fare or freight referred to in clause (b) of sub-section (1) of section 13 of the Act may be filed before the Bench having territorial jurisdiction over the place at which such fare or [freight was paid or the place] where the destination station lies.

[10A. Every application made under rule 9 or 10 shall be accompanied with a fee of ten rupees for each respondent for the service or execution of process.]

11. Scrutiny of applications. –

(1) The Registrar, or the officer authorized by him, shall endorse on every application, the date on which it is presented or received through post under [rule 5] and sign the endorsement.

(2) If, on scrutiny, the application is found to be in order, it shall be registered and given a serial number.

[(3) If on scrutiny an application is found defective and defect noticed is formal in nature, the Registrar may allow the applicant to rectify the same in his presence, and if the defect is not formal in nature, the Registrar may allow the applicant to rectify defect in a week's time, which may be extended in appropriate cases on the written request of the applicant.]

(4) If the applicant fails to rectify the defect within the time allowed under sub-rule (3), the Registrar may, by order and for reasons to be recorded in writing, decline to register the application, and inform the applicant accordingly.

(5) An appeal against the order passed under sub-rule (4) may be preferred by the person aggrieved within fifteen days from the date of such order to any Member and such appeal shall be dealt with and disposed of in Chamber by the Member whose decision thereon shall be final.

[11-A. Maintenance of Cash Register. - (1) All payments received by way of Indian Postal Orders or demand drafts or in cash by the Registrar shall be entered immediately by the Registration Clerk on their receipt side in a Cash Register maintained in Form VI.

(2) On every last working day of the week, the payments received during the week by way of Indian Postal Orders or demand drafts shall be transmitted by the Registration Clerk to the official in charge of the Cash Section, who after scrutiny and verification shall acknowledge the receipt of all moneys in the Cash Register.

(3) The payments received in cash shall be transmitted by the Registration Clerk to the official in charge of the Cash Section on each day, who after verification shall acknowledge the receipt of all moneys in the Cash Register.

(4) The official in charge of the Cash Section shall deposit all payments received by way of Indian Postal Order or demand draft or cash in the Bank account of the Tribunal.]

12. Notice to opposite party. –

(1) The Tribunal shall issue [notice in Form VII] to the respondent to show cause against the application on a date of hearing to be specified therein. Such [notice in Form VII] shall be accompanied by a copy of the application.

(2) If the respondent does not appear on the date specified in the [notice in Form VII] or appears and admits the claim, the Claims Tribunal shall forthwith proceed to dispose of the application.

(3) If the respondent contests the claim, it may file a reply along with copies of such documents on which it relies on or before the date of hearing and such reply and copies of documents shall form part of the record.

13. Service of notices and processes issued by the Tribunal. –

(1) Any notice or process to be issued by the Tribunal may be served in any one of the following modes as may be directed by the Bench:

(a) by hand delivery through a process server.
(b) by registered post with acknowledgment due.
(c) service by the party himself.

(2) Where a notice issued by the Tribunal is served by the party himself by "hand delivery" he shall file with the Registry the acknowledgment, together with an affidavit of service.

(3) Notwithstanding anything contained in sub-rule (1), the Tribunal may, taking into account the number of respondents and their places of residence or work and other circumstances, direct that notice of the application shall be served upon the respondents in any other manner, including any manner of substituted service, as it appears to the Tribunal just and convenient.

[(4) A notice or process may also be served on the legal practitioner representing the applicant or the respondent, as the case may be, in any proceeding or on any person authorized to accept a notice or a process, and such service on the legal practitioner or on the authorized person shall be deemed to be proper service.

(5) Where the Tribunal directs a service under sub-rule (3), such amount of charges, as may be determined by the Tribunal from time to time, but not exceeding the actual charges incurred in effecting the service, shall be deposited in the Tribunal.]

14. Filing of affidavit. –

(1) The Tribunal may direct the parties to give evidence, if any, by affidavit.

(2) Notwithstanding anything contained in sub-rule (1), where the Tribunal considers it necessary for just decision of the case, it may order cross-examination of any deponent.

[(3) Every affidavit to be filed before the Tribunal shall be in Form VIII.]

15. Filing of reply and other documents by the respondents. –

(1) Each respondent may file his reply to the application and copies of the documents on or before the date of hearing.

(2) In reply filed under sub-rule (1), the respondent shall specifically admit, deny or explain the facts stated by the applicant in his application and state such additional facts as may be found necessary in his reply [* * *].

[(3) When the respondent admits the facts stated in the application, the Tribunal may make order in this regard.]

[15-A. Filing of rejoinder. - The applicant intending to file rejoinder to the written reply filed by the respondent may do so with the permission of the Tribunal.

15-B. Admission and denial of documents. - The Tribunal may, before framing issues ascertain from parties or their authorized representatives whether they admit or deny documents accompanying the application or reply, if any, and shall record such admission and denial.

15-C. Marking of documents. - The documents filed by the applicant shall be marked as `A' series and the documents filed by the respondent shall be marked as `R' series and the Tribunal exhibits shall be marked as `C' series.]

16. Summary dismissal of application. -

The Tribunal may, after considering the application summarily, dismiss the application, if for reasons to be recorded, the Tribunal is of opinion that there are not [sufficient grounds] for proceeding therewith.

17. Hearing of applications. –

The Tribunal shall notify to the parties the date and place of hearing of the application in such manner as the Chairman may, by general or special order, direct.

[17-A. Oath to the witness. - The Court Master or the Commissioner, as the case may be, shall administer the following oath to a witness: - "I do swear in the name of God that what I shall state shall be truth and nothing but the truth".]

18. Action on application for applicant's default. –

(1) Where on the date fixed for hearing of the application or on any other date to which such hearing may be adjourned, the applicant does not appear when the application is called for hearing, the Tribunal may, in its discretion, either dismiss the application for default or hear and decide it on merit.

(2) Where an application has been dismissed for default and the applicant files an application within thirty days from the date of dismissal and satisfies the Tribunal that there was sufficient cause for his non-appearance when the application was called for hearing, the Tribunal shall make an order setting aside the order dismissing the application and restore the same:

Provided, however, where the case was disposed of on merits the decision shall not be re-opened except by way of review.

19. Ex parte hearing and disposal of applications. –

(1) Where on the date fixed for hearing the application or on any other date to which such hearing may be adjourned, the applicant appears and the respondent does not appear when the application is called for hearing, the Tribunal may, in its discretion adjourn the hearing or hear and decide the application *ex parte.*

(2) Where an application has been heard *ex parte* against a respondent or respondents, such respondent or respondents may apply to the Tribunal for an order to set it aside and if such respondent or respondents satisfy the Tribunal that the notice was not duly served, or that he or they were prevented by any sufficient cause from appearing when the application was called for hearing, the Tribunal may make an order setting aside the *ex parte* hearing as against him or them upon such terms as it thinks fit, and shall appoint a day for proceeding with the application:

Provided that where the *ex parte* hearing of the application is of such nature that it cannot be set aside as against one

respondent only, it may be set aside as against all or any of the other respondents also.

20. Procedure and powers of Tribunal. –

The Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely: -

i) summoning and enforcing the attendance of any person and examining him on oath.
ii) requiring the discovery and production of documents.
iii) receiving evidence on affidavits.
iv) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), requisitioning any public record or document or copy of such record or document from any office.
v) issuing commissions for the examination of witness or documents.
vi) reviewing its decisions.
vii) dismissing an application for default or *ex parte*;
viii) setting aside any order of dismissal of any application for default or any order passed by it ex parte.

21. Framing and determination of issues. –

(1) After considering the reply, the Tribunal shall ascertain upon what material propositions of fact or of law the parties are at variance and shall thereupon proceed to frame and record the issues upon which the right decision of the case appears to it to depend.

(2) In recording the issues, the Tribunal shall distinguish between those issues which in its opinion concern points of facts and those which concern points of law.

(3) After framing the issues, the Tribunal shall proceed to record evidence thereon which each party may desire to produce.

[22. Summoning of witnesses and method of recording evidence. -

(1) If an application is presented by any party to the proceedings for

summoning of witness, the Tribunal shall issue summons for the appearance of such witness with recording the reasons for doing so, unless it considers that his appearance is not necessary for the just decision of the case.

(2) The Tribunal shall make a brief memorandum of the substance of the evidence of every witness as the examination of the witness proceeds and such memorandum shall form part of the record:

Provided that if the Tribunal is prevented from making such memorandum, it shall record the reasons of its inability to do so and shall cause such memorandum to be made in writing from its dictation and shall sign the same, and such memorandum shall form part of the record.]

[(3) Where summons are issued by the Tribunal under sub-rule (1) to any witness to give evidence or to produce any document, the person so summoned shall be entitled to such traveling and daily allowance, sufficient to defray the traveling and other expenses, as may be determined by the Registrar.]

[22-A. Documents not to form part of records. - Unless duly permitted by the Tribunal, the following documents shall not form part of the records of the case-

(a) written statement filed after the expiry of time granted for the purpose.

(b) rejoinder filed without leave of the Tribunal or after the expiry of time granted.

(c) additional pleading filed without leave of the Tribunal or filed after expiry of time granted; and

(d) documents not tendered into evidence.]

23. Power to issue commission. - Any Bench of the Tribunal may issue a commission for the examination on interrogatories or otherwise of any person [* * *] who is unable to attend the Tribunal for any justifiable reason.

24. Procedure in connected cases. –

(1) Where two or more applications pending before a Tribunal arise out of the same facts and any issue involved is common to two or more such applications, such applications may, so far as the evidence bearing on such issue is concerned, be heard simultaneously.

(2) Where action is taken under sub-rule (1), the evidence bearing on the common issue or issues shall be recorded on the record of one application the Tribunal shall certify under its hand on the records of any such other application, the extent to which evidence so recorded applies to such other case and the fact that the parties to such other case had the opportunity of being present, and, if they were present for cross-examining the witnesses.

25. Calendar of transferred cases. - Each Bench shall draw up a calendar for the hearing of transferred cases in such manner as the Chairman may, by general or special order direct and, hear and decide the cases according to the calendar.

26. Substitution of legal representatives. –

(1) In the case of death of a party during the pendency of the proceedings before Tribunal, the legal representatives of the deceased party may apply within ninety days of the date of such death for being brought on record.

(2) Where no application is received from the legal representatives within the period specified in sub-rule (1), the proceedings shall abate:

Provided that for good and sufficient reasons shown, the Tribunal may allow substitution of the legal representatives of the deceased.

27. Assessors. –

(1) In any enquiry into a claim, the Tribunal may call in the aid of assessors, not exceeding two in number, who possess any

technical or special knowledge with respect to any matter before the Tribunal for the purpose of assisting the Tribunal.

(2) An assessor shall perform such functions as the Tribunal may direct.

(3) The remuneration, if any, to be paid to an assessor shall in every case be determined by the Tribunal and be paid by it.

28. Adjournment of hearing. - If the Tribunal finds that an application cannot be disposed of at one hearing it shall record the reasons which necessitate the adjournment and also inform the parties present of the date of adjourned hearing:

[Provided that no such adjournment shall be granted more than three times to a party during the proceedings before the Tribunal:

Provided further that all the documents shall be filed by the parties alongwith pleadings and no adjournment shall be granted for filing documents at a later stage, except in circumstances which are beyond the control of the concerned party.]

29. Costs:

The Claims Tribunal may, in its discretion, pass such orders in respect of costs incidental to any proceedings before it, as it may deem fit.

30. Decision of the Tribunal: The Tribunal shall decide every application as expeditiously as possible on perusal of documents, affidavits and other evidence, if any, and after hearing such oral arguments as may be advanced.

31. Order to be passed and signed:

[(1) The Tribunal, after hearing the applicant and respondent, shall pass an order either at once, or as soon as thereafter, as may be practicable, but not later than twenty-one days from the date of conclusion of the arguments; and where it is unable so to do, it shall record its reasons for such inability.]

(2) An order made by the Tribunal shall be executable by the Tribunal as a decree of a Civil Court and the provisions of the

Code of Civil Procedure, 1908 (5 of 1908), so far as may be, shall apply as they apply in respect of decree of a Civil Court.

(3) Every order of the Tribunal shall be in writing and shall be signed by the Member or Members constituting the Bench, which pronounced the order.

[31-A. Execution of order: An order of the Tribunal may be executed by the Bench which pass it if the respondent is within the territorial jurisdiction of the said Bench or by any other Bench or Court to which it is sent for execution, when the respondent is having his office within the territorial jurisdiction of such Bench or Court, as the case may be.

31-B. Application for execution: For execution the holder of an order shall make an application to the Tribunal in Form IX.

31-C. Issue of process of execution: (1) On receipt of an application under rule 31-B, the Tribunal shall issue a process for execution of its order in Form X.

(2) The Tribunal shall consider objection, if any, raised by the respondent and make such order as it may deem fit and shall issue attachment or recovery warrant in Form XI and XII, as the case may be.]

32. Review of decision

(1) Any person considering himself aggrieved by any order of the Tribunal from which no appeal is allowed [or from which appeal is allowed, but has not been preferred] and who on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the order made against him, may apply for review of a final order not being an interlocutory order, to the Tribunal.

[(2) Where it appears to the Tribunal that there is no sufficient ground for a review, it shall reject the application and its reasons for so doing].

(3) Where the Tribunal is of the opinion that the application for review should be granted, it shall grant the same:

Provided that no such application shall be granted without previous notice to the opposite party to enable him to appear and be heard in support of the order, a review of which is applied for.

33. Publication of orders: Any order of the Tribunal deemed by it to be fit for publication in any authoritative report or other media may be released for such publication on such terms and conditions as the Chairman or Vice-Chairman or Member concerned may specify by general or special order.

34. Certified copy of the order and inspection of record:

(1) If the applicant or the respondent to any proceeding requires a copy of any order passed by the Tribunal, the same shall be supplied to him on payment of rupees ten per order [in the normal course of time within seven working days from the receipt of an application for the said purpose and on payment of rupees twenty on urgent basis within three working days from the receipt of an application for the said purpose].

(2) The parties to any case or their Counsel may be allowed to inspect the record of the case on making an application in writing to the Registrar and payment of rupees ten per inspection.

[(3) Notwithstanding anything contained in sub-rule (1), in compensation cases relating to accident and untoward incidents, one copy of the order made by the Tribunal shall be sent within three working days by the Registrar to both the parties free of cost with an endorsement thereon "Free copy".]

35. Orders or directions by the Tribunal: The Tribunal may pass such orders or give such directions as may be necessary or expedient to give effect to its orders or to prevent abuse of its process or to secure the end of justice.

36. Registration of legal practitioner's clerks:

(1) No clerk employed by a legal practitioner shall act as such before the Tribunal or be permitted to have access to the records and obtain copies of the orders of a Bench of the Tribunal in which the legal practitioner ordinarily practices, unless his name is entered in the Register of Clerks maintained by the said Bench. Such clerk shall be known as a "Registered Clerk".

(2) A legal practitioner desirous of registering his clerk shall make an application to the Registrar in Form V. On such application being allowed by the Registrar, his name shall be entered in the Register of Clerks.

[(3) An Identity Card shall be issued in Form XIII to a Registered Clerk of the legal practitioner on payment of a fee of rupees fifteen by way of Indian Postal Order or demand draft drawn in favor of the Registrar.]

37. Powers, functions, and duties of the Registrar:

(1) The Registrar shall have the custody of the records of the Tribunal and shall exercise such other functions as are assigned to him under these rules or from time to time by the Chairman or the Vice-Chairman or the Member.

(2) Without prejudice to the foregoing sub-rule (1), the Registrar shall have the following powers and duties, subject to the general or special order of the Chairman, Vice-Chairman or Member, namely: -

i) to receive all applications and other documents including transferred applications under sub-rule (3) of rule 3.

ii) to decide all questions arising out of the scrutiny of the applications before they are registered in accordance with rule 11.

iii) to require any application presented to the Tribunal to be amended for compliance with any provision of the Act or the rules.

iv) subject to the direction of the respective Benches, to fix the date of hearings and to issue notices therefor.

v) to direct any formal amendment of records.

vi) to order grant of copies of documents to parties to the proceedings.

vii) to grant leave to inspect the records of the Tribunal.

viii) to dispose of all matters relating to the service of notices or other processes, applications for the issue of fresh notices and for extending the time for filing such applications and to grant time not exceeding [thirty] days for filing a reply or rejoinder, if any, and to place the matter before the Bench for appropriate orders after the expiry of the aforesaid period.

ix) to requisition or transfer of any records of such suit, claim or other legal proceeding as are transferred to the claims Tribunal from any Court, Claims Commissioner, or other authority under clause (a)of sub-section (2) of section 24 of the Act.

x) to receive and dispose of applications for substitution, except where the substitution would involve setting aside an order of abatement.

xi) to receive and dispose of applications by parties for return of documents.

[(xii) to supply to the Central Government the information in Form XIV.

xii) to dismiss the application for default in case the applicant or his legal practitioner does not appear before him on the date fixed for hearing of the case.

xiii) to dismiss the application in case the applicant fails to serve the opposite party with the notice; and

xiv) to restore the application, if he is satisfied that there are sufficient reasons for non-appearance or for not serving the opposite party.]

(3) The [official seal shall] be kept in the custody of the Registrar.

(4) Subject to any general or special direction by the Chairman, the seal of the Tribunal shall not be affixed to any order, summons or other process save under the authority in writing of the Registrar.

(5) The seal of the Tribunal shall not be affixed to any certified copy issued by the Tribunal save under the authority in writing of the Registrar.

(6) The Registrar of each Bench shall make out, every month a brief summary of the important decisions given by that Bench during the previous month and send it to the Registrar of the Principal Bench who shall after suitable editing, circulate it to all the Benches of the Tribunal in the country and to all Chief Claims Officers of Zonal Railways for their information.

38. Working hours of the Tribunal:

Except on Saturdays, Sundays and other public holidays, the office of the Tribunal shall, subject to any order made by the Chairman, remain open from 9-30 a.m. to 6-00 p.m.

39. Sitting hours of the Tribunal:

The sitting hours of the Tribunal shall ordinarily be from 10-30 a.m. to 1-30 p.m. and 2-30 p.m. to 4-30 p.m. subject to any general or special order made by the Chairman or by Vice-Chairman or Member concerned with the prior approval of the Chairman.

40. Seal and emblem:

The official seal and the emblem of the Tribunal shall be such as the Central Government may specify.

41.[* * *]

[42. Headquarters of the Tribunal: (1) The Tribunal shall have its Headquarters at Delhi and have four administrative zones with their Headquarters as mentioned in Schedule I and Schedule I(A) to sub-rule (1) of rule 3.

(2) The presiding officers and administrative head of administrative zones shall exercise such administrative powers as delegated by Chairman and will act under directions, control and supervision of Chairman.]

43. Preservation of record:

All necessary documents and records relating to applications dealt with by the Tribunal shall be kept in a record room and shall be

preserved for a period of three years after the passing of the final order.

44. Inherent powers of the Tribunal:

Nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the Tribunal to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Tribunal.

[45. Monthly progress report of Tribunal: The Tribunal shall furnish every month to the Central Government in Form XIV, the information with regard to institution, disposal and pendency of claims cases, accident cases and other information relating to the functioning of the Tribunal and its Benches.]

46. Maintenance of order sheets:

The Registrar shall attach to every application an order sheet in duplicate in Form XV.

47. Maintenance of Court Diary:

The Court Master shall maintain a Court Diary in Form XVI for recording the proceedings of the Tribunal for each working day with respect to all applications listed in the daily cause list.

48. Preparation and publication of daily cause list:

The Court Master shall on each working day prepare for the next working day, the cause list in Form XVII and fix a copy of the same on the Notice Board of the Tribunal.

49. Retention, preservation, and destruction of records:

(1) The Record Keeper shall be responsible for the records consigned to the Record Room. He shall scrutinize the records received by him within three days and prepare an index.

(2) If on scrutiny, any deficiency is found in the records, the Record Keeper shall return the records back to the concerned Branch or Section.

(3) On the expiry of the period for preservation of the records prescribed under rule 43, the Registrar shall weed out the record.

THE RAILWAY CLAIMS TRIBUNAL (FINANCIAL AND ADMINISTRATIVE POWERS) RULES, 1989

30

The Railway Claims Tribunal (Financial and Administrative Powers) Rules, 1989

Published vide Notification G.S.R. 845(E), dated 19.9.1989, published in the Gazette of India, Extraordinary, Part 2, Section 3(i), dated 19.9.1989.

In exercise of the powers conferred by section 11 and clause (c) of sub-section (2) of section 30 of the Railway Claims Tribunal Act, 1987 (54 of 1987), the Central Government hereby makes the following rules, namely: -

1. Short title and commencement. -

(1) These rules may be called The Railway Claims Tribunal (Financial and Administrative Powers) Rules, 1989.

(2) They shall come into force on the "appointed day" within the meaning of clause (b) of section 2 of the Act

2. In these rules, unless the context otherwise requires: -

(1) **"Act"** means the Railway Claims Tribunal Act, 1987 (54 of 1987).

3. Sitting of a Bench at a place other than the place where it ordinarily sits. - If at any time, the Chairman is satisfied that circumstances exist which necessitate sittings of the Bench at any place falling in its jurisdiction other than the place at which it ordinarily sits, he may direct that the Bench may hold its sittings at any such place.

4. Powers of Chairman. - The Chairman shall have the same powers in respect of matters specified in the Schedule as are conferred on a General Manager of a railway administration under the Indian Railway Financial Code, Indian Railway Establishment Code, Railway Servants (Discipline and Appeal) Rules, 1968, Railway Servants (Conduct) Rules, 1966, and Railway Servants (Pass) Rules, 1986:

Provided that the exercise of the financial powers shall be subject to any procedural or other instructions issued from time to time by the Government after obtaining the advice of the associated Financial Adviser and Chief Accounts Officer.

Schedule

1. Appointments and promotions against vacancies in respect of sanctioned posts.
2. Grant of Leave.
3. Issue of Passes.
4. Establishment matters generally.
5. Contingent expenditure within the amount allotted for this purpose in the sanctioned grant for each year.
6. Re-appropriation from one sub-head to another.
7. Write off of losses and deficiencies in stores.
8. Disposal of worn-out articles.
9. Write off of losses of cash.
10. Hiring of vehicles for official use.
11. Sanction and write off of advances.
12. Hiring of accommodation for official use.

THE RAILWAY CLAIMS TRIBUNAL
(PROCEDURE FOR INVESTIGATION OF MISBEHAVIOUR OR INCAPACITY OF THE CHAIRMAN, VICE-CHAIRMAN AND MEMBERS) RULES, 1991

31

Published vide G.S.R. 699(E), dated 26.11.1991, published in the Gazette of India, Extraordinary, Part II, Section 3(i), dated 26.11.1991.

In exercise of the powers conferred by sub-section (1) read with clause (a) of sub-section (2) of section 30 of the Railway Claims Tribunal Act, 1987 (54 of 1987), the Central Government hereby makes the following rules to regulate the procedure for investigation of misbehaviour and incapacity of the Chairman, Vice-Chairman and Members of the Railway Claims Tribunal, namely: -

1. Short title and commencement. –

(1) These rules may be called The Railway Claims Tribunal (Procedure for Investigation of Misbehaviour or Incapacity of the Chairman, Vice-Chairman and Members) Rules, 1991.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. Definitions. –

In these rules unless the context otherwise requires, -

(a) "Judge" means the Judge of the Supreme Court appointed for conducting an inquiry under rule 3.

(b) "Member" means the Members of the Claims Tribunal established under section 3 of the Railway Claims Tribunal Act, 1987 (54 of 1987) and includes the Chairman, Vice-Chairman of such Tribunal against whom investigation of misbehaviour or incapacity is being made under these rules.

(c) words and expression used herein and not defined but defined in the Railway Claims Tribunal Act, 1987 (54 of 1987), shall have the meanings respectively assigned to them in that Act.

3. Judge to conduct inquiry. –

(1) Whenever the Central Government is of the opinion that there are reasonable grounds for making an inquiry into truth of any imputation of misbehaviour or incapacity of a member, it may, after consulting the Chief Justice of India, by notification in the Official Gazette appoint a Judge for the purpose of conducting such inquiry.

(2) Notice of appointment of a Judge under sub-rule (1) shall also be given to such Member.

4. Powers of Judge. –

(1) The Judge shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice and shall have power to regulate his own procedure including the fixing of places and times of his enquiry.

(2) The Judge shall have, for the purposes of discharging his functions under these rules, the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit, in respect of the following matters, namely: -

(a) summoning and enforcing the attendance of any person and examining him on oath.

(b) requiring the discovery and production of documents.

(c) receiving evidence on affidavits.

(d) subject to the provisions of sections 123 and 124 of Indian Evidence Act, 1872, requisitioning any public record or document or copy of such record or document from any office.

RAILWAY ACCIDENTS AND UNTOWARD INCIDENTS (COMPENSATION) RULES, 1990

32

Published vide Notification G.S.R. 552(E), dated 7.6.1990, published in the Gazette of India, Extraordinary, Part 2, Section 3(i), dated 7.6.1990

G.S.R. 552(E). - In exercise of the powers conferred by section 129 of the Railways Act, 1989 (24 of 1989) read with section 22 of the General Clauses Act, 1897 (10 of 1897) and in supersession of the Railway Accidents (Compensation) Rules, 1989 except in respect of things done or omitted to be done before such supersession, the Central Government hereby makes the following rules, namely: -

Preliminary

1. Short title and commencement. –

(1) These rules may be called the Railway Accidents and Untoward Incidents] (Compensation) Rules, 1990.

(2) They shall come into force on the date of commencement of the Act.

2. Definitions. –

(1) In these rules, unless the context otherwise requires, -

(a) **"accident"** means an accident of the nature described in section 124 of the Act.

(b) **"Act"** means the Railways Act, 1989 (24 of 1989).

(c) **"Claims Tribunal"** means the Railway Claims Tribunal established under section 3 of the Railway Claims Tribunal Act, 1987 (54 of 1987).

(d) **"Schedule"** means the Schedule to these rules; and

[(e) **"untoward incident"** means an incident defined in clause (c) of section 123 of the Act.]

[(2) The words used and not defined in these rules but defined in the Act shall have the meanings respectively assigned to them in that Act.]

Claims For Compensation

3. Amount of compensation. –

(1) The amount of compensation payable in respect of death for injuries, shall be as specified in the Schedule.

(2) The amount of compensation payable for an injury not specified in Part II or Part III of the Schedule but which, in the opinion of the Claims Tribunal, is such as to deprive a person of all capacity to do any work, shall be [rupees eight lakhs].

(3) The amount of compensation payable in respect of any injury (other than an injury specified in the Schedule or referred to in sub-rule (2) resulting in pain and suffering), shall be such as Claims Tribunal may after taking into consideration medical evidence, besides other circumstances of the case, determine to be reasonable:

Provided that if more than one injury is caused by the same accident, compensation shall be payable in respect of each such injury:

Provided further that the total compensation in respect of all such injuries shall not exceed [rupees one lakh sixty thousand].

(4) Where compensation has been paid for any injury which is less than the amount which would have been payable as compensation

if the injured person had died and the person subsequently dies as a result of the injury, a further compensation equal to the difference between the amount payable for death and the already paid shall become payable.

(5) Compensation for loss, destruction or deterioration of goods or animals shall be paid to such extent as the Claims Tribunal may, in all the circumstances of the case, determine to be reasonable.

4. Limit of compensation. - Notwithstanding anything contained in rule 3, the total compensation payable under that rule shall in no case exceed [rupees eight lakhs] in respect of any one person.

[5. Mode of Payment. –

5.1 The tribunal may, in order to protect the sum awarded to the claimant, having due regard to the illiteracy or other disabling factors impairing the judicious use of such sum, issue directions for disbursing the award in terms of annuities, fixed deposits or other suitable mode as shall subserve justice.

5.2 If any of the claimants is a minor or person of unsound mind, the Tribunal may give liberty to the guardian ad litem to use the interest accruals on the deposit that shall be made during the minority for maintenance.

5.3 Nothing in this rule shall limit the power of the Tribunal to make modifications of the mode of disbursal for reasons to be stated in writing depending on the exigencies requiring liquidation of any corpus created for annuity or premature closure of fixed deposit, for the benefit of the claimant.

5.4 The orders dated 21st April 2017, 24th May, 2019 and 06th November, 2019 of Hon'ble High Court of Delhi in FAO No. 22/2015 and CM Application No. 4501/2015 in Geeta Devi Vs Union of India, relating to disbursement of compensation shall be read as part of this rule.

5.4.1 Examination of the Claimant(s) before passing of the award

(i) RCT shall, before or at the time of passing of the award, examine the claimant(s) to ascertain their financial

condition/ needs, mode of disbursement and amount to be kept in fixed deposit.

(ii) Before disbursement of the award amount, the RCT shall direct the claimant(s) to open an individual savings bank account in a nationalised bank near the place of their permanent residence and the concerned bank be directed to not issue any cheque book(s) and/or debit card(s) to the claimant(s) and if the same have already been issued, the bank be directed to cancel the same and make an endorsement on the passbook of the claimant(s) to the effect that no cheque book and/or debit card shall be issued to the claimant(s) without the permission of the RCT. The concerned Bank of the claimant(s) be directed to permit the claimant(s) to withdraw money from his savings bank account by means of a withdrawal form only. The claimant(s) be directed to produce the copy of the order passed by the RCT before the concerned bank whereupon the bank be directed to make an endorsement on the passbook. The claimant(s) be directed to produce the passbook with the necessary endorsement as well as Aadhaar Card and PAN Card before the RCT on the next date fixed for compliance.

(iii) RCT shall take the following documents on record from the Claimant(s):

(a) Details of the Bank Account(s) of the Claimant(s) near the place of their residence with the necessary endorsement.

(b) Aadhaar Card and PAN Card or any other appropriate ID card; and

(c) Two sets of photographs and specimen signatures of the Claimant(s).

5.4.2 Deposit of The Award Amount

The RCT shall direct the Railways to deposit the amount awarded with the Registrar or RCT within a period of 30 days from the date of communication of the award. At the time of passing the award, RCT

shall examine whether the Claimant(s) are entitled to exemption of deduction of TDS and if so, the Claimant(s) shall submit Form 15G or Form 15H (for senior citizen) to the Presenting Officer of the Railways (as applicable under sub-section (2) of section 19 of the Railway Claims Tribunal Act, 1987) so that no TDS is deducted.

5.4.3 Protection of The Award Amount

The RCT shall, depending upon the financial status and financial need of the Claimant(s), release such amount as may be considered necessary and direct the remaining amount to be kept in annuity or fixed deposit. For Example, in case of award of compensation of amount of Rs.5.5 lakhs: -

(i) Rs.50,000/- be released immediately and the balance Rs.5,00,000/- be kept in FDR for five years or such period as the RCT may consider appropriate, on which monthly interest be released to the claimant(s) by transferring the same to his savings bank account; or

(ii) Rs. 50,000/- may be released immediately and the remaining amount of Rs. 5,00,000/- may be kept in 50 fixed deposits of Rs. 10,000/- each, in the name of the Claimant(s), for the period of one month to 50 months respectively, with cumulative interest.

5.4.4 RCT shall impose the following conditions with respect to the fixed deposits

(a) The Bank shall not permit any joint name(s) to be added in the savings bank account or fixed deposit accounts of the Claimant(s) i.e. the savings bank account(s) of the Claimant(s) shall be an individual savings bank account(s) and not a joint account(s).

(b) The original fixed deposit shall be retained by the bank in safe custody. However, the statement containing FDR number, FDR amount, date of maturity and maturity amount shall be furnished by bank to the Claimant(s).

(c) The monthly interest be created by Electronic Clearing System (ECS) in the savings bank account of the Claimant(s) near the place of their residence.

(d) The maturity amounts of the FDR(s) be credited by Electronic Clearing System (ECS) in the savings bank account of the Claimant(s) near the place of their residence.

(e) No loan, advance, withdrawal, or pre-mature discharge be allowed on the fixed deposits without permission of the RCT.

(f) The concerned bank shall not issue any cheque book and/or debit card to the Claimant(s). However, in case the debit card and/or cheque book have already been issued, bank shall cancel the same before the disbursement of the award amount. The bank shall freeze the account of the Claimant(s) so that no debit card be issued in respect of the account of the Claimant(s) from any other branch of the bank.

(g) The bank shall make an endorsement on the passbook of the Claimant(s) to the effect that no cheque book and/or debit card have been issued and shall not be issued without the permission of the RCT and Claimant(s) shall produce the passbook with the necessary endorsement before the RCT on the next date fixed for compliance.

(h) It is clarified that the endorsement made by the bank along with the duly signed and stamped by the bank official on the passbook(s)of the Claimant(s) is sufficient compliance of clause(g) above.

(i) The concerned Bank of the claimant(s) be directed to permit the claimant to withdraw money from his savings bank account by means of a withdrawal form only.

5.4.5 RCT Shall Fix a Date for Reporting Compliance

(i) RCT shall fix a date for reporting compliance, preferably within 90 days of the award itself.

(ii) Railway shall place on record the proof of deposit of the award amount with up-to-date interest along with a calculation sheet.

(iii)Upon such proof being filed, RCT shall ensure that the interest up to the date of notice of deposit has been deposited by the Railways.

5.4.6. Twenty-One Banks mentioned in Appendix-I have implemented Motor Accident Claims Tribunal Annuity Deposit (MACAD) Scheme on the directions of the Delhi High Court in Rajesh Tyagi Vs. Jaibir

Singh, FAO No.842/2003. The particulars of the said Scheme are given in Appendix-II. All the aforesaid twenty-one banks have been directed to extend the MACAD Scheme to the victims of the untoward incident of Railways. The RCT is at liberty to disburse the award amount through the said Scheme in appropriate cases.]

[Appendix-1]

List of Approved Banks for Implementation of Motor Accident Claims Annuity Deposit (Macad) Scheme

(i) State Bank of India, (ii) Punjab National Bank, (iii) UCO Bank, (iv) Bank of Baroda, (v) Allahabad Bank, (vi) Oriental Bank of Commerce, (vii) IDBI Bank, (viii) Indian Overseas Bank, (ix) Andhra Bank, (x) Bank of India, (xi) Punjab and Sind Bank, (xii) Bank of Maharashtra, (xiii) Canara Bank, (xiv) Central Bank of India, (xv) Syndicate Bank, (xvi) Corporation Bank, (xvii) Dena Bank, (xviii) Union Bank of India, (xix) United Bank of India, (xx) Indian Bank, (xxi) Vijaya Bank

[Appendix-II]

Motor Accident Claims Annuity Deposit (Macad) Scheme

S. No.	Scheme Features	Particulars/Details
1	Purpose	One-time lump sum amount, as decided by the Court / Tribunal, deposited to receive the same in Equated Monthly Installments (EMIs), comprising a part of the principal amount as well as interest.
2	Eligibility	Individuals including Minors through guardian in single name.
3	Mode of Holding	Singly
4	Type of account	Motor Accident Claims Annuity (Term) Deposit Account (MACAD)
5	Deposit Amount	i. Maximum: No Limit ii. Minimum–Based on minimum monthly annuity Rs.1,000/- for the relevant period.
6	Tenure	i. 36 to 120 months ii In case the period is less than 36 months, normal FD will be opened. iii. MACAD for longer period (more than 120 months) will be looked as per direction of the Court.
7	Rate of interest	Prevailing rate of interest as per Tenure.
8	Receipts/Advices	i No Receipts will be issued to depositors. ii. Passbook will be issued for MACAD
9	Loan Facility	No loan or advances shall be allowed.
10	Nomination facility	i. Available. ii. MACAD shall be duly nominated as directed by the court.
11	Premature Payment	i. Premature closure or part lump sum payment of MACAD during the life of the claimant will be made with permission of the court. However,

		if permitted, the annuity part will be reissued for balance tenure and amount, if any, with change in annuity amount. ii. Premature closure penalty will not be charged. iii. In case of death of the claimant, payment to be given to the nominee. The nominee has an option to continue with the annuity or seek pre-closure.
12	Tax deduction at source	i. Interest payment is subject to TDS as per Income Tax Rules. Form 15G/15H can be submitted by the Depositor to get exemption from the Tax deduction. ii. The annuity amount on monthly basis net of TDS, will be credited to the MACT Savings Bank account.

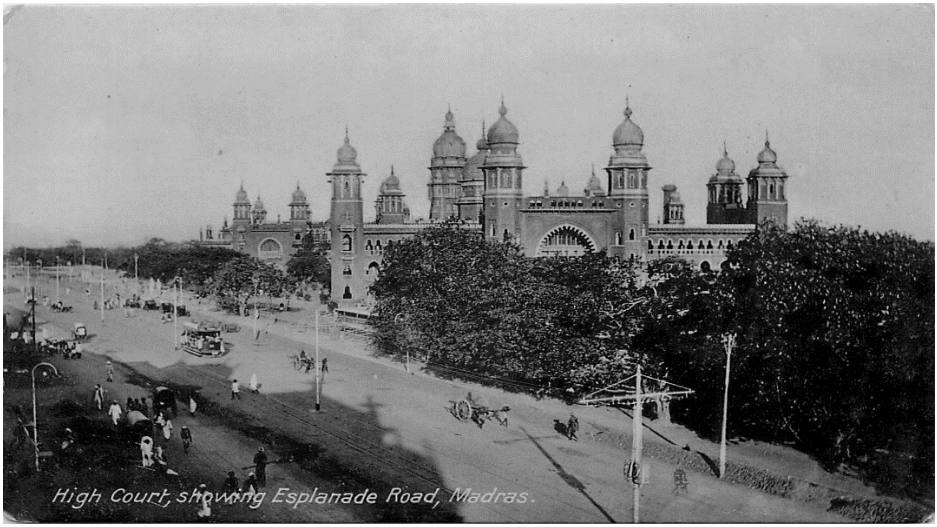
[Appendix-II]
Mact Claims Sb Account

Features	**Particulars / Details**
Eligibility	Individuals including Minors (through guardian) in single name
Minimum/Maximum Balance Requirement	Not applicable
Cheque book / Debit Card / ATM Card / Welcome Kit/ Internet Banking / Mobile Banking facility	i. By default, these facilities are not available in this product. ii. However, in case these facilities have already been issued, the court shall direct the bank to cancel the same before the disbursement of the award amount. iii. The bank shall make an endorsement on the passbook of the claimant(s) to the effect that no cheque book and/or debit card have been issued and shall not be issued without the permission of the Court.
Operations in the account	i. Only single operation. ii. In case of Minor accounts, the operation will be through guardian.
Withdrawals	Only through Withdrawal Forms or through Bio-Metric authentication.
Product change	Not permitted
Place of Opening	Only at the Branch near to the place of residence of Claimant (as directed by the Court).
Account Transfer	Not allowed
Nomination	Available
Passbook	Available
Rate of Interest	As applicable to Regular SB accounts
Statement by e-mail	Available
Any other terms and conditions of SB account in Bank are applicable.	

[Schedule]
(See Rule 3)
Amount of Compensation Payable in respect of Death and Injuries

Part I		Amount of Compensation (in rupees)
For death		8,00,000
PART II		
(1)	For loss of both hands or amputation at higher sites.	8,00,000
(2)	For loss of hand and a foot.	8,00,000
(3)	For double amputation through leg or thigh or amputation through leg or thigh on one side and loss of other foot.	8,00,000
(4)	For loss of sight to such an extent as to render the claimant unable to perform any work for which eyesight is essential.	8,00,000
(5)	For very severe facial disfigurement.	8,00,000
(6)	For absolute deafness.	8,00,000
Part III		
(1)	For amputation through shoulder joint.	7,20,000
(2)	For amputation below shoulder with stump less than 8" from tip of acromion.	6,40,000
(3)	For amputation from 8" from tip of acromion to less than 4 ½" below tip of olecranon.	5,60,000
(4)	For loss of a hand or the thumb and four fingers of one hand or amputation from 4 ½ " below space tip of olecranon.	4,80,000
(5)	For loss of thumb.	2,40,000
(6)	For loss of thumb and its metacarpal bone.	3,20,000
(7)	For loss of four fingers of one hand.	4,00,000
(8)	For loss of three fingers of one hand.	2,40,000
(9)	For loss of two fingers of one hand.	1,60,000
(10)	For loss of terminal phalanx of thumb.	1,60,000
(11)	For amputation of both feet resulting in end bearing stumps.	7,20,000
(12)	For amputation through both feet proximal to the metatarso-phalangeal joint.	6,40,000
(13)	For loss of all toes of both feet through the metatarso-phalangeal joint.	3,20,000
(14)	For loss of all toes of both feet proximal to the proximal interphalangeal joint.	2,40,000
(15)	For loss of all toes of both feet distal to the proximal inter-phalangeal joint.	1,60,000
(16)	For amputation at hip.	7,20,000
(17)	For amputation below hip with stump not exceeding 5" in length measured from tip of great trenchanter but not beyond middle thigh.	6,40,000

(18)	For amputation below hip with stump exceeding 5" in length measured from tip to great trenchanter but not beyond middle thigh.	5,60,000
(19)	For amputation below middle thigh to 3 ½" below knee.	4,80,000
(20)	For amputation below knee with stump exceeding 3 ½" but not exceeding 5.	4,00,000
(21)	Fracture of Spine with paraplegia.	4,00,000
(22)	For amputation below knee with stump exceeding 5.	3,20,000
(23)	For loss of one eye without complications the other being normal.	3,20,000
(24)	For amputation of one foot resulting in end-bearing.	2,40,000
(25)	For amputation through one foot proximal to the emetatarso-phalangeal joint.	2,40,000
(26)	Fracture of Spine without paraplegia.	2,40,000
(27)	For loss of vision of one eye without complications of disfigurement of eyeball, the other being normal.	2,40,000
(28)	For loss of all toes of one foot through the metatarso-phelangeal joint.	1,60,000
(29)	Fracture of Hip-joint.	1,60,000
(30)	Fracture of Major Bone Femur Tibia Both limbs.	1,60,000
(31)	Fracture of Major Bone Humerus Radius Both limbs.	1,20,000
(32)	Fracture of Pelvis not involving joint.	80,000
(33)	Fracture of Major Bone Femur Tibia one limb.	80,000
(34)	Fracture of Major Bone Humerus Radius Ulna One limb.	64,000



Madras, High Court

THE RAILWAY PASSENGERS (MANNER OF INVESTIGATION OF UNROWARD INCIDENTS) RULES, 2020

33

Notice no. G.S.R. 346(E)- In exercise of powers conferred by Section 129 of the Railways Act, 1989 (24 of 1989) and in supersession of the Railway Passengers (Manner of Investigation of Untoward Incidents) Rules, 2003 except as respects things done or omitted to be done before such supersession, the Central Government hereby makes the following rules, namely-

1. **Short title and commencement.** –
   (1) These rules may be called Railway Passengers (Manner of Investigation of Untoward Incidents) Rules, 2020.
   (2) They shall be deemed to have come into force on the 1st day of January 2020.
2. **Definitions**
   (1) In these rules, unless the context otherwise requires-
      (a) **'Act'** means the Railways Act, 1989 (24 of 1989).
      (b) **'Claims Tribunal'** means Tribunal constituted under the Railway Claims Tribunal Act, 1987 (54 of 1987);

(c) **'Diary'** means the station diary being maintained by the Station Superintendent for recording daily events happened at the station.

(d) **'Divisional Office'** means the Divisional Headquarter of the Zonal Railway.

(e) **'Divisional Railway Manager'** means the administrative in-charge of the divisional office, or the Additional Divisional Railway Manager nominated by him.

(f) **'Divisional Security Commissioner'** means an officer, not below the rank of a Commandant, who is the head of the Force of a Division or a Railway Establishment at any other place connected with the Railways.

(g) **'Force'** means the Railway Protection Force.

(h) **'Form'** means the form appended to these rules.

(i) **'Inquest Report'** means the report prepared by the Police containing details of incident.

(j) **'Jama Talashi'** means the report about the recovery of any belongings of the person affected by the untoward incident.

(k) **'Officer of the Force'** means the authorised officer as defined in clause (c) of Section 2 of the Railway Property (Unlawful Possession) Act, 1966 (29 of 1966) and clause (26-A) of Section 2 of the Railways Act, 1989 (2 of 1989).

(l) **'Police'** means a State Police.

(m) **'Station Superintendent'** includes Deputy Station Superintendent Station Master and Assistant Station Master or other officer being in- charge of the station;

(n) **'Untoward Incident'** means an incident defined under clause (c) of Section 123 of the Act; and

(o) **'Zonal Railway'** means a Zonal Railway constituted under Section 3 of the Act.

1. Ministry of Railways (RAILWAY BOARD), Noti. No. G.S.JR. 346(E), dated June 3, 2020, and published in the Gazette of India, Extra, Part 11, Section 3(i), dated 4th June 2020, pp. 7-12, No. 267

(2) The words and expressions used herein and not defined but defined in the Act shall have the meaning respectively assigned to them in the Act.

3. Report about untoward incident.

Any railway servant, including member of the Force. Guard and Driver of the train, on coming to know of the occurrence of an untoward incident, shall report the incident immediately to the nearest Stations Master/Station Superintendent of Railways.

4. Duties of Station Superintendent, Guard, Conductor and Train Ticket Examiner in charge of the train.

(1) If an untoward incident occurs at the station, the concerned Station Superintendent shall immediately arrange for medical assistance to the injured passengers and report such incident within twenty- four hours of the occurrence to the Divisional Security Commissioner in FORM -1.

(2) If an untoward incident occurs in the mid-section, the Guard of the concerned train shall inform the Station Superintendent of the nearest station who shall perform the duties referred to in sub-rule (1).

(3) In case the Guard is injured in an untoward incident, the Conductor of the concerned train shall inform the Station Superintendent of the nearest station who shall perform the duties referred to in sub-rule (1).

(4) In case both the Guard and the Conductor are injured in an untoward incident, the Train Ticket Examiner in-charge shall inform the Station Superintendent of the nearest station who shall perform the duties referred to in sub-rule (1).

(5) If an untoward incident occurs in mid-section, in the absence of officers mentioned in sub-rules (2), (3) and (4), the Station Superintendent, if it comes to his notice, shall perform the duties referred to in sub-rule (1).

5. Additional duties of Station Superintendent

The Station Superintendent on receipt of an information about the occurrence of untoward incident under Rule 3, shall, -

(i) Maintain a separate exclusive register for recording the untoward incidents-

(a) Assign a unique identification number to each untoward incident and mention the untoward incident in the said register against this unique identification number.

(b) The untoward incident register should be closed at 23:59 hrs every day so that untoward incident happening thereafter can be added in the register against that day.

(ii) Make a brief report in respect of spot of the untoward incident and forward copies thereof to the Divisional Office, Zonal Railways, Police and Divisional Security Commissioner of the Force.

(iii) Submit a fortnightly status report of untoward incidents including compliance of Rule 4 to Divisional Commercial Manager In-charge/ Senior Divisional Commercial Manager.

6. Conducting of investigation and submission of report by the Force-

(1) On receipt of information under Rule 5, an officer of the Force, shall carry out the investigation and shall-

(i) Obtain copies of the inquest report, postmortem report and Jama Talashi report from the Police investigating the incident.

(ii) Obtain a copy of the report specified under clause (ii) of Rule 5:

(iii) Obtain information about the untoward incident in Form-2:

(iv) Record statement of additional witnesses, if so required.

(v) Collect any other evidence required by the circumstances of the case.

(2) The officer of the Force shall complete the investigation within sixty days and submit a report to the authority specified under sub-rule (2) of Rule 9.

7. Conducting of investigation and submission of report by the Police. -

(1) The Police on receipt of information of an untoward incident from general public or any Railway servant including Station Superintendent, the Police shall immediately initiate investigation and prepare inquest report or injury report in accordance with the procedure laid down in Code of Criminal Procedure, 1973 (2 of 1974).

(2) The Police upon reaching the scene of the untoward incident shall inform the nearest/concerned Station Superintendent personally or over telephone or through

SMS or any effective electronic means of its presence at the scene of the incident. The Police shall immediately take photographs of the incident along with dead body/victim at the spot along with the tracks/witness(es)/bystanders.

(3) After preparation of report, as mentioned in sub-rules (1) and (2), the Police shall immediately give clearance certificate for movement of trains from the site of incident so that minimum delay is caused in restoration of train movement.

(4) The Police shall prepare the Detailed Accident Report (DAR) and submit a copy of the same to Divisional Security Commissioner/Sr. DSC within 60 days from the date of untoward incident for onward submission to Divisional Railway Manager.

(5) In the event of the Police failing to take photographs as stated under sub-rule (2) of Rule 7 above, the concerned DCP shall examine why the photographs were not taken and whether any action is warranted for the lapse.

8. The injured and the next of kin of the deceased passenger shall submit all the relevant evidence before the Police and assist the Police/Force to complete investigation.

9. Forwarding of investigation report by the police and the Force-

(1) The Police on completion of the investigation shall forward the report thereof to the Magistrate as required under the Code of Criminal Procedure, 1973 (2 of 1974).

(2) The officer of the Force shall forward the report prepared under sub-rule (2) of Rule to the Divisional Security Commissioner of Force.

(3) The Divisional Security Commissioner shall submit the report to Divisional Railway Manager within fifteen days of the receipt of report of investigation from officer of the Force.

(4) The Divisional Security Commissioner shall also ensure that a copy of Detailed Accident Report prepared by Police, in the format circulated by Ministry of Home Affairs (CS Division) vide their letter No. 24013/35/Misc/2017 CSR, III dated 2-9-2019, is forwarded to the Divisional Railway Manager within 15 days of the receipt from the Police and after ascertaining the facts and verifying the genuineness of the facts of the case along with Forrn-2.

10. Action on the Report by the Divisional Railway Manager. -

(1) The Divisional Railway Manager, on receipt of the report, mentioned in sub-rule (3) of Rule 9 shall examine the same within fifteen days.

(2) The Divisional Railway Manager, on receipt of the report, mentioned in sub-rule (3) of Rule 9 shall examine the same within fifteen days. In case, the statutory time periods mentioned in the rules for filing of Form-1 and Form-2 have not been adhered to then Divisional Railway Manager shall call for explanation for delay from the concerned authorities.

(3) When, on examination, Divisional Railway Manager is satisfied that the investigation is complete, he shall pass an order accepting the said report.

(4) If the Divisional Railway Manager has reason to believe that some more inquiry is required in the matter, it shall refer the same back for investigation to the officer of the

Force along with his observations for further investigation.

(5) On receipt of the reference under sub-rule (4), the officer of the Force shall investigate the matter further and submit the report immediately to the Divisional Railway Manager.

11. Communication of order

Final orders passed on the report by the Divisional Railway Manager shall be communicated to the Station Superintendent who shall maintain the records and make necessary entries in the Station Diary to this effect.

12. Sending report to Claim Office

(1) The investigation report along with acceptance of Divisional Railway Manager there on shall be sent within fifteen days to the administrative in-charge of the Claim office of the Zonal Railway where the incident has occurred.

(2) The administrative in-charge of Claim office of the Zonal Railway who has received the notice of the claim for that particular incident, shall arrange to collect the report from the Claim office of Railway where the incidence has occurred, shall initially have the claim examined by presenting officer (Railway Claims Tribunal) and associated legal branch and on the basis of their submission, and recommendation of Divisional Railway Manager as provided under sub-rule (3) of Rule 10 and pass a speaking order, whether the claim is to be admitted or contested and shall submit the same to the concerned Bench of the Railway Claims Tribunal along with the Written Statement.

FORM 1
(Refer Rule 4)
REPORT OF UNTOWARD INCIDENT

1. Unique Identification Number of the Untoward Incidents:
2. Kilometre at which untoward incident occurred:
3. Name of Driver of the train with Headquarter.
4. Name of the Guard of the train with Headquarter:
5. Name of the Train Ticket Examiner of train, if posted, with Headquarter:
6. Nature of the untoward incident:
   (a) Accident fall
   (b) Bomb blast.
   (c) Rioting
   (d) Shootout
   (e) Arson
   (f) Dacoity/Robbery
   (g) Violent attack
   (h) Terrorist act/attack
   (i) Run over/trespassing
   (j) Suicide
   (k) Others
7. Date and time of occurrence:
8. Position of the injured dead body in relation to the tracks along with photographs:
9. Whether medical help was given to the injured/victim:
10. Whether train stopped or not:

    Condition of doors and occupation of coach:

Signature
Name and designation.

Date:

**For creating the Unique ID Number, the alphabetical and numerical code of station/division/ zone/year/month/incident serial number mentioned in the register can be written in a continuous manner.

For example: If the incident falls within the area of Kathgodam Station under Izzat Nagar division of N.E Railway and the incident happened in the month of October 2017, the Unique ID will be as follows:

KGM/04305472/IZN/NER/2017/serial number.

FORM 2
(Refer Rule 6)
BRIEF PARTICULARS OF UNTOWARD INCIDENT

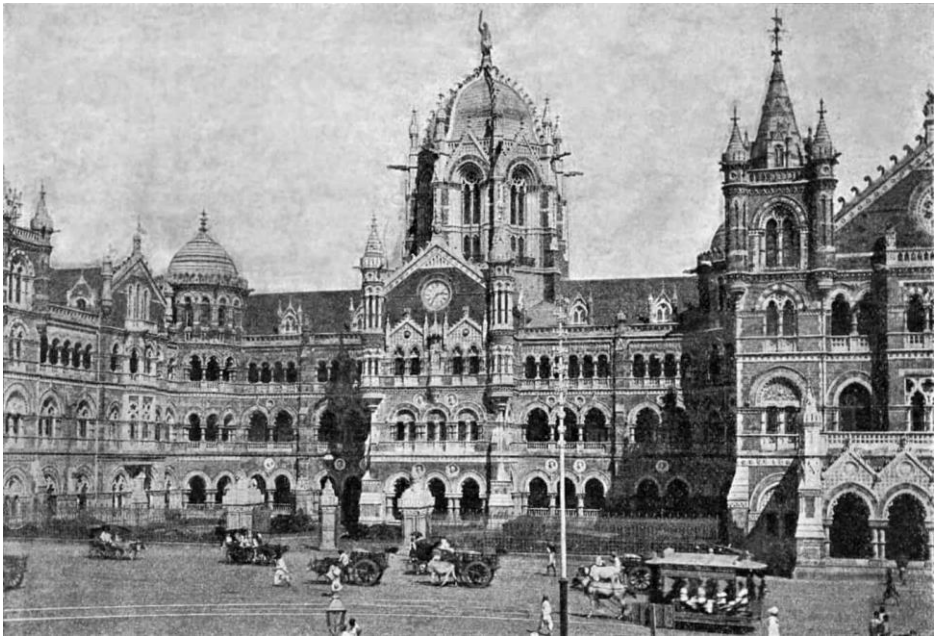
1. Date and time of the untoward incident:
2. Nature of untoward incidents (please specify (a) accidental fall, (b) bomb blast, (c) rioting. (d) shootout, (e) arson (f) dacoity/robbery, (g) violent attack, (h) terrorist act/ attack (1) run over, (1) tresspassing (k) suicide, (1) others):
3. FIR number and address of the Police Station where FIR is registered:
4. Medical report, if available:
5. Name, address, and parentage of the first informant:
6. Name and designation of the Railway officials who reached the place of incident first:
7. Name and designation of the Officer for the Force/Police on the train:
8. Name, age, sex, and address of the victim:
9. Photograph at the site where the victim was found:
10. Name and number of the train involved:

11. The actual time of arrival and departure of the train in question (As per TSR of the Station nearest to the place of incident):
12. Certified copies of station diary, untoward incident register, TSR, GDR report etc:
13. Kilometrage at which the passenger fell, or person was knocked down:
14. Was the incident noticed by the Guard/Driver/TTE and the train stopped, or was the alarm chain pulled to stop the train:
15. Type of injuries sustained by the injured i.e. grievous/simple, permanent/partial disablement:
16. Time and place the body was detected:
17. Position of the body in relation to the tracks:
18. Blood stains on ballast or engine, extent of the injuries and whether prima facie inflicted by a train, or otherwise:
19. Position of any clothing etc. found on, or near the rails:
20. Details of articles seized, including tickets, from the body of the victim:
21. Whether genuineness of the ticket is verified from the console:
22. Whether the ticket alleged to have been recovered is compatible with time of its issuance and where the victim was found:
23. How the injured or dead person was dealt with (whether medical help was given to the injured; whether he was admitted to any hospital; was the dead person identified; was postmortem carried out; was inquest report obtained; were the relatives of the injured/ dead informed):
24. If child, also give the name and address of the guardian at the time, and his relationship to the child:
25. Brief statement of the injured person containing cause of accident:

26. Name and signature of the passenger in whose presence the statement is recorded:
27. In the case of a child, the name and signature of guardian
28. Statement of co-passengers:
29. Condition of the doors of the relevant coach:
30. If there is no conclusive evidence regarding cause of incident, then Officer of Force instead of writing "fallen down", should state "reasons not known":
31. Any other comments/remarks:

Signature Name and Designation

Date:



COMMON LEGAL TERMS

34

A

Absentia – Absent; proceeding without the defendant present.
Abstract of Title – A chronological summary of all official records and recorded documents affecting the title to a parcel of real property.
Abuse of Process – Tort no longer recognized in New Mexico. It has been combined with "Malicious Prosecution" to form a new tort, "Malicious Abuse of Process." See Malicious Abuse of Process.
Acceptance – An unambiguous communication that the offer has been accepted. For contracts controlled by the UCC, contracts involving the sales of goods need not mirror the offer's terms. For other contracts, the acceptance must mirror the offer's terms without omitting, adding, or altering terms. In other words, under the UCC, the acceptance may alter the terms of the offer without becoming a counteroffer.
Accomplice – (1) A partner in a crime. (2) A person who knowingly and voluntarily participates with another in a criminal activity.
Accord and Satisfaction – Compromise and settlement. A way to discharge a claim whereby the parties agree to give and accept something in settlement of the claim that will replace the terms of the parties' original agreement. Accord is the new agreement; satisfaction is performance of the new agreement.

Acknowledgment – (1) A statement of acceptance of responsibility. (2) The short declaration at the end of a legal paper showing that the paper was duly executed and acknowledged.
Acquit, Acquittal – A finding of not guilty by a judge or jury.
Action – Case, cause, suit, or controversy disputed or contested before a court.
Additur – An increase by a judge in the amount of damages awarded by a jury.
Adjudication – Judgment rendered by the court after a determination of the issues.
Ad Litem – A Latin term meaning "for the purpose of the lawsuit." For example, a guardian "ad litem" is a person appointed by the court to protect the interests of a minor or legally incompetent person in a lawsuit.
Administrator – (1) One who administers the estate of a person who dies without a will. (2) An official who manages a court.
Administrative Revocation – The taking of a driver's license by the Motor Vehicle Division, through law enforcement agents and administrative law judges without involvement by the courts.
Admissible Evidence – Evidence that can be legally and properly introduced in a civil or criminal trial.
Admonish – To advise or caution. For example, the court may caution or admonish counsel or a witness for improper courtroom conduct.
Adversary System – The trial method used in the U.S. and some other countries. This system is based on the belief that truth can best be determined by giving opposing parties full opportunity to present and establish their evidence, and to test by cross-examination the evidence presented by their adversaries. This is done under the established rules of procedure before an impartial judge and/or jury.
Advisement – The process by which a judge takes time to consider, deliberate and/or consult on a matter prior to ruling.
Affiant – The person who makes and signs an affidavit.
Affidavit – A written statement of facts confirmed by the oath of the party making it, before a notary or officer having authority to administer oaths. For example, in criminal cases affidavits are often used by police officers asking courts to issue search or arrest warrants. In civil cases, affidavits of witnesses are often used to support motions for summary judgment.
Affidavit of Insolvency – A detailed form signed by the defendant, under oath, attesting to his/her indigency (inability to pay for private legal counsel).
Affirmative Defense – Apart from denying a charge or claim, a defendant may assert affirmative defenses such as insanity, self-defense or entrapment to avoid

criminal responsibility, or assert the statute of limitations or bankruptcy to avoid civil liability.

Affirmed – A decision by an appellate court stating that the decision of the trial court is correct.

Aid and Abet – To actively, knowingly or intentionally assist another person in the commission or attempted commission of a crime.

Alford Plea – A plea to a criminal charge that does not admit guilt but admits that sufficient evidence exists to obtain a conviction.

Allegation – A statement of the issues in a written document (a pleading) that a person is prepared to prove in court. For example, an indictment contains allegations of crimes against the defendant.

Alleged – Stated; claimed; asserted; charged.

Alternative Dispute Resolution – Settling a dispute without a full or formal trial. Methods include mediation, conciliation, arbitration, and settlement facilitation, among others.

Amend – Improve, correct, or change a complaint or other pleading.

Amicus Curiae – A friend of the court. One not a party to a case who volunteers, or is asked by the court, to offer information on a point of law or some other aspect of the case to assist the court in deciding a matter before it.

Answer – The defendant's response to the plaintiff's allegations as stated in a civil complaint. An item-by-item, paragraph-by-paragraph response to points made in a complaint, part of the pleadings.

Appeal – An application to a higher court for review of an order of conviction or of a civil judgment against a party.

Appeal Bond – A sum of money posted by a person appealing a judicial decision (appellant).

Appearance – (1) The formal proceeding by which a defendant submits to the jurisdiction of the court. (2) A written notification to the plaintiff by an attorney stating that s/he is representing the defendant.

Appellant – The party who takes an appeal from one court or jurisdiction to another.

Appellate Court – A court having jurisdiction to hear appeals and review a trial court's decision.

Appellee – The party against whom an appeal is taken. Sometimes called a respondent.

Arbitration – A form of alternative dispute resolution in which the parties bring their dispute to a neutral third party and agree to abide by his/her decision. In

arbitration there is a hearing at which both parties have an opportunity to be heard.

Arraignment – Appearance of the defendant in criminal court to be advised of rights and enter a plea to the charges.

Arrest – The official taking of a person to answer criminal charges. This involves at least temporarily denying a person of liberty and may involve the use of force.

Arrest Warrant – An order by a judge that gives permission for a police officer to arrest a person for allegedly committing a crime.

Assault – Threat to inflict injury with an apparent ability to do so. Also, any intentional display of force that would give the victim reason to fear or expect immediate bodily harm.

Asylum State – The state holding a fugitive from justice in another state.

Attachment – Taking and holding a person's property during proceedings to ensure satisfaction of a judgment not yet rendered.

At Issue – Matters are "at issue" when the complaining party has stated his/her claim, the other side has responded with a denial, and the matter is ready to be tried.

Attempt – A person attempts to commit a crime when: (1) that person intended to commit the crime; and (2) began to do an act that constituted a substantial part of the crime but failed to commit or complete the crime.

Attorney-at-Law – A licensed advocate or counsel authorized by the courts to prepare, manage and try cases in court, to prepare legal documents, or otherwise represent the interests of citizens.

Attorney-in-Fact – A private person (who is not necessarily a lawyer) authorized by another to act in his/her place, either for some particular purpose, as to do a specified act, or for the transaction of business in general, not of legal character. This authority is conferred by an instrument in writing, called a letter of attorney, or more commonly a power of attorney.

Attorney of Record – The attorney retained or assigned to represent a client.

Accomplice- A person who has taken part in or aided the commission of a crime.

Accused person- A person or persons accused of committing a crime but not yet tried for it.

Acknowledgement– It is a method to certify or declare one's knowledge of some document. It is a statement of acceptance.

Acquaintance Rape- When rape is being committed by a person known/related to the victim.

Acquittal- A conclusion by a judge that the accused person/s are not guilty of the commission of the charged offence/s.

Actus Reus- It is the unlawful, physical act that constitutes an essential element of a crime and which, in most cases, must be combined with mens rea (criminal intent) to prove that a crime has been committed.

Adjournment– The postponement of a case hearing to a later date.

Adjudication– The legal process of deciding a dispute between two or more parties by a competent authority.

Admissible Evidence- The evidence that a trial judge may consider based on the provisions of the Indian Evidence Act. All the evidence submitted by the parties to the court may not be admissible.

Admission– The acceptance of document, fact, or statement by a party before the court.

Advocate: A law graduate entered in any roll under the provisions of the Advocates Act, 1961.

Affidavit– A document sworn by a party before a notary asserting that the contents of the document are made to the best of the signatory's knowledge, information, and belief. Pleadings filed in court cases usually need to be supported by affidavits.

Appeal– A process by which a litigant can approach a higher court/authority challenging the order or judgment of a lower court, tribunal, or authority.

Appearance- A party showing up in court in response to summons or notice. A party can make an appearance either in person or through their lawyer, depending on the case. In criminal proceedings, the complainant, and the accused needs to be personally present at every hearing, unless the Court exempts them.

Appellant: A person who files an appeal i.e. applies to a higher court for a reconsideration of the decision made by a lower court.

Appellate (also see Jurisdiction):
In a court, those applications that are concerned with decisions made by a lower court, tribunal, or authority.

Arrears: As per the 245th Law Commission report: Some delayed cases might be in the system for longer than the normal time, for valid reasons. Those cases that show unwarranted delay will be referred to as arrears. Check the wiki page

Arrest– An arrest is an act of taking a person into custody as he/she may be suspected of a crime or an offence. It is done because a person is apprehended for doing something wrong.

Arrest Warrant– An order passed by a magistrate or judge authorising a law enforcement agency to arrest a person suspected of committing a crime.
Arson- It is a voluntary act of burning a property or setting a property on fire.
Assault- It is a threat or attempt to use criminal force on an individual. Actual physical contact is not required to prove assault.
Attachment– An order seizing or attaching property/assets (including bank accounts) to satisfy the demands or claims made by a party. Courts may attach a debtor's property to pay their creditors or to secure the creditors' interests during the pendency of proceedings.

B

Bail - Cash or surety posted to procure the release of a defendant in a criminal proceeding by insuring his/her future attendance in court and compelling him/her to remain within the jurisdiction of the court.
Bail Bond – A document through which one agrees to accept responsibility for a defendant and insure his/her appearance in court. By signing the form, the person posting the bond agrees to forfeit the bond if the defendant fails to appear in court as ordered.
Bailiff – A court attendant who keeps order in the courtroom and has responsibility for the jury.
Bankruptcy – Refers to statutes and judicial proceedings involving persons or businesses that cannot pay their debts and seek the assistance of the court in getting a fresh start. Under the protection of the bankruptcy court, debtors may be released ("discharged") from their debts completely or allowed to repay them in whole or in part on a manageable schedule. Federal bankruptcy judges preside over these proceedings. The person with the debts is called the debtor and the people or companies to whom the debtor owes money are called creditors.
Bar – (1) Historically, the partition separating the general public from the space occupied by the judges, lawyers, and other participants in a trial. (2) More commonly, the body of lawyers within a jurisdiction.
Bar Examination – A state examination taken by prospective lawyers, qualifying them to be admitted to the bar and licensed to practice law.
Battery – A beating or other wrongful touching of a person. The threat to use force is an assault; actual use of force is a battery, which usually includes an assault.
Bench – The seat occupied by the judge; more broadly, the court or judicial branch itself.

Bench Trial – Trial without a jury in which a judge decides the facts as well as the law.

Bench Warrant – An order issued by a judge to arrest a person based on his/her failure to obey a court order. A bench warrant may be issued when a person fails to pay a fine, appear, or attend DWI School.

Beneficiary – Someone named to receive property or benefits in a will, trust, insurance policy, or other such document.

Bequeath – To give a gift to someone through a will.

Bequests – Gifts made in a will.

Best Evidence – Primary evidence; the best form of evidence available. Evidence short of this is "secondary." For example, the original of a letter is the "best evidence," while a photocopy is "secondary evidence."

Best Evidence Rule – Rule requiring parties to proffer the original writing, recording, or photograph when attempting to prove the contents thereof. However, a duplicate is admissible in place of an original unless there is a genuine question about the authenticity of the original or it would be unfair under the circumstances of the case to admit the duplicate instead of the original. Also, an original is not required if it is lost or destroyed, if it cannot be obtained through a subpoena, if it is in the possession of the opposing party, and if the original is not closely related to a controlling issue in the case.

Beyond a Reasonable Doubt – The standard in a criminal case requiring that the jury be satisfied to a moral certainty that every element of a crime has been proven by the prosecution. This standard of proof does not require that the state establish absolute certainty by eliminating all doubt, but it does require that the evidence be sufficiently conclusive that all reasonable doubts are removed from the mind or the ordinary person.

Bind over – To hold a person for trial on bond (bail) or in jail. If the judicial official conducting a preliminary hearing finds probable cause to believe the accused committed a crime, the official will bind over the accused, normally by setting bail for the accused's appearance at trial.

Bond (supersedeas) – The bond set by the court during the appeal procedure and posted with the Clerk of Court. It ensures payment to the winner at the trial court level if the appeal is unsuccessful.

Bond (surety) – A certificate posted by a bonding company to the law enforcement agency to secure the appearance in court of a criminal defendant.

Booking – The process of photographing, fingerprinting, and recording identifying data of a suspect after arrest.

Breach – The breaking or violating of a law, right, or duty, either by the commission or omission of an act.

Breach of Contract – Failure by one party to abide by the terms of a contract without lawful excuse.

Brief – A written statement prepared by one side in a lawsuit to explain to the court its view of the facts of a case and the applicable law.

Burden of Proof – In the law of evidence, the necessity or duty of affirmatively proving a fact or facts in dispute on an issue raised between the parties in a lawsuit. The responsibility of proving a point or points: The level of the burden of proof for a type of case indicates the degree to which the point must be proven. For example, in a civil case the burden of proof rests with the plaintiff, who must establish his/her case by such standards of proof as a preponderance of evidence or clear and convincing evidence. In a criminal case, the burden on the prosecutor is to establish the defendant's guilty beyond a reasonable doubt, a much stricter standard.

Backlog: As per the 245th Law Commission report, when the institution of new cases in any given time period is higher than the disposal of cases in that time period, the difference between institution and disposal is the backlog. This figure represents the accumulation of cases in the system due to the system's inability to dispose of as many cases as are being filed. Check the wiki page

Bail- Bail is referred to as the temporary release of the accused person in a criminal case in which the trial has not started or the trial is going on and the court is yet to reach a decision. The court granting bail usually imposes conditions such as sureties, personal bond, participation in investigation, as conditions for release. Check the wiki page.

Beyond Reasonable Doubt- It is the level of proof that is required to be proved to convict an accused person in a criminal case. In criminal cases, the prosecution bears the burden of proving that the accused person is guilty beyond all reasonable doubt. The judge needs to be convinced beyond reasonable doubt, based on their consideration of the evidence, that the accused is guilty of the crime charged in order to convict them. Check the wiki page

Burden of proof- The burden of proof is the standard that the parties have to satisfy to prove a fact in court. In criminal cases, the burden of proving the accused person's guilt is on the prosecution, and they must prove it beyond reasonable doubt. In civil cases, the burden of proof is on the plaintiff and they have to prove their case by a preponderance of probabilities. This means that a fact is said to be proved when the court either believes it to exist or considers its existence so probable that a prudent man ought, under the circumstances of the

particular case, to act upon the supposition that it exists (Narayan Ganesh Dastane v. Sucheta Narayan Dastane 1975 AIR 1534).

C

Calendar – List of cases scheduled for hearing in court.
Calendaring – Assigning & scheduling of court appearances.
Capital Crime – A crime possibly punishable by death.
Caption – The heading on a legal document listing the parties, the court, the case number, and related information.
Case Law – Law established by previous decisions of appellate courts.
Cause – A lawsuit, litigation, or action. Any question, civil or criminal, litigated or contested before a court of justice.
Caveat – A warning; a note of caution.
Certified Copy – A copy of a document with a certificate attesting to its accuracy and completeness by the officer who has custody of the original.
Cert. Denied – Stands for "certiorari denied"; a writ of certiorari is a discretionary method by which a superior court chooses the cases it wishes to hear. "Cert. denied" means that the court has decided not to hear the case.
Certiorari – A means of getting an appellate court to review a lower court's decision when it is not required to do so. If an appellate court grants a writ of certiorari, it agrees to take the appeal. This is often referred to as "granting cert.," and results in an order to the lower court to convey the record of the case to the appellate court and to certify it as accurate and complete. Usually refers to a request for the Supreme Court to review a decision of the Court of Appeals.
Challenge – Term used in a jury trial for an attempt to exclude a potential juror. Challenge for Cause - Objection to the seating of a particular juror for a stated reason (usually bias or prejudice for or against one of the parties in the lawsuit). The judge has the discretion to deny the challenge. Distinguished from peremptory challenge, which they party can usually exercise as a matter of right.
Chambers – A judge's private office. A hearing in chambers takes place in the judge's office outside of the presence of the jury and the public.
Change of Venue – Moving a lawsuit or criminal trial to another place for trial. Venue may be changed when a cases has received so much local publicity as to create a likelihood of bias in the jury pool.
Charge to the Jury – The judge's instructions to the jury explaining the law that applies to the facts of the case on trial.
Charges (multiple) – A case with more than one count or offense listed on the court file.

Charging Document – A citation, information, indictment or notice to appear, indicating that the named person committed a specific criminal offense or civil infraction.

Chief Judge – Presiding or administrative judge in a court.

Circumstantial Evidence – All evidence except eyewitness testimony. Evidence from which an inference must be drawn. Examples include documents, photographs, and physical evidence, such as fingerprints.

Citation – A written notice to appear in court, usually to answer a violation of traffic law or other minor criminal laws.

Civil Action - Non-criminal cases in which one private individual, business, or government sues another to protect, enforce, or redress private or civil rights.

Civil Contempt – Contempt can be civil or criminal depending on the purpose the court seeks to achieve through its punishment. Contempt is civil when the purpose of punishment is to coerce the defendant to perform an act previously ordered by the court, which the defendant has not done, such as paying child support. Compare with Criminal Contempt.

Civil Procedure – The set of rules and process by which a civil case is tried and appealed, including the preparations for trial, the rules of evidence and trial conduct, and the procedure for pursuing appeals.

Class Action – A lawsuit brought by one or more persons on behalf of a larger group.

Clear and Convincing Evidence – Standard of proof commonly used in civil lawsuits and in regulatory agency appeals. It governs the amount of proof that must be offered in order for the plaintiff to win the case. It imposes a greater burden than the preponderance of evidence standard, but less than the criminal standard "beyond a reasonable doubt."

Clemency or Executive Clemency – Act of grace or mercy by the president or governor to ease the consequences of a criminal act, accusation, or conviction. It may take the form of commutation or pardon.

Closing Argument – The closing statement, by counsel, to the trier of facts after all parties have concluded their presentation of evidence.

Codicil – An amendment to a will.

Collateral Estoppel – Rule that bars relitigation between the same parties of a particular issue or determinative fact when there is a prior judgment.

Commit – To send a person to prison, asylum, or reformatory by a court order.

Common Law – The legal system that originated in England and is now in use in the United States. It derives legal principles from the statements by judges in their written opinions, rather than from statutes enacted by legislative bodies.

Commutation – The reduction of a sentence, as from death to life imprisonment.

Co-Defendants – More than one person arrested and charged on the same criminal incident.

Comparative Negligence – A legal doctrine effective in New Mexico, by which acts of the opposing parties in a tort case are compared to determine the liability of each party, making each liable only for his/her percentage of fault. See also contributory negligence.

Compensatory Damages – Damages awarded to compensate the nonbreaching or injured party.

Competency to Stand Trial – In order to be competent to stand trial, a person must have the capacity to understand the nature and object of the proceedings, to consult with counsel, and to assist in preparing his/her defence. Due process prohibits the government from prosecuting a defendant who is not competent to stand trial.

Competent Witness – Every person is considered competent to be a witness. When a party questions the competency of a witness, the judge must determine the witness's capacity to observe, recall, and communicate what he or she witnessed, and that the witness understands the duty to be truthful.

Complainant – The party who complains or sues; one who applies to the court for legal redress. Also called the plaintiff.

Complaint – [Civil] The initial paperwork filed in a civil action that states the claim for which relief is sought; in the complaint the plaintiff states the wrongs allegedly committed by the defendant. [Criminal] A sworn written statement showing that the complaining person has reason to believe that the defendant has violated a criminal law.

Conciliation - A form of alternative dispute resolution in which the parties bring their dispute to a neutral third party, who helps lower tensions, improve communications, and explore possible solutions. Conciliation is similar to mediation, but it may be less formal.

Concurrent Jurisdiction – Authority vested in more than one court to hear and resolve specific types of disputes.

Concurrent Sentences - Sentences of imprisonment for conviction of more than one crime, to be served at the same time, rather than one after the other.

Condemnation - The legal process by which the government takes private land for a public use, paying the owners a fair price as determined by the court.

Conditions of Release - Conditions upon which an arrested person is released pending trial.

Consecutive Sentences – Successive sentences of imprisonment, one beginning at the expiration of another, imposed against a person convicted of two or more crimes.

Conservatorship – Legal right given to a person to manage the property and financial affairs of a person deemed incapable of doing that for himself/herself. (See also guardianship. Conservators have somewhat less responsibility than guardians.)

Consideration – A bargained-for benefit or right. Consideration may be a promise to perform a certain act – for example, a promise to deliver goods, a promise not to do something, payment, or a promise to pay money, among other things. Whatever its particulars, consideration must be something of value to the people who are making the contract.

Consolidation – Joinder of two or more separately filed criminal or civil complaints, so that the charges may be tried together.

Contempt of Court – Behaviour intended to lessen the dignity of a court. Also, a willful act of disobedience of a judge's verbal or written order. There are two types of contempt, direct and indirect. When the contumacious (contemptuous) conduct occurs before the judge, the contempt is direct and may be punished summarily. All other conduct not witnessed by the judge is indirect contempt. Before punishing indirect contempt, the court must give the accused party notice and an opportunity to be heard. See also Civil Contempt and Criminal Contempt.

Continuance – Deferment of a trial or hearing to a later date.

Contraband - Articles, the possession of which is prohibited by law.

Contract – An agreement between two or more persons that creates an obligation to do or not to do a particular thing. A contract must have something of value promised or given, and a reasonable amount of agreement between the parties as to what the contract means. The parties must be legally capable of making binding agreements.

Contributory Negligence – A legal doctrine that prevents the plaintiff in a civil action from recovering against a defendant for his/her negligence if the plaintiff was also negligent. New Mexico has abandoned the doctrine of contributory negligence in favor of comparative negligence.

Conviction – A judgment of guilt against a criminal defendant.

Corpus Delicti - Body of the crime. The objective proof that a crime has been committed. It sometimes refers to the body of the victim of a homicide or to the charred shell of a burned house, but the term has a broader meaning. For the state to introduce a confession or to convict the accused, it must prove a corpus

delicti, that is, the occurrence of a specific injury or loss and a criminal act as the source of that particular injury or loss.

Corroborating Evidence – Supplementary evidence that tends to strengthen or confirm the initial evidence.

Costs – Fees required in the course of a law suit, beginning with the docketing or filing fee, and may include service fees, witness fees, publication fees, etc. Does not include attorney fees.

Counsel – Legal adviser; a term used to refer to lawyers in a case.

Counterclaim – A claim made by the defendant in a civil lawsuit against the plaintiff. In essence, a counter lawsuit within a lawsuit.

Court – Government entity authorized to resolve legal disputes. Judges sometimes use "court" to refer to themselves in the third person, as in "the court has read the brief."

Court Administrator/Clerk of Court –An officer appointed by the court to oversee the administrative, non-judicial activities of the court.

Court Costs – The expenses of prosecuting or defending a lawsuit, other than the attorneys' fees. When permitted by law, a court may award an amount of money to the successful party, to be paid by the losing party, as reimbursement for the winner's court costs.

Court Recorder – A deputy clerk who maintains the verbatim record of court proceedings on tape.

Court Reporter – A certified person who maintains the verbatim record of court proceedings.

Court Rules – Procedural rules adopted by a court that govern the litigation process. Court rules often govern the format and style of documents submitted to the court.

Criminal Contempt – A criminal contempt is an act done in disrespect of the court or its process or which obstructs the administration of justice or tends to bring the court into disrepute. Criminal contempt can be direct or indirect. Direct contempt involves disorderly or insolent behaviour in the presence of the judge that interferes with the course of a judicial proceeding; it is punishable summarily (i.e. without a hearing) by fine or imprisonment. Indirect contempt involves willful disobedience of court orders away from the court, which tend to impede justice. For example, refusing to carry out lawful court orders, preventing service of process, withholding evidence, and bribing a witness are all considered indirect criminal contempt. A person charged with indirect contempt is entitled to notice and a hearing.

Cross-Claim – A claim by codefendants or coplaintiffs in a civil case against each other and not against persons on the opposite side of the lawsuit.
Cross-Examination – The questioning of a witness produced by the other side.
Cumulative Sentences – Sentences for two or more crimes to run consecutively, rather than concurrently.
Custody – Detaining of a person by lawful process or authority to assure his/her appearance at any hearing; the jailing or imprisonment of a person convicted of a crime.
Capital punishment- Capital punishment or the death penalty is the punishment for a crime which involves taking the convicted person's life. In India capital punishment is awarded in the rarest of rare cases.
Case Number: A unique identification number provided by the court for each case, made up of three components: a case type, the said number, and the year in which the case was instituted.
Case Status: The stage at which a case is, within the process in the court.
Cause List: A list issued by the registry of the matters to be heard by the court on any day. The bench, court hall number and the position of the matter are indicated on the cause list. This list appears in print form in every court and is made available on the website of several courts. Check the wiki page.
Cause of action– A set of facts and circumstances sufficient for a party to initiate legal action against another party.
Charge sheet- Charge sheet refers to a formal police record presented to the court showing the names of each person accused of the criminal offence/s, the nature of the accusations and the crimes, and the evidence. If the person accused of a crime is in prison, the police has to file a chargesheet in 60 days (where the punishment for the crime is less than 10 years) or 90 days (where the punishment of the crime is more than 10 years). Check the wiki page.
Circumstantial Evidence-
Circumstantial evidence is indirect evidence that is not based on direct observation. On its face circumstantial evidence does not prove a fact in issue but gives rise to a logical inference that the fact exists. A person can be convicted on the basis of circumstantial evidence only if the circumstances taken cumulatively form a chain so complete that there is no escape from the conclusion that in all human probability, the crime was committed by them.
Civil Procedure Code: Codified procedural law related to administration of Indian civil law.

Civil: That part of the law that encompasses business, contracts, estates, domestic (family) relations, accidents, negligence, and everything related to legal issues, statutes, and lawsuits, that is not criminal law.

Commissions: A commission is appointed by a court to ascertain or investigate facts needed to decide a case. A commission is usually given specific terms of reference. Members of a commission can be academics, social activists/workers, advocates, or judges.

Commutation– The action of an executive officer to substitute a punishment given to a convicted person, with a less severe punishment. Under the Constitution, the President and Governor have the power to commute sentences.

Complaint: Any allegation made orally or in writing to the police or a magistrate stating that a criminal offence has been committed, with a view to them taking action to investigate the alleged offence.

Conviction– It is a final adjudication of finding an accused person guilty of the commission of s crime by a Court.

Counterclaim– A claim made by the defendant against the plaintiff in answer to the claim raised by the plaintiff.

Court Hall: The room in which the judicial proceedings of the court are carried out. Court halls are usually described by the numbers assigned to them e.g. Courthall No. 3.

Court Notice/Summons– An official document that a court sends to a party informing them that a case has been filed against them, and which indicates the date and time of the next hearing.

Criminal Procedure Code: The main legislation on procedure for administration of substantive criminal law in India.

Criminal: That which pertains to crimes and requires the administration of penal justice. Involving those cases that deal with a violation of a law in which a citizen inflicts injury upon another citizen or the state. Punishable with the curtailment of liberty, via imprisonment or detention, or fines.

Cross-examination- The examination of witness by the opposite party shall be called a cross-examination. Cross-examination gives the opposing party an opportunity to point out the weaknesses of a witness' testimony. The lawyer conducting the cross-examination cannot ask questions outside the scope of the witness's prior direct examination.

Culpable homicide not amounting to murder- An act which has caused death done with the intention of causing death, or causing such bodily injury which is likely to cause death or done by someone having the knowledge that they can, by their act, likely cause death, amounts to culpable homicide.

D

Damages – Money awarded by a court to a person injured by the unlawful act or negligence of another person.

Decision – The judgment reached or given by a court of law.

Declaratory Judgment – A judgment of the court that explains what the existing law is or expresses the opinion of the court as to the rights and status of the parties, but which does not award relief or provide enforcement.

Decree – An order of the court. A final decree is one that fully and finally disposes of the litigation. An interlocutory decree is a preliminary order that often disposes of only part of a lawsuit.

Defamation – That which tends to injure a person's reputation. Libel is published defamation, whereas slander is spoken.

Default – A failure to respond to a lawsuit within the specified time.

Default Judgment – A judgment entered against a party who fails to appear in court or respond to the civil complaint or petition.

Defendant – In a civil case, the person being sued. In a criminal case, the person charged with a crime.

Deferred Sentence – A sentence that is postponed to a future time. After conviction, the judge does not announce or impose a sentence, but defers sentencing to a future date so that the defendant will complete certain conditions, such as attending driving school or completing a probationary period. If the person completes the requirements, the case will be dismissed and will not be part of the defendant's criminal record.

Deficiency Judgment – Judgment for a creditor for an amount equal to the difference between the amount owed by the debtor and the amount collected from sale of the collateral.

Demand for Discovery – Demand by the defense attorney to the prosecutor to furnish material information on a case.

Demanding State – The state seeking return of a fugitive.

De Novo – "Anew." A trial de novo is a new trial of a case, such as a district court trial de novo of a magistrate court case.

Deposition – An oral statement made before an officer authorized by law to administer oaths. Such statements are taken to examine potential witnesses, to obtain discovery to be used later in trial. Testimony of a witness other than in open court.

Descent and Distribution Statutes – State laws that provide for the distribution of estate property of a person who dies without a will. Same as intestacy laws.

Designee – A person appointed by a judge to act for the court to set conditions of release for any person arrested at a time when the judge is not available.
Direct Evidence – Proof of facts by witnesses who saw acts done or heard words spoken.
Direct Examination – The first questioning of witnesses by the party on whose behalf they are called.
Directed Verdict – Now called judgment as a matter of law. An instruction by the judge to the jury to return a specific verdict.
Disbarment – Form of discipline of a lawyer resulting in the loss (often permanently) of that lawyer's right to practice law. It is more severe than censure (an official reprimand or condemnation) and suspension (a temporary loss of the right to practice law.)
Discharge of bond – A court order to release a bond.
Disclaim – To refuse a gift made in a will.
Discovery – Investigation and gathering of information by opposing parties prior to going to trial. The tools of discovery include: interrogatories, depositions, production of documents or things, permission to enter land or other property, physical and mental examinations, and requests for admission.
Discretion – A power or right conferred on a judge to act according to the dictates of his own judgment and conscience, uncontrolled by the judgment or conscience of others.
Dismissal – An order or judgment disposing of a case without a trial.

- **With prejudice –** In criminal cases, the defendant may not be charged with the specific crime again. A case is usually dismissed with prejudice when the court has not pursued action within the six-month time limit. In civil cases, the complainant is barred from bringing the same claim or cause of action against the same defendant.
- **Without prejudice -** the person may be charged with the specific crime again. A case is usually dismissed without prejudice when more evidence is needed in a case or the case needs to be filed in another court because of jurisdictional issues. In civil cases, the plaintiff is entitled to bring the same claim or cause of action again.

Disposition – The sentencing or other final settlement of a case.
Dissent – (Verb) To disagree. (Noun) An appellate court opinion setting forth the minority view and outlining the disagreement of one or more judges with the decision of the majority.

Diversion – The process of removing some minor offenses from the full judicial process, on the condition that the accused undergo some sort of rehabilitation or make restitution for damages.
DOC – The Department of Corrections - state prison facility.
Docket – A list of cases to be heard by a court or a log containing brief entries of court proceedings.
Docket Call – The proceeding in which a judge assigns trial dates or takes pleas.
Docket Number – The numerical designation assigned to each case by the court.
Domicile – The place where a person has his/her permanent legal home. A person may have several residences, but only one domicile.
Double Jeopardy – Putting a person on trial more than once for the same crime. It is forbidden by the Fifth Amendment to the U.S. Constitution and by Article II, E of the NM Constitution.
Due Process of Law – The right of all persons to receive the guarantees and safeguards of the law and the judicial process. It includes such constitutional requirements as adequate notice of legal proceedings, opportunity to be heard by the judge, assistance of counsel, and the defendants' rights to remain silent, to a speedy and public trial, to an impartial jury and to confront and secure witnesses.
Date of Hearing: The date on which a case is heard in court.
Date of Institution: The date when a case is filed and registered in a court.
Decree Holder – The person in favour of whom the judgment and decree is given by a court, directing the other party to take action or desist from acting in terms of the decree.
Decree– The formal order of a court that conclusively resolves the issues in a case and determines the rights of the parties.
Defendant- The party against whom a civil suit is filed.
Deferred Sentence- Postponement or delay of a sentence to a future date.
Delay: As per the 245th Law Commission report: A case that has been in the court or judicial system for longer than the normal time that it should take for a case of that type to be disposed of.
Disposal: The resolution of a case. This could either be the dismissal or a charge, or a final judgement. Court records often specify the nature of resolution.
Dispute: A conflict of claims or rights that has given rise to the subject of litigation.
District: An administrative unit within a state. Each district is headed by an official called the District Magistrate/ Deputy Commissioner/ Collector.

E

Elements of a Crime – Specific factors that define a crime and which the prosecution must prove beyond a reasonable doubt in order to obtain a conviction.

Eminent Domain – The power of the government to take private property for public use through condemnation.

En Banc – All the judges of a court sitting together. Appellate courts can consist of a dozen or more judges, but often they hear cases in panels of three judges. If a case is heard or reheard by the full court, it is heard en banc.

Endorsed – Stamped with the seal of the court indicating the date and time of filing with the court.

Enjoining – An order by the court telling a person to stop performing a specific act.

Entrapment – A defence to criminal charges alleging that agents of the government induced a person to commit a crime he/she otherwise would not have committed.

Entry of Judgment or Order – The filing of a written, dated, and signed judgment or order.

Equal Protection of the Law – The guarantee in the Fourteenth Amendment to the U.S. Constitution Article III, and Article II, Section 18, of the NM Constitution, that the law treats all persons equally. Court decisions have established that this guarantee requires that courts be open to all persons on the same conditions, with like rules of evidence and modes of procedure; that persons be subject to no restrictions in the acquisition of property, the enjoyment of personal liberty, and the pursuit of happiness, which do not generally affect others; that persons are liable to no other or greater burdens than those are laid upon others; and that no different or greater punishment is enforced against them for a violation of the laws.

Equity – Generally, justice or fairness. Historically, equity refers to a separate body of law developed in England in reaction to the inability of the common-law courts, in their strict adherence to rigid writs and forms of action, to consider or provide a remedy for every injury. The king therefore established the court of chancery to do justice between parties in cases where the common law would give inadequate redress. The principle of this system of law is that equity will find a way to achieve a lawful result when legal procedure is inadequate. Remedies such as restraining orders and injunctions are equitable remedies. Equity and law courts are now merged in NM.

Escheat – The process by which a deceased person's property goes to the state if no heir can be found.

Escrow – Money or a written instrument such as a deed that, by agreement between two parties, is held by a neutral third party (held in escrow) until all conditions of the agreement are met.

Estate – An estate consists of personal property (car, household items, and other tangible items), real property and intangible property, such as stock certificates and bank accounts, owned in the individual name of a person at the time of the person's death. It does not include life insurance proceeds (unless the estate was made the beneficiary) or other assets that pass outside the estate (like a joint tenancy asset.)

Estate Tax – Generally, a tax on the privilege of transferring property to others after a person's death. In addition to federal estate taxes, many states, including New Mexico, have their own estate taxes.

Estoppel – A person's own act, or acceptance of facts, which preclude his or her later making claims to the contrary.

Et al. – "And others."

Et Seq. – "And the following."

Evidence – Testimony or exhibits received by the court at any stage of court proceedings.

Examination – The questioning of a witness under oath.

Exceptions – Declarations by either side in a civil or criminal case reserving the right to appeal a judge's ruling upon a motion or objection. These are no longer required to preserve error in New Mexico courts. Also, in regulatory cases, objections by either side to points made by the other side or to rulings by the agency or one of its hearing officers.

Exclusionary Rule – The rule preventing illegally obtained evidence, such as property found during an illegal search, from being used in any trial.

Execute – To complete the legal requirements (such as signing before witnesses) that make a will valid. Also, to execute a judgment or decree means to put the final judgment of the court into effect.

Executor – A personal representative, named in a will, who administers an estate.

Exempt Property – In collection, execution, and bankruptcy proceedings, this refers to certain property protected by law from the reach of creditors.

Exhibits – A document or item which is formally introduced in court and which, when accepted, is made part of the case file.

Exigent Circumstances – An emergency, demand, or need calling for immediate action or remedy that, for instance, would justify a warrantless search.

Exonerate – Removal of a charge, responsibility, or duty.

Ex Parte – On behalf of only one party, without notice to any other party. For example, a request for a search warrant is an ex parte proceeding, since the person subject to the search is not notified of the proceeding and is not present at the hearing.

Ex Parte Communication – Communication about a lawsuit between a judge and one party, witness, attorney, or other person interested in the litigation when all of the parties are not present, and the absent party did not have notice.

Ex Parte Proceeding – The legal procedure in which only one side is present or represented. It differs from the adversary system or adversary proceeding and is only lawful in limited circumstances. For example, a hearing for a temporary restraining order.

Ex Post Facto – After the fact. The Constitution prohibits the enactment of ex post facto laws. These are laws that permit conviction and punishment for an act that was lawful at the time it was performed.

Express Warranty – An affirmation of fact or promise made by the seller to the buyer that is relied upon by the buyer in agreeing to the contract.

Expungement – Official and formal erasure of a record or partial contents of a record.

Extenuating Circumstances – Circumstances that render a crime less aggravated, heinous, or reprehensible than it would otherwise be.

Extradition – Surrender by one state to another of a person accused or convicted of an offense outside its own territory and within territorial jurisdiction of the other, with the other state which is competent to try him/her, demanding his/her surrender.

Extrinsic – Foreign, from outside sources.

Evidence– Evidence are things or information brought before the court to prove a fact. Evidence can be documents, computers, witness testimony, videos, audio recordings, weapons etc. The Indian Evidence Act governs the admissibility of evidence and burden of proof.

Ex Parte- A hearing or trial conducted in the absence of one party

Examination in chief- Examination-in-chief is the examination of a witness by the lawyer of the side who called that witness. It is usually followed by a cross-examination of the witness by the lawyers of the opposite side.

Exculpatory Evidence- Evidence that establishes the innocence of the defendant.

Executing court– The court which executes the decree. It is generally the court which passed the decree.

Execution– In a civil case execution is the process of enforcement of the decree to enable the decree-holder to claim the benefits of the decree. In a criminal case execution is the implementation of death sentence given by a court.

Executive- The executive is the part of the government that has sole authority and responsibility for the effecting and enforcing laws.

Exhibit- A document, electronic device or other item introduced in evidence during a trial or hearing.

F

Family Allowance – A small amount of money set aside from the estate of the deceased. Its purpose is to provide for the surviving family members during the administration of the estate.

Felony – A crime that allows a defendant to be imprisoned for more than one year upon being found guilty.

Fiduciary – A person having a legal relationship of trust and confidence to another and having a duty to act primarily for the other's benefit: i.e., a guardian, trustee or executor.

File – To place a paper in the official custody of the clerk of court/court administrator to enter into the files or records of a case.

Filed in Open Court – Court documents entered into the file in court during legal proceedings.

Final Order – An order that ends the lawsuit between the parties, resolves the merits of the case, and leaves nothing to be done but enforcement.

Finding – Formal conclusion by a judge or regulatory agency on issues of fact. Also, a conclusion by a jury regarding a fact.

First Appearance – The initial appearance of an arrested person before a judge to determine whether or not there is probable cause for his/her arrest. Generally, the person comes before a judge within hours of the arrest. Also called initial appearance.

Foundation – Preliminary questions to a witness to establish admissibility of evidence, i.e., "laying a foundation" for admissibility.

Fraud – Intentional deception to deprive another person of property or to injure that person in some way.

Fruit of the Crime – Property acquired by means and in consequence of the commission of a crime, and sometimes constituting the subject matter of the crime.

Fruit of the Poisonous Tree – Property seized, or statements made subsequent to and because of an illegal search or interrogation. Fruit of the poisonous tree is generally not admissible in evidence because it is tainted by the illegal search or interrogation.

Fugitive – A person who flees from one state to another to avoid prosecution.

Fine– A fine is a sum of money imposed on a convicted person by a court as a punishment.

FIR– First Information Report (FIR) is a written document prepared by the police when they first receive information about the commission of an offence. Check the wiki page

Forgery– The act of making false documents or false electronic records to cause damage or injury to the public or any person.

Fundamental Rights: A charter of rights contained in the Constitution of India which can be enforced against the state.

G

Garnishment – A legal proceeding in which a debtor's money, which is in the possession of another (called the garnishee), is applied to the debts of the debtor, such as when an employer garnishes a debtor's wages.

General Damages – Compensation for the loss directly and necessarily incurred by a breach of contract.

General Jurisdiction – Refers to courts that have no limit on the types of criminal and civil cases they may hear.

Good Faith – Honest intent to act without taking an unfair advantage over another person. This term is applied to many kinds of transactions.

Good Time – A reduction in sentenced time in prison as a reward for good behaviour. It usually is one-third to one-half off the maximum sentence.

Grand Jury – A jury of inquiry convened to determine whether evidence against a defendant justifies issuing an indictment; comprised of not more than 18 and not less than 15 persons, with at least 12 concurring before an indictment may be returned.

Grantor or Settlor – The person who sets up a trust. Also known as "trustor."

Guardian – A person appointed by will or by law to assume responsibility for incompetent adults or minor children. If one parent dies, the children's guardian will usually be the other parent. If both die, it usually will be a close relative.

Guardianship – Legal right given to a person to be responsible for the food, housing, health care, and other necessities of a person deemed incapable of providing these necessities for himself/herself. A guardian also may be given responsibility for the person's financial affairs, and thus perform additionally as a conservator. See also Conservatorship.

Garnishee– Garnishee is a debtor of judgment debtor whose debt is attached by the court.

Gram Nyayalayas: Village courts instituted by the Gram Nyayalayas Act, 2008 for speedy and easy access to justice system in the rural areas of India.

H

Habeas Corpus – A writ used as a means to bring a person before the court to determine whether he/she is being detained unlawfully.

Harmless Error – An error committed during a trial that was corrected or was not serious enough to affect the outcome of the trial and therefore was not sufficiently harmful (prejudicial) to require that the judgment be reversed on appeal.

Hearing –A proceeding, generally public, at which an issue of fact or law is discussed and either party has the right to be heard.

Hearsay – Testimony by a witness concerning events about which the witness has no personal knowledge. Hearsay testimony conveys not what the witness observed personally, but what others told the witness or what the witness heard others say. Hearsay is usually not admissible as evidence in court because of its unreliability.

Hung jury - Jury unable to reach a verdict. A trial ending in a hung jury results in a retrial with a new jury.

Habeas corpus- This is a writ that can be filed before the High Court or Supreme Court when a person is in unlawful detention. A writ of habeas corpus is used to bring a prisoner or other detainee before the court to determine if their imprisonment or detention is lawful.

Hand Summons/dasti summons– Giving summons "by hand" by the plaintiff or his lawyer personally to the defendant.

Hearsay– A testimony or evidence by an individual not from his personal knowledge but what he heard another person saying. Hearsay evidence is usually not admissible in a trial.

Homicide- The act of killing a human being.

I

Immunity – A grant by the court assuring someone that they will not face prosecution in return for their providing criminal evidence.

Impeachment of a Witness – An attack on the credibility (believability) of a witness, through evidence introduced for that purpose.

Implied Consent – Knowing indirectly (through conduct or inaction) that a person would agree or give permission. For example, in New Mexico a person who gets a driver's license has given implied consent to allow a police officer to conduct an alcohol breath or blood test, when the police suspect the person is driving while intoxicated.

Implied Warranty of Merchantability – An assumption in law that the goods are fit for the ordinary purposes for which such goods are used. This implied warranty applies to every sale by a merchant who deals in goods of the kind sold. However, if there is a warning that the goods are sold "as is," the implied warranty does not apply.

Inadmissible – That which, under the rules of evidence, cannot be admitted or received as evidence.

In Camera – In chambers or in private. A hearing in camera takes place in the judge's office outside of the presence of the jury and the public.

Incarcerate – To confine in jail.

In-Custody Arraignments (jail cases) – Arraignment while the defendant remains in jail because defendant has not been released on bond or by other means.

Indeterminate Sentence – A sentence of imprisonment to a specified minimum and maximum period of time, specifically authorized by statute, subject to termination by a parole board or other authorized agency after the prisoner has served the minimum term.

Indicia – Signs, indications.

Indictment – The written accusation by a grand jury that charges a person named in the indictment with the violation of a law. Indictments are used for felony charges, not misdemeanours.

Indigency – Financial inability to hire a lawyer or pay court costs.

Indigent – Needy or impoverished. A defendant who can demonstrate his/her indigence to the court may be assigned a court-appointed attorney at public expense in criminal and child abuse/neglect cases, but not in other civil cases.

In Forma Pauperis – "In the manner of a pauper." Permission given to a person to sue without payment of court costs because of indigence or poverty.

Information – An accusation against a person for a criminal offense, without an indictment; presented by the prosecution instead of a grand jury. Informations are used for felony charges, not misdemeanors.

Infra – Below.

Infraction – A violation of law not punishable by imprisonment. Minor traffic offenses generally are considered infractions.

Inheritance Tax – A state tax on property that an heir or beneficiary under a will receives from a deceased person's estate. The heir or beneficiary pays this tax.

Initial Appearance – In criminal law, the hearing at which a judge determines whether there is sufficient evidence against a person charged with a crime to hold him/her for trial. The Constitution bans secret accusations, so initial appearances are public unless the defendant asks otherwise; the accused must be present, though he/she usually does not offer evidence. Also called first appearance.

Injunction – Writ or order by a court prohibiting a specific action from being carried out by a person or group. A preliminary injunction is granted provisionally, until a full hearing can be held to determine if it should be made permanent.

Inspectorial Search – An entry into and examination of premises or vehicles by an inspector for the identification and correction of conditions dangerous to health or safety.

Instructions – Judge's explanation to the jury before it begins deliberations of the questions it must answer and the applicable law governing the case. Also called charge to the jury.

Intangible assets – Nonphysical items that have value, such as stock certificates, bonds, bank accounts, and pension benefits. Intangible assets must be taken into account in estate planning and divorce.

Interlocutory – Provisional; not final. An interlocutory order or an interlocutory appeal concerns only a part of the issues raised in a lawsuit.

Interpleader – An action in which a third person asks the Court to determine the rights of others to property held—but not owned—by the third person.

Interrogatories – Written questions asked by one party in a lawsuit for which the opposing party must provide written answers.

Intervention – An action by which a third person that may be affected by a lawsuit is permitted to become a party to the suit.

Inter Vivos Gift – A gift made during the giver's life.

Inter Vivos Trust – Another name for living trust.

Intestacy Laws – See Descent and Distribution Statutes.
Intestate – Dying without having a will.
Intestate Succession – The process by which the property of a person who has died without a will passes on to others according to the state's descent and distribution statutes. If someone dies without a will and the court uses the state's intestate succession laws, an heir who receives some of the deceased's property is an intestate heir.
Invoke the Rule – Separation and exclusion of witnesses (other than parties) from the courtroom.
Irrevocable Trust - A trust that, once set up, the grantor may not revoke.
Issue – 1. The disputed point in a disagreement between parties in a lawsuit.
2. To send out officially, as in to issue an order.
Implied bar– A claim/right barred by necessary implication of statute, contract, or general principles of law.
Indigent person– An individual who does not possess the financial means to afford the court fees to be paid with the plaint in a particular suit.
Inquiry- It is every inquiry, other than a trial, conducted by a Magistrate.
Indian Penal Code: Main criminal code of India that covers all aspects of substantive criminal law in India.
Interpretation: The process of determining the intended meaning of a written document, such as the constitution, or a statute.
Interlocutory Application – An application filed by either party during the pendency of a civil proceeding seeking relief of an interim/temporary nature. Check the wiki page
Interrogation- The process of law enforcement agencies questioning a person accused of a crime. The accused person is not obligated to answer the questions asked by the law enforcement agency, and the fact that they have remained silent generally cannot be used by the prosecution to help prove guilt. It is illegal for the police to use violence in the process of interrogation.
Investigation– Investigation includes all the proceedings required for the collection of evidence to ascertain whether a crime has been committed, who has committed the crime and to provide evidence to prove the guilt of the accused person. Investigation usually involves collecting physical evidence like fingerprints, computers, weapons etc and information from people like witnesses, informants and suspects. It is conducted by the law enforcement agency or by any person other than a magistrate, who has been authorized by the magistrate on this behalf.
Issues: The question of fact or law that is in dispute.

J

Joinder – Combining charges or defendants on the same complaint. Where a crime is committed by two people, both may be charged on one complaint. Joinder also applies in civil cases, where parties and claims may be joined in one complaint.

Joint and Several Liability – A legal doctrine that makes each of the parties who are responsible for an injury liable for all the damages awarded in a lawsuit if the other responsible parties cannot pay.

Joint Tenancy – A form of legal co-ownership of property (also known as survivorship). At the death of one co-owner, the surviving co-owner becomes sole owner of the property. Tenancy by the entirety is a special form of joint tenancy between a husband and wife.

Judge – An elected or appointed public official with authority to hear and decide cases in a court of law. A judge Pro Tem is a temporary judge.

Judgment – The first disposition of a lawsuit.

- **Consent Judgment –**
  Occurs when the provisions and terms of the judgment are agreed on by the parties and submitted to the court for its sanction and approval.
- **Default Judgment –**
  A judgment rendered because of the defendant's failure to answer or appear.
- **Judgment Notwithstanding the Verdict –**
  Judgment entered by order of the court for one party notwithstanding the jury's verdict in favor of the other party. A judgment notwithstanding the verdict may only arise after a motion for a directed verdict.
- **Judgment on the Pleadings –**
  Judgment based on the pleadings alone. It is used when there is no dispute as to the facts of the case and one party is entitled to a judgment as a matter of law.
- **Summary Judgment –**
  Judgment given on the basis of pleadings, affidavits, and exhibits presented for the record without any need for a trial. As with Judgment on the Pleadings, it is used when there is no dispute as to the facts of the case and one party is entitled to a judgment as a matter of law.
- **Judgment and Sentence** –
  The official document of a judge's disposition of a case sentencing a defendant to the Department of Corrections or jail custody.

Judicial Review – The authority of a court to review the official actions of other branches of government. Also, the authority to declare unconstitutional the actions of other branches.

Jurat – Certificate of officer or person whom writing was sworn before. Typically, "jurat" is used to mean the certificate of the competent administering officer that writing was sworn to by person who signed it.

Jurisdiction – The court's legal authority to hear and resolve specific disputes. Jurisdiction is usually composed of personal jurisdiction (authority over persons) and subject matter jurisdiction (authority over types of cases.)

Jurisprudence – The study of law and the structure of the legal system.

Juror Disqualified – Juror excused from a trial.

Jury - Persons selected according to law and sworn to inquire into and declare a verdict on matters of fact. A petit jury is a trial jury, composed of 6 to 12 persons, which hears either civil or criminal cases.

Jury Array – The whole body of prospective jurors summoned to court from which the jury will be selected. Also called "Jury Panel."

Jury List – A list containing the names of jurors empanelled to try a cause or containing the names of all the jurors summoned to attend court.

Jury Polling – The procedure by which each individual juror is asked to affirm his or her verdict in open court at the conclusion of a trial.

Jury Trial – A trial in which the jury judges the facts and the judge rules on the law.

Justiciable – Issues and claims capable of being properly examined in court.

Juvenile – A person under 18 years of age.

Judge: A public official authorised to hear and decide cases in a court of law. Check the wiki page

Judgment debtor – The party against whom a court has given a judgement and who is liable to pay/perform in terms of the decree passed by the court in favour of the decree holder.

Judgment– The final decision in a case determining the rights of parties and the reasoning for this decision given by a court.

Judicial Custody–

Judicial custody means the detention of an accused person in the custody of the concerned Magistrate. The accused person is lodged in a prison. Magistrates usually order judicial custody after the accused person has been in police custody for fourteen days or less.

Judiciary-The judiciary is one of the three main organs of the government (also known as the judicial system or court system). It is the system of courts that interprets and applies the law in the name of the state.

Jurisdiction– Jurisdiction refers to the legal authority or power of a court to hear and decide a case. It is the power to interpret and apply the law, and to determine the facts of a case and to deliver a binding judgment and enforce it. Jurisdiction can be based on a number of factors, including the location of the parties or the subject matter of the dispute, and may be limited by geography, subject matter, and other legal principles.

Juvenile- A juvenile is a person who is under the age of 16 years in the case of boys, or the age of 18 years in the case of girls. A juvenile has to serve their sentence until the age of twenty-one years in a remand home. A person between the ages of sixteen and eighteen, accused of committing 'heinous offences' may be tried as an adult.

K

Kangaroo Court – Term descriptive of a sham legal proceeding in which a person's rights are totally disregarded and in which the result is a foregone conclusion because of the bias of the court or other tribunal.

Knowingly and Willfully – This phrase, in reference to violation of a statute, means consciously and intentionally.

L

Lapsed Gift – A gift made in a will to a person who has died prior to the will-maker's death.

Larceny – Obtaining property by fraud or deceit.

Law – The enforceable rules that govern individual and group conduct in a society. The law establishes standards of conduct, the procedures governing standards of conduct, and the remedies available when the standards are not adhered to.

Law Clerks – Persons trained in the law who assist judges in researching legal opinions.

Leading Question – A question that suggests the answer desired of the witness. A party generally may not ask one's own witness leading questions. Leading questions may be asked only of adverse witnesses and on cross-examination.

Legal Aid –

Professional legal services available usually to persons or organizations unable to afford such services.

Leniency – Recommendation for a sentence less than the maximum allowed.

Lesser Included Offense – Any lesser offense included within the statute defining the original charge, such as a lower grade of an offense. An offense

composed of some, but not all of the elements of a greater offense and which does not have any additional elements not included in the greater offense, so that it is impossible to commit the greater offense without also committing the lesser.

Letters of Administration – Legal document issued by a court that shows an administrator's legal right to take control of assets in the deceased person's name. Used when the deceased died without a will.

Letters Testamentary – Legal document issued by a court that shows an executor's legal right to take control of assets in the deceased person's name. Used when the deceased left a will.

Liable – Legally responsible.

Libel – Published words or pictures that falsely and maliciously defame a person. Libel is published defamation; slander is spoken.

Lien – A legal claim against another person's property as security for a debt. A lien does not convey ownership of the property, but gives the lien-holder a right to have his or her debt satisfied out of the proceeds of the property if the debt is not otherwise paid.

Limited Jurisdiction – Courts with limited jurisdiction may hear only certain kinds of cases and are precluded from hearing anything else. For example, small claims court may only decide cases in which the amount in controversy is below a set figure.

Lis Pendens – A pending suit. Jurisdiction, power, or control that courts acquire over property in a suit pending action and until final judgment.

Litigant – A party to a lawsuit. Litigation refers to a case, controversy, or lawsuit.

Living Trust – A trust set up and in effect during the lifetime of the grantor. Also called inter vivos trust.

Lawyer: A person who practices law.

Legal representative– The legal heir(s) of a deceased person, or the person(s) who represents the deceased person after his death.

Legislative Assembly: The name given in some countries to either a legislature, or to one of its branch. In India, legislative assembly usually refers to the legislature at the state-level.

Legislature: A branch of the government that has the power to make laws in a country.

Limitation- The maximum time from the date of the offence that parties have to initiate legal proceedings. Limitation does not apply to criminal cases involving offences punishable with imprisonment of more than 3 years.

Litigant: A party to a lawsuit in a court.

Lok Adalats: A system of alternative dispute resolution developed in India. It roughly means people's court and it is a forum where disputes/cases pending in the court of law or at pre-litigation stage are settled/ compromised amicably. Lok Adalats have been given statutory status under the Legal Services Authorities Act, 1987. Check the wiki page.

M

Magistrate – A judge whose civil and criminal jurisdiction is limited by law. In federal court, a judicial officer who is assigned numerous trial and pretrial responsibilities.

Malfeasance – Evil doing, ill conduct; the commission of some act which is positively prohibited by law.

Malicious Abuse of Process – Tort involving a litigant's malicious misuse of the power of the judiciary. The elements of this tort are: (1) initiation of judicial proceedings against the plaintiff by the defendant; (2) an act by the defendant in the use of process that would not be proper in the regular prosecution of the claim; (3) a primary motive by the defendant in misusing the process to achieve an illegitimate end; and (4) damages.

Malicious Prosecution – In New Mexico, the tort of "Malicious Prosecution" no longer exists. It has been combined with "Abuse of Process" to form a new tort, "Malicious Abuse of Process."

See Malicious Abuse of Process.

Mandamus – A writ issued by a court ordering a public official to perform an act that s/he is required to do by law under the existing state of facts.

Mandate – The official decree by a court of appeal.

Manslaughter – The unlawful killing of another without intent to kill; either voluntary (upon a sudden impulse); or involuntary (during the commission of an unlawful act not ordinarily expected to result in great bodily harm.)

Mediation – A form of alternative dispute resolution in which the parties bring their dispute to a neutral third party, who helps them reach a resolution.

Memorialized – In writing.

Mens Rea – The "guilty mind" necessary to establish criminal responsibility.

Merchant – A person who regularly deals in goods of the kind being sold or who otherwise holds himself out as having a special knowledge of the goods sold. For example, Bob owns a clock shop and sells clocks, so he would be considered a merchant of clocks. However, if Bob sold his car to someone, he would not be considered a merchant of cars.

Merger Clause – Merger clauses state that the written document contains the entire understanding of the parties. The purpose of merger clauses is to ensure that evidence outside the written document will not be admissible in court to contradict or supplement the express terms of the written agreement.
Merits – The substantive claims and defences raised by the parties to an action.
Minor – A person under 18 years of age.
Miranda Warning – Prior to any custodial interrogation (that is, questioning by police after a person has been deprived of his or her freedom in a significant way), a person must be advised that: (1) he has a right to remain silent; (2) any statement he does make may be used in evidence against him; (3) he has the right to the presence of an attorney; and (4) if cannot afford an attorney, one will be appointed for him prior to any questioning, if he so desires.
Misdemeanor – An offense punishable by not more than one year in county jail and/or $1,000 fine.
Mistrial – An invalid trial, caused by fundamental error or inability of a jury to reach a verdict. When a mistrial is declared, the trial must start again from the selection of the jury.
Mitigating Circumstances – Those facts which do not constitute a justification or excuse for an offense, but which may be cooffensed as reasons for reducing the degree of blame.
Mitigation – Reduction of penalty or punishment.
Moot – A moot case or a moot point is one not subject to a judicial determination because it involves an abstract question, because there is no actual controversy, or because the issues no longer exist. Mootness usually refers to a court's refusal to consider a case because the issue involved has been resolved prior to the court's decision, leaving nothing that would be affected by the court's decision.
Motion – Oral or written request made by a party to an action before, during, or after a trial, upon which a court issues a ruling or order.
Motion in Limine – A motion made outside the presence of a jury requesting that the court not allow certain evidence that might prejudice the jury. Usually heard before trial begins.
Motion to Expunge – A motion to delete material from official court records, such as a record of juvenile conviction.
Motion to Mitigate Sentence – A motion to reduce the sentence.
Motion to Seal – A motion to close records to public inspection.
Motion to Suppress – A motion to prevent admission of evidence in a case.
Murder – The unlawful killing of a human being with deliberate intent to kill. Murder in the first degree is characterized by premeditation; murder in the

second degree is characterized by a sudden and instantaneous intent to kill or to cause injury without caring whether the injury kills or not.

Mutuality – A meeting of the minds of contracting parties regarding the material terms of the agreement.

Malice– Intention to commit a criminal offence.

Mandatory minimum sentence– It is a minimum sentence prescribed for certain serious offences irrespective of the circumstances of the crime. It reduces a judge's discretion since they cannot reduce the sentence below the minimum. E.g. Section 376-DB of IPC provides for a mandatory minimum punishment of life imprisonment without remission for persons convicted for rape/gangrape of a girl under the age of 12 years.

Mediation– It is a form of alternative dispute resolution where parties choose a third party who is neutral to help them to resolve their dispute through compromise and discussion.

Mens Rea- It means guilty mind in Latin. Mens rea refers to criminal intent required in order to convict a person, and it is an essential element that has to be proved in criminal proceedings.

Merits– The substantive grounds of dispute between the parties.

Mitigating Circumstances– Mitigating circumstances are facts that appear to mitigate the seriousness of a crime by rendering the actions of the accused less severe and influences the sentence given by the judge. E.g. the age of the accused person and their previous criminal record are considered mitigating circumstances.

Modus Operandi- The mode or way in which a person commits a crime.

Murder An act committed with an intention to cause death. The act is done with the intention of causing such bodily injury which the offender has knowledge that it would result in death.

N

Necessarily Included Offense –Where an offense cannot be committed without necessarily committing another offense, the latter is a necessarily included offense; sometimes referred to as lesser included offense.

Negligence – Failure to exercise the degree of care that a reasonable person would exercise under the same circumstances.

Next Friend – One acting without formal appointment as guardian for the benefit of an infant, a person of unsound mind not judicially declared incompetent, or other person under some disability.

No-Contest Clause – Language in a will providing that a person who makes a legal challenge to the will's validity will be disinherited.
No Contest Plea – See Nolo Contendere.
No-Fault Proceedings – A civil case in which parties may resolve their dispute without a formal finding of error or fault.
Nolle Prosequi – The prosecutor declines to prosecute but may still initiate prosecution within the time allowed by law.
Nolo Contendere – No contest. A plea through which the defendant does not admit guilt, but which has the same legal effect as a plea of guilty in a criminal case. However, the no contest plea may not be used in a civil action related to the criminal charge to prove the defendant's civil liability. For example, a plea of nolo contendere for a traffic citation that resulted from an accident cannot be used to convince a judge in a civil case that the defendant is guilty of causing an accident.
Non-jury trial – A case tried by a judge on the facts as well as the law.
No Probable Cause – Insufficient grounds to hold the person who was arrested.
Notice – Formal notification to the party that has been sued that a civil lawsuit has been filed. Also, any form of notification of a legal proceeding or filing of a document.
Notice of Lis Pendens – A notice filed on public records to warn all persons that the title to certain property is in litigation, and that if they purchase or lease that property, they are in danproperty,eing bound by an adverse judgment. The notice is for the purpose of preserving rights pending litigation.
Nuisance – An unreasonable, unwarranted, or unlawful use of one's property that annoys, disturbs, or inconveniences another in the use of his or her property. Violation of an ordinance that forbids annoyance of the public in general.
Nunc Pro Tunc – An entry made now for an act done previously and to have the effect as if it were done on a prior date.
Nuncupative Will – An oral (unwritten) will.
Notice: The legal notification by which a party or person is made aware of a legal process affecting their rights, obligations, or duties.

O

Oaths – Sworn attestations required in court, usually administered by the in-court clerk.
Objection – The process by which one party tries to prevent the introduction of evidence or the use of a procedure at a hearing. An objection is either sustained (allowed) or overruled by the judge.

Offense – A violation of a municipal ordinance or state statute.
Offer – An expression of willingness to enter into a bargain that is definite and certain in its terms and that is communicated to the offeree. Once accepted, the offer is transformed into a contractual obligation.
Offeree – The person to whom an offer is made.
Offeror – The person who makes an offer.
Opening Statement – The initial statement made by attorneys for each side, outlining the facts each intends to establish during the trial.
Opinion – A judge's written explanation of a decision of the court or of a majority of judges. A dissenting opinion disagrees with the majority opinion because of the reasoning and/or the principles of law on which the decision is based. A concurring opinion agrees with the decision of the court but offers further comment or different reasoning. A per curiam opinion is an unsigned opinion "of the court."
Oral Argument – An opportunity for lawyers to summarize their positions before the court and also to answer the judges' questions.
Order – A written or oral command from a court directing or forbidding an action.
Ordinance – A law adopted by the governing body of a municipality or county.
Overrule – A judge's decision not to allow an objection. Also, a decision by a higher court finding that a lower court decision was in error.
Objection– An argument or contention raised in response to the actions of the other party in a court or tribunal.
Order–A direction issued by a court against one of more parties to a case. Orders can be given during the proceedings or after the case has been decided.
Original Jurisdiction: A court's power to hear a case in the first instance. It is the first court that hears a matter. This depends on the nature of the case and the value of the dispute in the case.

Chief Judicial Magistrate, Judicial Magistrate First Class and Judicial Magistrate Second Class, Civil Judge (Junior Division), Civil Judge (Senior Division) and Sessions Courts typically have original jurisdiction at the district court level depending on the nature of the case. In some cities like Bangalore, District Judges will typically have original jurisdiction.

The High Courts of Delhi, Bombay, Calcutta, and Madras however have original jurisdiction in civil cases of certain monetary value / nature. Every High Court has original jurisdiction in revenue matters as well as those relating to admiralty, probate, contempt of court and election petitions. High Courts have original writ

jurisdiction for enforcing fundamental rights as well as for other purposes under the Constitution under article 226 of the Constitution.

The Supreme Court of India has exclusive original jurisdiction over any dispute between the Government of India and one or more states or between the Government of India and any state or states on one side and one or more states on the other or between two or more states. Article 32 of the Constitution gives original jurisdiction to the Supreme Court for the enforcement of fundamental rights.

P

Parens Patriae – The doctrine under which the court protects the interests of a juvenile.
Parol Evidence – Oral evidence.
Parol Evidence Rule – When a written agreement is intended to be a complete and final document, then the terms of the agreement cannot be altered by evidence of oral (parol) agreements that purport to change, explain, or contradict the written agreement.
Parole – The supervised conditional release of a prisoner before the expiration of his/her sentence. If the parolee observes the conditions, he/she need not serve the rest of his/her term.
Party – A person, business, organization, or government agency involved in the prosecution or defense of a legal proceeding.
Patent – A government grant giving an inventor the exclusive right to make or sell his/her invention for a term of years.
Penalty Assessment – Procedure in which traffic offender is allowed to mail in a fine (plead guilty by mail). Points may be assessed against the person's driving record for penalty assessment offenses.
Peremptory Challenge – The right to challenge a judge or prospective juror without assigning a reason for the challenge.
Perjury – The criminal offense of making a false statement under oath.
Permanent Injunction – A court order requiring that some action be taken or that some party refrain from taking action for an indefinite period.
Personal Jurisdiction – Power which a court has over the defendant's person and which a court must have before it can enter a judgment affecting the defendant's rights.
Per Se Law – In the Motor Vehicle Code, the per se crime is driving with a blood alcohol level of .08 or greater, as established through a valid testing

procedure. No proof is required to show that the defendant was under the influence since the law concludes that driving with a blood alcohol content (BAC) of .08 or greater is driving while intoxicated. (DWI can be proved by other evidence even if a defendant's BAC is less than .08.)

Personal Property – Tangible physical property (such as cars, clothing, furniture and jewelry) and intangible personal property (such as bank accounts). This does not include real property such as land or rights in land.

Personal Recognizance – In criminal proceedings, the pretrial release of a defendant without bail upon his/her promise to return to court. See also Release on Own Recognizance.

Personal Representative – The person that administers an estate. If named in a will, that person's title is an executor. If there is no valid will, that person's title is an administrator.

Petitioner – The person filing an action in a court of original jurisdiction. Also, the person who appeals the judgment of a lower court. The opposing party is called the respondent.

Petty Misdemeanor – A crime that allows less than six months of jail time upon conviction.

Plaintiff – The person/business/organization/agency that files the complaint in a civil lawsuit. Also called the complainant.

Plain View Doctrine – The doctrine that permits a law enforcement officer to lawfully seize incriminating evidence not specifically sought but readily visible in the course of a valid search.

Plea – (1) Defendant's answer to the charge - guilty, not guilty, nolo contendere or Alford plea.

(2) In a criminal proceeding, the defendant's declaration in open court that he or she is guilty or not guilty. The defendant's answer to the charges made in the indictment or information.

Plea Agreement – An agreement between the prosecutor and the defendant, presented for the court's approval, regarding the sentence the defendant should serve upon a plea of guilty, an Alford plea, or a no contest plea. Typically, the defendant pleads guilty in exchange for some form of leniency. For example, the defendant may plead to lesser charges so that the penalties are diminished. Or, the defendant may plead to some, but not all of the charges so that others are dropped. The agreement may include sentencing recommendations. Such bargains are not binding on the court.

Plea Bargaining or Plea Negotiating – The process through which an accused person and a prosecutor negotiate a mutually satisfactory disposition of a case.

The Court is not privy to the actual negotiations but is presented with a plea agreement for its approval or rejection.

Pleadings – The written statements of fact and law filed by the parties to a lawsuit.

Points or Point Information – Penalty points imposed by the Motor Vehicles Division after conviction of a traffic offense.

Polling the Jury – The act, after a jury verdict has been announced, of asking jurors individually whether they agree with the verdict.

Pour-Over Will – A will that leaves some or all estate assets to a trust established before the will-maker's death.

Prejudice – Unfair harm to one party.

Power of Attorney – Formal authorization of a person to act in the interests of another who is incapable of managing his or her own affairs or property.

Preliminary Hearing – See "Initial Appearance."

Preliminary Injunction – Court order requiring action or forbidding action until a decision can be made whether to issue a permanent injunction. It differs from a temporary restraining order.

Pre-Sentence Investigation – A background investigation of the defendant by the Department of Corrections, returnable to the sentencing judge on or before a certain date.

Pre-Sentence Report – A report designed to assist the judge in passing sentence on a convicted defendant. Such reports should contain at least the following: (1) complete description of the situation surrounding the criminal activity; (2) offender's educational background; (3) offender's employment background; (4) offender's social history; (5) residence history of the offender; (6) offender's medical history; (7) information about environment to which the offender will return; (8) information about any resources available to assist the offender; (9) probation officer's view of the offender's motivations and ambitions; (10) full description of the offender's criminal record; and (11) recommendation as to disposition.

Pretermitted Child – A child born after a will is executed, who is not provided for by the will. New Mexico law provides for a share of estate property to go to such children.

Pretrial Conference – A meeting between the judge and the lawyers involved in a lawsuit to narrow the issues in the suit, agree on what will be presented at the trial, and explore the possibility of settling the case without a trial.

Pretrial Intervention – Programs to aid certain qualifying criminal defendants by diverting them from prosecution and enrolling them in rehabilitative

programs. Upon successful completion of the required program(s), the criminal case is dismissed. Pretrial intervention is most often used in substance abuse and domestic violence where the crime charged is the defendant's first offense.

Pretrial Release – Release by sheriff's personnel after arrest and before any court appearance, but with a court appearance date.

Precedent – A previously decided case that guides the decision of future cases, source of common law.

Preponderance of the evidence – Evidence that is of greater weight or more convincing than the evidence that is offered in opposition to it. The amount of evidence that must be presented to prevail in most civil actions.

Presentment – Declaration or document issued by a grand jury that either makes a neutral report or notes misdeeds by officials charged with specified public duties. It ordinarily does not include formal criminal charges.

Prima Facie – Presumably. A fact presumed to be true unless disproved by some evidence to the contrary. Evidence that will prevail until contradicted and overcome by other evidence. A prima facie case is one in which the plaintiff has presented sufficient evidence to require the defendant to go forward with his or her case. In other words, the plaintiff will prevail if the defendant does not rebut the plaintiff's case.

Principal – The person primarily liable; the person for whom performance of an obligation a surety has become bound.

Privilege – A right, power, or immunity held by a person or class beyond the course of law, such as the privilege against self-incrimination under the Fifth Amendment.

Probable Cause – The evidence required before a person or property may be searched or seized by law enforcement and before a search or arrest warrant may be issued.

- Probable Cause to Arrest exists when the facts and circumstances within the officers' knowledge and of which the officers had reasonably trustworthy information are sufficient to warrant a person of reasonable caution to believe that the suspect has committed or is committing a crime.
- Probable Cause to search exists when the facts and circumstances within the officers' knowledge and of which the officers had reasonably trustworthy information are sufficient to warrant a person of reasonable caution to believe that evidence of a crime will be found in the location identified.

Probate – The court-supervised process by which a will is determined to be the will-maker's final statement regarding how the will maker wants his/her property distributed. It also confirms the appointment of the personal representative of the estate. Probate also means the process by which assets are gathered; applied to pay debts, taxes, and the expenses of administration; and distributed to those designated as beneficiaries in the will.
In Chapter 12 of our Probate Judges Manual is the Probate Glossary that includes legal terms specific to probate court in New Mexico.
Probate Court – The court with jurisdiction to supervise estate administration.
Probate Estate – Estate property that may be disposed of by a will.
Probation – A procedure under which a defendant convicted of a crime is released by the court without imprisonment under a suspended or deferred sentence and subject to conditions.
Probative Value – Evidence has "probative value" if it tends to prove an issue. It is evidence that furnishes, establishes, or contributes toward proof.
Pro Bono Publico – For the public good. Lawyers representing clients without a fee are said to be working pro bono publico.
Promissory Estoppel – Equitable doctrine allowing the court to enforce a promise even though a valid contract was not formed when a person reasonably acted in reliance on that promise. Promissory Estoppel allows the court to compensate the person for their expenditures and/or to avoid the unjust enrichment of the other party.
Property Bond – A signature bond secured by mortgage or real property.
Pro Se – In one's own behalf, commonly used to refer to a party representing himself or herself in a court action, instead of being represented by an attorney.
Prosecutor – A trial lawyer representing the government in a criminal case and the interests of the state in civil matters. In criminal cases, the prosecutor has the responsibility of deciding who and when to prosecute.
Proximate Cause – The act that caused an event to occur. A person generally is liable only if an injury was proximately caused by his/her action or by his/her failure to act when he/she had a duty to act.
Public Defender – A court-appointed attorney for those defendants who are declared indigent.
Punitive Damages – Damages awarded over and above compensatory damages in order to punish the defendant for malicious, wanton, willful, reckless, oppressive, or fraudulent conduct. Punitive damages are imposed to compensate the Plaintiff for mental anguish, shame, degradation, or other aggravations beyond actual damages.

Pecuniary jurisdiction–The pecuniary jurisdiction of a court refers to the monetary value of cases that can be adjudicated by it.

Pendency: As per the 245th Law Commission report pendency refers to all cases instituted but not disposed of, regardless of when the case was instituted. Check the wiki page.

Personal Bond- A personal bond is an agreement by the accused person as a condition for release on bail that they will appear for court hearings and will comply with the conditions placed on their release.

Petition: A formal written request presented to a court of law.

Petitioner: The party who presents a petition in court of law.

Plaint– A legal document which contains plaintiff's claims and, and the remedies prayed for from the court.

Plaintiff: The party who initiates a lawsuit (also known as an action) before a court of law.

Plea bargain- Plea bargaining is a negotiation between the accused and the prosecution where the accused agrees to plead guilty in exchange for certain concessions by the prosecution. It is a bargain where an accused person pleads guilty to a lesser charge and the prosecutors in return drop more serious charges. Check the wiki page.

Plea– In a court of law, a person's plea is the answer that they give when they have been charged with a crime, saying whether or not they are guilty of that crime. It is usually taken at the initial stage of the trial.

Pleadings- Written presentation by litigants in a case, setting forth the facts upon which they are claiming legal relief or challenging the claims of the opposite party.

Police Custody- Police custody means that the physical custody of the accused person is with the police. The accused person is lodged in a lock-up of a police station. Police custody is ordered for a maximum of fourteen days after which the accused person has to be kept in judicial custody.

Prayer: A prayer for relief is a portion of a complaint in which the plaintiff describes the remedies that they seek from the court.

Precedent: A precedent or authority is a principle or rule established in a previous legal case that is either binding on a court or other tribunal when deciding subsequent cases with similar issues or facts.

Pre-emption– It is the preferential right to purchase or enjoy property before another.

Prima facie– It means at first sight in Latin. It is a way to evaluate a case at an initial stage to see if there is enough material for it to go to trial.

Probation - The release of a convict from prison subject to good behaviour and any other conditions. A violation of probation conditions can lead to its revocation and to imprisonment.

Procedural: Procedural law comprises the rules by which a court prescribes the steps for having a right or duty that is judicially enforced, and determines what happens in civil lawsuit, criminal or administrative proceedings.

Proceedings– It is the form and manner in which a court of law or judicial officer conducts business.

Public Prosecutor A lawyer representing the state in a criminal trial. Since a criminal offence is regarded as a public wrong, which has been committed not only against the victim, but also against society as a whole, the case is prosecuted by the state. Check the wiki page.

Q

Quash – To vacate or void a summons, subpoena, etc.

R

Real Property – Land, buildings, and other improvements affixed to the land.

Reasonable Belief – Probable cause. The facts and circumstances within an arresting officer's knowledge, and of which s/he had reasonably trustworthy information, sufficient in themselves to justify a person of average caution in believing that a crime has been or is being committed. Facts sufficient to justify a warrantless arrest.

Reasonable Doubt – Such a doubt as would cause a careful person to hesitate before acting in matters of importance to himself/herself.

Reasonable Person – A phrase used to denote a hypothetical person who exercises the qualities of attention, knowledge, intelligence, and judgment that society requires of its members for the protection of their own interest and the interests of others. This term is commonly used in torts, where the test of negligence is based on either a failure to do something that a reasonable person, guided by considerations that ordinarily regulate conduct, would do, or on the doing of something that a reasonable and prudent (wise) person would not do.

Reasonable Suspicion – Level of suspicion required to justify law enforcement investigation, but not arrest or search. A lower level of suspicion or evidence than probable cause. An officer has reasonable suspicion when the officer is aware of specific, articulable facts, together with rational inferences from those facts, which, when judged objectively, would lead a reasonable person to believe that criminal activity occurred or was occurring.

Rebut – To introduce evidence disproving other evidence previously given or reestablishing the credibility of challenged evidence.
Rebuttal – Evidence that is offered by a party after he has rested his case and after the opponent has rested in order to contradict and explain the opponent's evidence.
Rebuttal Witnesses – Witnesses introduced to explain, repel, counteract, or disprove facts given in evidence by the adverse party.
Recall Order – Court order recalling a warrant or capias (writ requiring an officer to take a named defendant into custody).
Record - All the documents and evidence plus transcripts of oral proceedings in a case.
Recusal – The voluntary action by a judge to remove himself or herself from presiding in a given case because of self-interest, bias, conflict, or prejudice. Also, the process by which a judge is disqualified from a case because a party objects.
Redirect Examination – Opportunity to present rebuttal evidence after one's evidence has been subjected to cross-examination.
Redress – To set right; to remedy; to compensate; to remove the causes of a grievance.
Referee – A person to whom the court refers a pending case to take testimony, hear the parties, and report back to the court. A referee is an officer with judicial powers who serves as an arm of the court, but whose final decision is subject to court approval. Also called "special master," "special commissioner," or "hearing officer."
Rehearing – Another hearing of a civil or criminal case or motion by the same court in which the matter was originally decided in order to bring to the court's attention an error, omission, or oversight in the first consideration.
Release – Discharge from confinement or custody.
Release On Own Recognizance – Release of a person from custody without the payment of any bail or posting of bond, upon the promise to return to court.
Remand – To send a dispute back to the court where it was originally heard. Usually it is an appellate court that remands a case for proceedings in the trial court consistent with the appellate court's ruling.
Remedy – Legal or judicial means by which a right or privilege is enforced or the violation of a right or privilege is prevented, redressed, or compensated.
Remittitur – The reduction by a judge of the damages awarded by a jury.
Removal – The transfer of a state case to federal court for trial.
Rendition – Transfer of a fugitive from the asylum state to the demanding state.

Replevin – A legal action for the recovery of a possession that has been wrongfully taken.

Reply – The response by a party to charges raised in a pleading by the other party.

Request for Production – A formal court process by which one party requests that another produce certain documents or other tangible items.

Rescission – Cancellation of a contract.

Res Judicata – A thing or matter already decided by a court. A final judgment on the merits is conclusive as to the rights of the parties and is an absolute bar to a later action involving the same claim, demand, or cause of action. Res judicata bars relitigation of the same cause of action between the same parties where there is a prior judgment. By comparison, collateral estoppel bars relitigation of a particular issue or determinative fact. Compare Collateral Estoppel.

Respondent – The person against whom an appeal is taken. See Petitioner.

Rest – A party is said to rest or rest its case when it has presented all the evidence it intends to offer.

Restitution – Either financial reimbursement to the victim or community service imposed by the court for a crime committed.

Retainer –Act of the client in employing the attorney or counsel; also denotes the fee which the client pays when he/she retains the attorney.

Return of service – A certificate of affidavit by the person who has served process upon a party to an action, reflecting the date and place of service.

Reversal – An action of a higher court in setting aside or revoking a lower court decision.

Reversible Error – An error during a trial or hearing sufficiently harmful to justify reversing the judgment of a lower court.

Revocable Trust – A trust that the grantor may change or revoke.

Revocation (of Driver's License) – Judicial termination of a driver's license and privilege to drive after conviction of DWI. The license shall not be renewed or restored for the duration of the revocation, except that an application for a new license may be presented and acted upon by the division after the expiration of at least one year after date of revocation. This kind of revocation is distinguished from an administrative revocation, in which the Motor Vehicle Division may terminate a driver's license for up to one year.

Revoke –To cancel or nullify a legal document.

Robbery –Felonious taking of another's property, from his or her person or immediate presence and against his or her will, by means of force or fear.

Rules of Evidence –Standards governing whether evidence in civil or criminal case is admissible.

Rape– Sexual intercourse with a woman against her will, without her consent, by coercion, misrepresentation or fraud or at a time when she has been intoxicated or duped or is of unsound mental health and in any case if she is under the age of 18 years.

Record–It is the record maintained by the court for each case, including pleadings, documents and evidence.

Recusal–It is an action of a judge to withdraw himself from a case in which his bias to one of the parties may be called into question.

Registry: An office of the court which receives and maintains documents for filing with the court.

Rejoinder– A pleading in which the plaintiff explains or rebuts the additional facts brought up by the defendant in their written statement.

Remand- Police custody of an accused person ordered by a magistrate when the investigation is not completed within 24 hours of arrest.

Remand– To send back the case to the lower court. Check the wiki page.

Representative suit– It is a suit that is filed by one person on behalf of themselves and on behalf of others who have the same interest in the suit.

Respondent: A party against whom a petition is filed. This term is generally used in appeals. A respondent can be the plaintiff or defendant from lower court.

Review: A proceeding in a court to review its own judgement in case of any error or mistake made with regard to the decision rendered, to rectify the same.

Right– A legally protected interest.

Robbery– Theft is a robbery when in order to commit theft, the offender voluntarily causes or attempts to cause to any person death, subject him to wrongful restraint, cause hurt or induce fear of instant death, instant wrongful restraint or cause instant hurt.

S

Satisfaction of Judgment – Payment of all monies determined to be owed pursuant to a court judgment.

Seal – The Clerk of Court symbol of authenticity.

Search –Examination of a person's house or other building or premises, or of his person, or vehicle, with a view to discovery of contraband, illicit or stolen property, or some evidence of guilt to be used in the prosecution of a criminal action.

Search Warrant – A written order issued by a judge that directs a law enforcement officer to search a specific area for a specific piece of evidence.
Secured Debt – In collection or bankruptcy proceedings, a debt is secured if the debtor gave the creditor a right to repossess the property or goods used as collateral.
Self Defense – Claim that an act otherwise criminal was legally justifiable because it was necessary to protect a person or property from the threat or action of another.
Self-Incrimination (privilege against) – The constitutional right of people to refuse to give testimony against themselves that could subject them to criminal prosecution. The right is guaranteed in the Fifth Amendment to the U.S. Constitution. Asserting the right is often referred to as "Taking the Fifth."
Self-Proving Will – A will whose validity does not have to be testified to in court by the witnesses to it, since the witnesses executed an affidavit reflecting proper execution of the will prior to the maker's death.
Sentence – The punishment ordered by a court for a defendant convicted of a crime. A concurrent sentence means that two or more sentences would run at the same time. A consecutive sentence means that two or more sentences would run one after another.
Sentence Report – A document containing background material on a convicted person. It is prepared to guide the judge in the imposition of a sentence. Sometimes called a pre-sentence investigation.
Sequester – To separate. Sometimes juries are separated from outside influences during their deliberations. For example, this may occur during a highly publicized trial.
Sequestration of Witnesses – Keeping all witnesses (except plaintiff and defendant) out of the courtroom except for their time on the stand and cautioning them not to discuss their testimony with other witnesses. Also called exclusion of witnesses. This prevents a witness from being influenced by the testimony of a prior witness.
Service – The delivery of a legal document, or of a requirement to appear in court, by an officially authorized person in accordance with the formal requirements of the applicable laws. Service is required, unless waived, for complaints, summonses, or subpoenas, to notify a person of a lawsuit or other legal action taken against him/her.
Settlement – An agreement between the parties disposing of a lawsuit.
Settlor – The person who sets up a trust. Also called the grantor or trustor.
Severance – The separation of offenses or defendants into different trials.

Show Cause Order – Court order requiring a person to appear and show why some action should not be taken.

Sidebar –A conference between the judge and lawyers, usually in the courtroom, out of earshot of the jury and spectators.

Slander –False and defamatory spoken words tending to harm another's reputation, business or means of livelihood. Slander is spoken defamation; libel is published.

Sovereign Immunity – The doctrine that the government, state or federal, is immune to lawsuit unless it gives its consent, generally through legislation.

Special Damages – Damages that are the actual, but not necessary, consequence of a breach of contract or injury. In contract law, special damages must have been reasonably foreseeable and must flow directly and immediately from the breach, or they are not enforceable.

Specific Performance – A remedy by which a court orders a person who has breached an agreement to perform specifically what he or she has agreed to do. Specific performance is ordered when damages alone would be inadequate compensation.

Speedy Trial –A rule of law wherein the defendant must be brought to trial within 180 days.

Spendthrift Trust – A trust set up for the benefit of someone whom the grantor believes would be incapable of managing his/her own financial affairs.

Standing – The legal right to bring a lawsuit. Only a person with some legally recognized interest at stake has standing to bring a lawsuit.

Stare Decisis – The doctrine that courts will follow principles of law laid down in previous cases. Similar to precedent.

Statement – A writing made by a person and signed or otherwise adopted or approved by such person; any mechanical, electrical or other recording or a transcription thereof, which is a recital of an oral utterance; and stenographic or written statements or notes which are in substance recitals of an oral statement.

Statute – Law passed by a legislative body declaring rights and duties or commanding or prohibiting certain conduct.

Statute of Frauds – Law which requires that certain documents be in writing, such as leases for more than one year. Under the UCC, contracts for the sale of goods for more than $500 must be in writing to be enforced.

Statute of Limitations – The time within which a plaintiff must begin a lawsuit (in civil cases) or a prosecutor must bring charges (in criminal cases). There are different statutes of limitations at both the federal and state levels for different kinds of lawsuits or crimes.

Statutory Construction – Process by which a court seeks to interpret the meaning and scope of legislation.
Statutory Law – The body of law enacted by the legislative branch of government, as distinguished from case law or common law.
Stay – A court order halting a judicial proceeding.
Stipulation – An agreement by attorneys on both sides of a civil or criminal case about some aspect of the case, e.g. to extend the time to answer, to adjourn the trial date, or to admit certain facts at the trial.
Strict Liability Statutes – Statutes criminalizing specific conduct without regard to the actor's intent. The only question for a judge or jury in a strict-liability case is whether the defendant did the prohibited act.
Strike – Highlighting evidence, in the record of case, that has been improperly offered and will not be relied upon.
Sua Sponte – A Latin phrase which means on one's own behalf, voluntary, without prompting or suggestion.
Subject Matter Jurisdiction – Power of a court to hear the type of case that is before it. Example: a municipal court has subject matter jurisdiction for cases involving violation of that municipality's ordinances but does not have subject matter jurisdiction over felonies.
Subpoena – A process directing a witness to appear and give testimony at a certain time and in a certain place.
Subpoena Duces Tecum – A court order commanding a witness to bring certain documents or records to court.
Summary Judgment – A decision made on the basis of statements and evidence presented for the record without a trial. It is used when there is no dispute as to the material facts of the case, and one party is entitled to judgment as a matter of law.
Summons – A document signed by a deputy clerk ordering a person to appear before the court to respond to a complaint.
Support Trust – A trust that instructs the trustee to spend only as much income and principal (the assets held in the trust) as needed for the beneficiary's support.
Suppress – To forbid the use of evidence at a trial because it is improper or was improperly obtained. See also exclusionary rule.
Supra – Latin for above.
Surety – One who signs a bond and guarantees to pay money if the defendant fails to appear in court as ordered.
Surety Bond – A bond purchased at the expense of the estate to insure the executor's proper performance.

Survivorship – Another name for joint tenancy, in which one owner becomes entitled to property because he or she has survived all other owners.
Suspended Sentence – Postponed execution of sentence; sentence is imposed, and execution of sentence is suspended, postponed, or stayed for a period and on conditions set by the judge.
Suspension (of driver's license) – The driver's license and privilege to drive are temporarily withdrawn, but only during the period of such suspension. No reapplication is necessary to obtain license.
Sustain – A court ruling upholding an objection or a motion.
Sworn Complaint Affidavit – A sworn, witnessed complaint filed with the Clerk of the Court**.**
Search Warrant- An order signed by a judge for probable cause that directs owners of private property to allow the police to enter and search for items named in the warrant.
Separation of Powers: A constitutional government with three separate branches: the legislative, executive, and judicial.
Set off– It is a kind of crossclaim for the recovery of money which the defendant raises against the claim of the plaintiff subtract dues owed to the defendant by the plaintiff from the dues claimed by the plaintiff.
Settlement– It is an agreement reached by the parties in a case to resolve their dispute.
Special Courts: Bodies within the judicial branch of government that generally address only one area of law or have specifically defined powers. Check the wiki page.
Stage of the Case: The steps in process through which a case passes.
Statute– Any law passed by a legislative body at the municipal, state, or central level.
Substantive: A statutory, or written law, that creates and defines rights and duties and powers of parties, such as crimes and punishments in criminal law, civil rights, and responsibilities in civil law.
Suit: A civil action brought by a party/parties against another in a court of law.
Summons- Summon is a document that commands a person to whom it is served to appear before the court. and to answer the complaint made against him.
Surety- A surety is a person that guarantees the accused person will attend their court hearing after being granted bail. The surety is required to deposit a security which is forfeited if the accused person fails to appear in court.

T

Temporary Relief – Any form of action by a court granting one of the parties an order designed to protect its interest pending further action by the court.

Temporary Restraining Order – A judge's order forbidding certain actions until a full hearing can be held. Usually of short duration. Often referred to as a TRO.

Testamentary Capacity – The legal ability to make a will.

Testamentary Trust – A trust set up by a will. This trust becomes effective only upon the death of the testator.

Testator – Person who makes a will (female: testatrix)

Testimony – The evidence given by a witness under oath. It does not include evidence from documents and other physical evidence.

Third Party – A person, business, organization, or government agency not actively involved in a legal proceeding, agreement, or transaction, but affected by it.

Third-Party Claim – An action by the defendant that brings a third party into a lawsuit.

Time served – Actual number of days already served in jail on a charge or offense before conviction.

Title – Legal ownership of property, usually real property or automobiles.

Tort – An injury or wrong committed on the person or property of another. A tort is an infringement on the rights of an individual, but not founded in a contract. The most common tort action is a suit for personal and/or property damages sustained in an automobile accident.

Transcript – A written, word-for-word record of what was said, either in a proceeding such as a trial or during some other conversation, as in a transcript of a hearing or oral deposition.

Transfer cases – Cases going from one court or one jurisdiction to another.

Trial – Examination of any issue of fact or law before a competent court to determine the rights of the parties.

Trial by Jury – Trial by a body of persons selected from the citizens of a particular district and brought before the court where they are sworn to try one or more questions of fact and determine them by their verdict.
Trial de Novo – A retrial in district court that is conducted as if no trial had occurred in the lower court.
True Bill – A finding by a grand jury that there is sufficient evidence to warrant a criminal charge; allows trial to proceed. An indictment.
True Copy – An exact copy of a written instrument.
Trust – A legal device used to manage real or personal property, established by one person (the grantor or settlor) for the benefit of another (the beneficiary). A third person (the trustee) or the grantor manages the trust.
Trust Agreement or Declaration – The legal document that sets up a living trust. Testamentary trusts are set up in a will.
Trustee – The person or institution that manages the property put in trust.
Trustor – Grantor, settlor; one who establishes a trust.
Testimony– It is evidence presented under oath by a witness in court
Theft– Theft means the dishonest removal of moveable property out of the possession of any person without their consent
Tort- A civil wrong in which an injury is caused by one person to another, and which may be intentional or unintentional. Prominent examples of torts include negligent injury, battery, deceit, and defamation.
Transcript- It is a record of official proceedings of a hearing.
Trial- It is a process to determine the guilt or innocence of the accused person. It is a structured process where the facts of a case are presented to the judge, and they decide if the accused person is guilty or not.
Tribunals: Tribunals are dispute resolution institutions established for discharging judicial or quasi-judicial duties related to certain areas of law.

U

UCC – Uniform Commercial Code. The UCC applies to the sale of movable goods to or by a merchant. New Mexico's UCC statutes are encoded at NMSA 1978, §§ 55-1-101 to -12-109.
Unenforceable Contract – A valid contract is unenforceable when some defence exists that is extraneous to the formation of the contract, such as

when the contract violates the Statute of Frauds, or the Statute of Limitations has passed.

Unjust Enrichment – Occurs when a person has unfairly gained at the expense of another (such as by mistake), and principles of justice and equity require the person to return or pay for the property or benefits received.

Unlawful Detainer – An unjustifiable retention of real estate without the consent of the owner or other person entitled to its possession; may occur when a tenant refuses to leave premises after the right of occupancy has ended.

Unlawful Search – Examination or inspection of premises or persons without authority of the law and in violation of the immunity from unreasonable search and seizure under the Fourth Amendment to the U.S. Constitution and Article II, Section 10 of the New Mexico Constitution.

Unsecured – In collection or bankruptcy proceedings, a debt or a claim is unsecured if there is no collateral, or to the extent the value of collateral is less than the amount of the debt.

Usury – Charging a higher interest rate or higher fees than the law allows.

V

Vacate – To set aside, as a judgment.

Venire – A writ summoning persons to court to act as jurors, also refers to the people summoned for jury duty, as in the "jury venire" or "jury panel."

Venue – The place in which prosecution is brought; venue may be in the county of the defendant's residence or in the county in which the offense is alleged to have been committed.

Vested – Fixed; accrued; settled; absolute.

Verdict – The findings of a judge or jury at the end of the trial.

Void Contract – A contract that does not have any legal effect and cannot be enforced under any circumstances. For example, a contract to commit an illegal act is void.

Voidable Contract – A valid contract that a party may cancel upon request. For example, a contract made by a minor is voidable by the minor or his or her legal guardian.

Voir Dire – A form of questioning designed to establish the qualifications of prospective jurors to serve in a case.

Vakalatnama: A document by which an advocate is empowered to appear or plead before any court, tribunal or other authority on behalf of a party.

W

Waive – To give up a known right voluntarily. Example: To give up the right to an attorney.

Waiver – In extradition proceedings, a form signed before a judge whereby a defendant voluntarily submits to pick-up by a foreign jurisdiction, waiving his/her rights as guaranteed under the Constitution.

Waiver of Immunity – A means authorized by statute by which a witness, before testifying or producing evidence, may relinquish the right to refuse to testify against himself or herself, thereby making it possible for his or her testimony to be used against him or her in future proceedings.

Warrant – Most commonly, a court order authorizing law enforcement officers to make an arrest or conduct a search. An affidavit seeking a warrant must establish probable cause by detailing the facts upon which the request is based.

Warrantless Search – Examination of a person or premises without first obtaining a warrant, which may be lawful under such limited circumstances as a domestic violence situation, emergency, hot pursuit, consent, or threat of immediate removal of contraband.

Warranty – A legal promise that certain facts are true.

Will – A legal declaration that disposes of a person's property when that person dies.

Without Prejudice – A claim or cause dismissed without prejudice may be the subject of a new lawsuit.

With Prejudice – Applied to orders of judgment dismissing a case, meaning that the plaintiff is forever barred from bringing a lawsuit on the same claim or cause.

Witness – A person who testifies to what he/she has seen, heard, or otherwise experienced. Also, a person who observes the signing of a will

and is competent to testify that it is the will-maker's intended last will and testament.

Writ – A judicial order directing a person to do something.

Writ of Attachment – A writ of the court ordering the sheriff to seize or hold a debtor's property and bring the property before the court.

Writ of Certiorari – An order by the appellate court used when the court has the discretion on whether or not to hear an appeal.

Writ of Mandamus – A writ to compel performance of one's responsibilities as set forth by law.

Writ of Prohibition – A writ used by a superior court to prevent an inferior court from exceeding its jurisdiction.

Writ of Superintending Control – A writ issued to prevent a gross miscarriage of justice by correcting the erroneous ruling of a lower court that is acting within its jurisdiction but is making mistakes of law or is acting in willful disregard of the law. The writ is issued when there is no appeal or when an appeal cannot provide adequate relief.

Waiver- It is a voluntary renunciation of a person's rights, claims or privileges.

Written statement– It is a statement of defence filed by the defendant countering the allegations of the plaintiff.

Writs: A writ is a formal written order issued by a high court or the Supreme Court asking the state to refrain from or perform a specific act. The following are the five types of writs.

1. Mandamus:

An order that is issued by a court of superior jurisdiction to ask a lower court, tribunal, commission, or individual, to perform or refrain from performing an action that is required by law.

2. Habeas Corpus: A court order that commands an individual or a government official who has restrained another to produce the prisoner at a designated time and place so that the court can determine the legality of custody.

3. Prohibition:

An extraordinary writ issued by a higher court commanding an inferior court or quasi-judicial body to keep within its jurisdiction.

4. Quo Warranto:

A writ issued with a view to restrain a person from holding a civil office to which he/she is not entitled

5. Certiorari:

A writ to quash the order already passed by an inferior court, tribunal or quasi-judicial body. A writ issued by the Supreme Court or High Court to quash the order already passed by an inferior court, tribunal or quasi-judicial body.

ABOUT THE AUTHOR

30

Shri Hari Shankar Verma, author of this book, is an officer of the 1987 examination batch of Indian Railway Traffic Service. He joined IRITM as Director General on 22.05.2023. Shri Verma was born in Village Akori, Bairagarh, District Jalaun, Headquarter Orai. He completed school education and Graduation at the village and District Headquarter Orai respectively, and later moved to Banaras Hindu University (BHU) for higher education. He did M.Sc. in Agriculture with a specialization in Mycology and Plant Pathology. He secured distinction in the final examination and set a record.

Shri Verma had supported his family from the young age of nine. He succeeded in the family business and become quite prominent as young businessman. Later, with a change of mind, he moved to Banaras for higher study. During student days, he was actively engaged in student politics and won several College and University elections.

He has cleared the Civil Service Examination, 1987, in first attempt and joined the Indian Railway Traffic Service on 25.08.1988 at Lal Bahadar Shastri National Academy of Administration (LBSNA),

Mussoorie and later Railway Staff College [RSC and now National Academy of Indian Railway (NAIR)], Vadodara. He had initially allotted the Southern Railway as lien Railway and later the Railway lien changed to Western Railway.

He had been trained on Southern Railway, Western Railway and Central Railway. He had been given an initial posting at Jaipur, Western Railway (now North-Western Railway) as Assistant Commercial Superintendent, which later changed to Assistant Commercial Manager.

He had been posted on Central Railway as Divisional Operating Manager (DOM), Divisional Safety Officer (DSO), Jhansi Central Railway (now North Central Railway). On promotion to Junior Administrative Grade, he has posted as Principal Zonal Training Center (ZTC now ZRTI), Bhusawal, Central Railway. He has been Senior Divisional Operations Manager (Sr. DOM), Bhopal Central Railway and later West Central Railway. He has also worked as Senior Divisional Safety Officer (Sr. DSO), Central Railway, Mumbai. On promotion to Senior Administrative Grade, he has been posted as Chief Claim Officer (CCO), Chief Commercial Manager Freight Marketing (CCM/FM), Chief Passenger Traffic Manager (CPTM), Central Railway, Mumbai.

He has also worked as Additional Divisional Railway Manager (ADRM), Mumbai, Central Railway, Divisional Railway Manager/Salem/Southern Railway and Principal Chief Operations Manager (PCOM), South-Western Railway/ Hubballi. During his career spanning more than 35 years in the Railways, he has been decorated with several awards like Railway Minister award, General Manager award, Railway Minister's Silver Medal, and Certificate for promotion of Rajbhasha and a number of other awards and appreciation from seniors.



He is a pioneer in standardization and ISO certification in Operating Department. His efforts culminated in the ISO certification of ZTC, Bhusawal, which was the first ever for any training centre in the country. Further, he also got ISO certification for the Divisional Control Office, Bhopal, Habib-Ganj railway station (now Rani Kamlapati Railway Station) and Habib-Ganj-Nizamuddin daily Express during his 5 years stint as Sr. DOM, Bhopal. Shri Verma excelled in each of his postings and achieved the highest targets of his time. As ADRM, Mumbai and later CPTM, he is credited with running of additional 278 daily suburban services in CR. He also started the first 15-car-rake on CR. It is noteworthy that all his achievements were marked by the maintenance of complete industrial peace.

As DRM, Salem he had been instrumental in easing traffic bottlenecks by way of yard remodelling, completion of long pending traffic facility works, restoration of Nilgiri Mountain Railway track, bridges and stations and infrastructural development of Salem Division Headquarter (as it was a newly created division).

During his tenure, Salem Division had received several Shields from the Zonal Headquarter.

As PCOM South-Western Railway, he had completed all long pending traffic facility works and facilitated doubling and construction of new lines. He achieved over performance in all operating parameters including highest ever loading, which was appreciated by MO&BD through a letter and a shield. He had been instrumental in making SWR the top performer amongst all Zonal Railways in Key Performance Indices (KPIs).

Over the last 11 months as DG IRITM, he has been instrumental in achieving quality in training and the standardization of the training process. **IRITM has been rated as 'Ati Utkrisht' (4 Stars)** as per the **National Standards for Civil Services Training Institutions** (NSCSTI) under the aegis of Capacity Building Commission of India (CBC). Chairman and CEO, Railway Board has personally appreciated his effort in this regard. Further, IRITM has also been awarded **ISO 21001, which is the latest Standard for Training Institute and named as Educational Organizations – Management System (EOMS)**.

He has written, designed and edited the reading material for first batch of Indian Railway Management Service (IRMS) probationary officers. Under his leadership, IRITM has been credited with conduction of training of first batch of as Indian Railway Management Service (IRMS) after Civil Service Examination, 2022. Following books has been authored or edited by him as under:

1. IRITM Handbook
2. Journal & Art of Journaling for IRMS
3. Handbook of Foundation Course
4. Reading material for IRMS Foundation Course Vol-I (**General Administration, History, Railway Account and Finance, Medical & Rajbhasha**)

ISBN No.: 978-81-966251-8-4

5. Reading material for IRMS Foundation Course Vol-II (**Civil Engineering, Railway Bridges, Railway Land, Schedule of Dimension, Project Management, Signals Engineering and Telecommunication Engineering**)
   ISBN No.: 978-81-966251-9-1
6. Reading material for IRMS Foundation Course Vol-III (**Mechanical Engineering, Electrical Engineering and Material Management**)
   ISBN No.: 978-81-966251-7-7
7. Reading material for IRMS Foundation Course Vol-IV (**Operating, Traffic Planning, Safety, Commercial Management & Business Development**)
   ISBN No.: 978-81-966251-3-9
8. A Railway Executive's Guide to Soft Skills, Communication, and Personality Development, ISBN No.: 978-81-971687-9-6
9. The Railway Executive's Guide to the General Law, Railway Act 1989 and Other Related Acts and Rules ISBN No.: 978-81-971687-7-2
10. An Elementary Textbook of Railway Operation, Safety and Management (Reading Material for **TSTS, TCTC** and other **promotional** and **Group B integrated** course) ISBN No.: 978-81-971687-1-0
11. A Guide to Supervision, Counselling and On Job Training **(TSTS, TCTC, CABD, SFMC and other Supervisory and Group 'B' training)** ISBN No.: 978-81-971687-3-4
12. An Elementary Textbook of Railway Commercial and Business Development, **(CABD)** (Reading Material for Commercial and Business Development Course (CABD) for Supervisors, Promotional and Induction course for Group B Officers)
    ISBN No.: 978-81-971687-2-7

13. A Guide on Ethics and Vigilance Management for Railway Officers

14. The Science and Art of Indian Railway Safety Management (Volume I- **Accident Prevention**)

15. The Science and Art of Indian Railway Safety Management (Volume II- **Accident Investigation**)

16. The Science and Art of Indian Railway Safety Management (Volume III- **Accident Management**)

17. Readings on Report of **Shahnawaz Committee** Report 1954, ISBN No.: 978-81-966251-1-5 (Safety Series I)

18. Readings on Report of The Railway Accidents Committee 1962 **(Kunzru committee)** Part I and II (Safety Series II)

19. Readings on Report of The Railway Accidents Inquiry Committee 1968 (**Wanchoo Committee 1968)** Part I, ISBN No.: 978-81-966251-2-2 (Safety Series III)

20. Readings on Report of The Railway Accidents Inquiry Committee 1968 (**Wanchoo Committee 1968)** Part II, ISBN No.: 978-81-966251-6-0 (Safety Series IV)

21. Readings on Report of The Railway Accident Enquiry Committee 1978 (**Sikri Committee 1978)** Part I ISBN No.: 978-81-971687-5-8 (Safety Series V)

22. Readings on Report of The Railway Accident Enquiry Committee 1978 (**Sikri Committee 1978)** Part II ISBN No.: 978-81-971687-4-1 (Safety Series VI)

23. Readings on Report of The Railway Safety Review Committee1998 **(Khanna Committee)** Part I, ISBN No.: 978-81-966251-5-3 (Safety Series VII)

24. Readings on Report of The Railway Safety Review Committee1998 **(Khanna Committee)** Part II ISBN No.: 978-81-971687-6-5 (Safety Series VIII)

25. Readings on Report of High-Level Safety Review Committee 2012 **(Kakodkar Committee)**
ISBN No.: 978-81-966251-4-6 (Safety Series IX)

26. Readings on Report of Corporate Safety Plan, High-Level Committee's report on disaster management over Indian Railway and Report of Task Force on Safety, 2017 (Safety Series X)

27. Readings on Report of Report of the Committee appointed by the Secretary of State for India to enquire into the administration and working of Indian Railways (East India Railway Committee 1920-21) **Acworth committee 1924** Volume I Report

28. Readings on Report of Report of the Committee appointed by the Secretary of State for India to enquire into the administration and working of Indian Railways (East India Railway Committee 1920-21) **Acworth committee 1924** Volume II, Evidence Taken in London

29. Readings on Report of Report of the Committee appointed by the Secretary of State for India to enquire into the administration and working of Indian Railways (East India Railway Committee 1920-21) **Acworth committee 1924** Volume III, Evidence Taken in India

30. Readings on Report of Report of the Committee appointed by the Secretary of State for India to enquire into the administration and working of Indian Railways (East India Railway Committee 1920-21) **Acworth committee 1924** Volume IV, Written Statements by witnesses and others.

31. Readings on Report of The Indian Railway Enquiry Committee 1937 along with action taken. **(Wedgwood Report)**
ISBN No.:

32. Readings on Report of The Indian Railway Enquiry Committee 1947

ISBN No.: 978-81-966251-0-8

33. Readings on Report of The Railway Corruption Enquiry Committee (1953-55) **Kripalani Report**
ISBN No.: 978-81-971687-0-3

34. Readings on Report of The Committee on Prevention of Corruption, 1964 **(Santhanam Committee Report 1964)**
ISBN No.: 978-81-971687-8-9

35. Readings on Report of Second Administrative Reforms Commission on Ethics in Governance 2007



High Court of Calcutta



वयं राष्ट्रे जागृयाम

भारतीय रेल परिवहन प्रबंधन संस्थान
रेल मंत्रालय, भारत सरकार

INDIAN RAILWAYS INSTITUTE OF TRANSPORT MANAGEMENT

(Hardoi By-Pass Road, PO Manak Nagar, Lucknow-226011, Uttar Pradesh)