AWHO & We the People

Chandra Nath
AWHO & We the People

Chandra Nath

---

nath@computer.org He is an Independent researcher engaged in research in information security, privacy, law & justice
Dedicated to Veterans in Pursuit of Justice.
Preface

*It is for “We the people” to determine whether societies of men are really capable or not, of establishing good government from reflection and choice, or whether they are forever destined to depend, for their constitutions, on accident and force.*

This book is a collection of all of communications with AWHO, a Registered Society that were totally left unanswered by AWHO. That much for the responsiveness for the AWHO Society. Now that AWHO is under RTI, request for information will have to be answered within stipulated time. AWHO tried its best to exempt itself from RTI but failed miserably in its attempt. AWHO refused to answer communication from its members who have investments to the tune of Rs half a crore each. Now with RTI, it will have to answer all requests for information from any member of the public!

Right to Information to the Members of the co-operative sector is enshrined in our constitution since the Constitution amendment.

AWHO is engaged in Construction of houses for the Army personnel both serving and retired. It is registered as a Society under Registration of Societies Act 1860 (though it has nothing even remotely connected with “literary, scientific or charitable activities” for which this Act was dedicated) but is engaged in construction of homes for its member home buyers. It should have been registered under the Co-operative Society Act. The purpose of registering AWHO under the Registration of Societies Act was specifically to avoid the harsh enforcement of rights of the members compared to the Registration of Societies. While this may be justified by some on the grounds that the members of Societies engaged in bird watching or poetry appreciation will not have stakes running to Rs half a crore each, the case of AWHO is not at par with the societies like bird watching and poetry appreciation. Members of AWHO has stakes running beyond Rs half a crore each and still they have no rights at all:

1. No Democratic member control
2. No member economic participation
3. No autonomous functioning
4. No member participation in the Board

5. No Open independent professional audit

6. No Right to see the audit report

7. No Right to information for the members

8. Not even right to information of governance documents, the name of governance Board, and not even the rules that affect them financially!

This is more like the plight of people of Libya under Colonel Gaddafi except for the fact that in Libya, the the “Green Book” was officially handed over to every citizen where as in AWHO, even the Memorandum of Association, laws and rules are secret even when they are secretly applied to them by the rulers! Long live the “oligarchy”, the last bastion still alive in the society of veterans! And most of the veterans are not even aware that they live in a society of citizens totally deprived of their rights which even the citizen of 13th century England would scoff at!

*The essence of oligarchical rule is not father-son inheritance, but the persistence of a certain world-view and a certain way of life ... A ruling group is a ruling group so long as it can nominate its successors ... Who wields power is not important, provided that the hierarchical structure remains always the same.*

George Orwell

97th Constitution Amendment (Ninety Seventh Amendment) Act 2011 relating to the co-operatives inter alia provides for:

- incorporation, regulation and winding up of cooperative societies based on the principles of voluntary formation, democratic member control, member economic participation and autonomous functioning;
- specifying the maximum number of directors of a cooperative society to be not exceeding twenty-one members;
- a fixed term of five years from the date of election in respect of the elected members of the board and its office bearers; and an authority or body for the conduct of elections to a cooperative society;
- a maximum time limit of six months during which board of directors of a co-operative society could be kept under suspension or suspension;
- independent professional audit;
- right of information to the members of the co-operative societies;

To believe that AWHO “Builder Interest” controlled by the military brass can deny all the above
to its members who are essentially “home buyers” unlike in any other co-operative housing society is the biggest Criminal Breach of Trust!

It is the “Builder Interest” that has usurped the Society of “Home Buyers” that gives justification to deny all the above constitutionally guaranteed rights of a co-operative society member. If they attempt to answer my communication, they will realize that they do not have a case but then they will have to attempt to answer the questions I have raised. They mistakenly think that they have power to ignore the questions from its “Members” with total impunity!
## Contents

I  An Appeal to Comply with the Constitution & the Laws  
   1

   I  Appeal to the Chairman– A Public Servant  
       3
         I  POST SCRIPT  
             6
         II  Annexure A: Obligations of a Public Authority  
              8
         III  Annexure B: National Litigation Policy  
              10
         IV  Annexure C: I have Right of Reply  
              10

II  Messages to AWHO  
    15

   II  An Inquiry into the Rule of Law, AWHO & We the People  
       19
         I  Introduction  
             19
         II  Board of Management AWHO  
             20
         III  An Appeal to Board of Management  
             21
         IV  Strict Interpretation of Powers  
             21
            A  Strict Interpretation of Powers  
                21
            B  Onus of Proving authority lies with the usurper  
                23
         V  Liberty Rights and Claim Rights  
             23
         VI  Property as an Important Right  
             24
            A  life, liberty and property  
                24
            B  Rules of AWHO  
                25
            C  Governance by Consent Only  
                25
            D  AWHO Concentration of Power  
                26
         VII  AWHO Rules that violate Rules of Law  
             26
            A  Vox populi, vox Dei  
                28
            B  Local Self-governments Rights  
                28
CONTENTS

VIII Response to Democratic Governance .................................. 29
  A Violation of Rule of Law ................................................. 32
  B Prostitution of Rule of Law ............................................. 33
  C AWHO Rules: Strict Statutory Criteria .............................. 33
  D Core fiduciary duties .................................................... 34
IX Wherever law ends, tyranny begins .................................... 35
X AWHO Rules & Equity, Justice & Fiduciary Duties ..................... 36
  A Principles of Natural Right and Justice .............................. 36
XI Who is the enemy of Society? ............................................... 37

3 Option Letter for Specific Dwelling Unit - BANGALORE

  VASANTH VIHAR PROJECT .................................................. 39
  I Appendix A: Criminal Breach of Trust ................................. 48
    A Fiduciary ..................................................................... 49
    B Standard of Care ........................................................ 49
    C Buying & Selling Trust Property ......................................... 49
    D Conflict of Interest ...................................................... 49
    E What Is Criminal Breach Of Trust? ..................................... 50
    F Entrustment .................................................................. 50
    G Property ...................................................................... 51
    H Misappropriation .......................................................... 52
    I Doctrine of Public Trust and Interpretation of Law ............. 53
     Courts ....................................................................... 53
    J Criminal Breach of Trust by Public Servant or by Banker or by Agent ........................................ 55
    K Dishonest Intention ....................................................... 56
  II Appendix B: Competition Commission Landmark Ruling ......... 57

4 Copies of Original Statutory Documents of AWHO Society .......... 69

5 4th Reminder and Yet No Original Statutory Documents .......... 77

6 AWHO Society: Seeking of Information Relevant to Members of the Society ........................................ 81

7 Building a Culture of Respect for the Rule of Law .................... 87
<table>
<thead>
<tr>
<th>Chapter</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>8</td>
<td>Computerized Draw of Lots Bangalore Part A Project</td>
<td>89</td>
</tr>
<tr>
<td>9</td>
<td>AWHO: An Appeal to COAS</td>
<td>97</td>
</tr>
<tr>
<td>10</td>
<td>Black-Box Analysis of Final Cost of AWHO DU</td>
<td>101</td>
</tr>
<tr>
<td>11</td>
<td>Analysis of Final Cost of AWHO DU</td>
<td>103</td>
</tr>
<tr>
<td>12</td>
<td>Appreciation Charges</td>
<td>105</td>
</tr>
<tr>
<td>13</td>
<td>AWHO &amp; RTI</td>
<td>107</td>
</tr>
<tr>
<td>14</td>
<td>Declaration &amp; Deed of Apartment of Vasant Vihar, Bengaluru</td>
<td>109</td>
</tr>
<tr>
<td>15</td>
<td>Builder Interest vs Home Buyer Interest</td>
<td>113</td>
</tr>
<tr>
<td>16</td>
<td>An Inquiry into Some Fundamentals of AWHO</td>
<td>115</td>
</tr>
<tr>
<td>17</td>
<td>Real Estate (Regulation &amp; Development) Bill</td>
<td>119</td>
</tr>
<tr>
<td>18</td>
<td>AWHO Lawyer as a Fiduciary</td>
<td>123</td>
</tr>
<tr>
<td>Section</td>
<td>Page</td>
<td></td>
</tr>
<tr>
<td>------------------------------------------------------------------------</td>
<td>------</td>
<td></td>
</tr>
<tr>
<td>XI AWHO Context</td>
<td>129</td>
<td></td>
</tr>
<tr>
<td>XII Conclusion</td>
<td>129</td>
<td></td>
</tr>
<tr>
<td>19 AWHO Appreciation Charges</td>
<td>131</td>
<td></td>
</tr>
<tr>
<td>20 An Inquiry into Plot Size &amp; Pricing by AWHO</td>
<td>137</td>
<td></td>
</tr>
<tr>
<td>I Introduction</td>
<td>137</td>
<td></td>
</tr>
<tr>
<td>II Size of Plot</td>
<td>138</td>
<td></td>
</tr>
<tr>
<td>III Illegality in Charging for excess Size Plot</td>
<td>138</td>
<td></td>
</tr>
<tr>
<td>IV Additional Land from UDS</td>
<td>138</td>
<td></td>
</tr>
<tr>
<td>V Cost of additional size of plot in 2013</td>
<td>139</td>
<td></td>
</tr>
<tr>
<td>A Sinister Motivation to Benefit Friends of AWHO</td>
<td>139</td>
<td></td>
</tr>
<tr>
<td>VI Analysis</td>
<td>139</td>
<td></td>
</tr>
<tr>
<td>VII Remedial Action by AWHO</td>
<td>141</td>
<td></td>
</tr>
<tr>
<td>21 Statement of Account : Bangalore, Yelahanka Part 'A'</td>
<td>143</td>
<td></td>
</tr>
<tr>
<td>22 The Societies Registration Act, 1860</td>
<td>147</td>
<td></td>
</tr>
<tr>
<td>23 THE KARNATAKA OWNERSHIP FLATS (REGULATION OF THE PROMOTION OF CONSTRUCTION, SALE, MANAGEMENT AND TRANSFER) ACT, 1972</td>
<td>153</td>
<td></td>
</tr>
<tr>
<td>I STATEMENT OF OBJECTS AND REASONS</td>
<td>153</td>
<td></td>
</tr>
<tr>
<td>II [KARNATAKA]1 ACT NO. 16 OF 1973</td>
<td>154</td>
<td></td>
</tr>
<tr>
<td>III THE 1[KARNATAKA]1 OWNERSHIP FLATS</td>
<td>154</td>
<td></td>
</tr>
<tr>
<td>IV General liabilities of promoter.-</td>
<td>155</td>
<td></td>
</tr>
<tr>
<td>V Offences by promoter.</td>
<td>160</td>
<td></td>
</tr>
<tr>
<td>VI Offences by Companies.-</td>
<td>160</td>
<td></td>
</tr>
<tr>
<td>VII Power to make rules.-</td>
<td>161</td>
<td></td>
</tr>
<tr>
<td>VIII NOTIFICATION</td>
<td>162</td>
<td></td>
</tr>
<tr>
<td>24 THE KARNATAKA APARTMENT OWNERSHIP ACT, 1972</td>
<td>163</td>
<td></td>
</tr>
<tr>
<td>I STATEMENT OF OBJECTS AND REASONS</td>
<td>163</td>
<td></td>
</tr>
<tr>
<td>II NOTIFICATION</td>
<td>176</td>
<td></td>
</tr>
</tbody>
</table>
CONTENTS

25 REGISTRATION ACT, 1908

I PART I: PRELIMINARY ........................................ 177
II PART II: OF THE REGISTRATION-ESTABLISHMENT ...... 178
III PART III: OF REGISTRABLE DOCUMENTS ......... 180
IV PART IV: OF THE TIME OF PRESENTATION .......... 183
V PART V: OF THE PLACE OF REGISTRATION ....... 184
VI PART VI: OF PRESENTING DOCUMENTS FOR REGIS-
TRATION .......................................................... 185
VII PART VII: OF ENFORCING THE APPEARANCE OF EX-
ECUTANTS AND WITNESSES ........................... 188
VIII PART VIII: OF PRESENTING WILLS AND AUTHO-
RIES TO ADOPT ............................................... 189
IX PART IX: OF THE DEPOSIT OF WILLS ............... 189
X PART X: OF THE EFFECTS OF REGISTRATION AND 
NON-REGISTRATION ........................................ 190
XI PART XI: OF THE DUTIES AND POWERS OF REGIS-
TERING OFFICERS .......................................... 191
XII PART XII: OF REFUSAL TO REGISTER .......... 197
XIII PART XIII: OF THE FEES FOR REGISTRATION, SEARCHES 
AND COPIES ................................................ 199
XIV PART XIV: OF PENALTIES ............................... 199
XV PART XV: MISCELLANEOUS .............................. 200

26 TRANSFER OF PROPERTY ACT, 1882

I CHAPTER I: PRELIMINARY ................................ 205
II CHAPTER II: OF TRANSFERS OF PROPERTY BY ACT 
OF PARTIES ELECTION ................................... 214
III CHAPTER III: OF SALES OF IMMOVABLE PROPERTY . 222
IV CHAPTER IV: OF MORTGAGES OF IMMOVABLE PROP-
ERTY AND CHARGES .................................... 225
V CHAPTER IV: OF MORTGAGES OF IMMOVABLE PROP-
ERTY AND CHARGES .................................... 232
VI CHAPTER IV: OF MORTGAGES OF IMMOVABLE PROP-
ERTY AND CHARGES .................................... 238
VII CHAPTER V: OF LEASES OF IMMOVABLE PROPERTY . 243
VIII CHAPTER VI: OF EXCHANGES ....................... 249
IX CHAPTER VII: OF GIFTS ................................. 250
X CHAPTER VIII: OF TRANSFERS OF ACTIONABLE CLAIMS

27 THE REAL ESTATE (REGULATION AND DEVELOPMENT) BILL, 2013

I CHAPTER I PRELIMINARY ............................................. 255
II CHAPTER II REGISTRATION OF REAL ESTATE PROJECT
AND REGISTRATION OF REAL ESTATE AGENTS ............... 259
III CHAPTER III FUNCTIONS AND DUTIES OF PROMOTER .... 264
IV CHAPTER IV RIGHTS AND DUTIES OF ALLOTTEES .... 266
V CHAPTER V THE REAL ESTATE REGULATORY AUTHORITY .... 267
VI CHAPTER VI CENTRAL ADVISORY COUNCIL ................. 271
VII CHAPTER VII THE REAL ESTATE APPELLATE TRIBUNAL .... 271
VIII CHAPTER VIII OFFENCES, PENALTIES AND ADJUDICATION .... 276
IX CHAPTER IX FINANCE, ACCOUNTS, AUDITS AND REPORTS .... 278
X CHAPTER X MISCELLANEOUS ...................................... 280

28 The Consumer Protection Act, 1986

I CHAPTER I PRELIMINARY ............................................. 313
II CHAPTER II CONSUMER PROTECTION COUNCILS ........... 318
III CHAPTER III CONSUMER DISPUTES REDRESSAL AGENCIES .... 319
IV Consumer Protection Regulations, 2005 ......................... 328

29 The Prevention Of Corruption Act, 1988

I CHAPTER I- PRELIMINARY ............................................. 337
II CHAPTER III- OFFENCES AND PENALTIES .................. 340
III CHAPTER IV- INVESTIGATIONS INTO CASES UNDER THE ACT .... 343
IV CHAPTER V- SANCTION FOR PROSECUTION AND OTHER
MISCELLANEOUS PROVISIONS .................................. 344

30 The Competition Act, 2002

I CHAPTER I PRELIMINARY ............................................. 349
| II | CHAPTER II PROHIBITION OF CERTAIN AGREEMENTS, ABUSE OF DOMINANT POSITION AND REGULATION OF COMBINATIONS | 352 |
| III | CHAPTER III COMPETITION COMMISSION OF INDIA | 357 |
| IV | CHAPTER IV DUTIES, POWERS AND FUNCTIONS OF COMMISSION | 360 |
| V | CHAPTER V DUTIES OF DIRECTOR GENERAL | 371 |
| VI | CHAPTER VI PENALTIES | 372 |
| VII | CHAPTER VII COMPETITION ADVOCACY | 374 |
| VIII | CHAPTER VIII FINANCE, ACCOUNTS AND AUDIT | 374 |
| IX | CHAPTER IX MISCELLANEOUS | 375 |

31 The Right To Information Act, 2005 383

| I | CHAPTER I PRELIMINARY | 384 |
| II | CHAPTER II RIGHT TO INFORMATION AND OBLIGATIONS OF PUBLIC AUTHORITIES | 385 |
| III | CHAPTER III THE CENTRAL INFORMATION COMMISION | 392 |
| IV | CHAPTER IV THE STATE INFORMATION COMMISION | 394 |
| V | CHAPTER V POWERS AND FUNCTIONS OF THE INFORMATION COMMISSIONS, APPEAL AND PENALTIES | 397 |
| VI | CHAPTER VI MISCELLANEOUS | 400 |
Part I

An Appeal to Comply with the Constitution & the Laws
Chapter 1

Appeal to the Chairman– A Public Servant

Dear Mr. Chairman, AWHO,

So as to have very clear understanding of every issue involved in the case at hand, and so that the main points emphasized in this long communication is not lost sight of, I have drawn an Index wherein each issue is separated with appropriate heading. Every sentence is employed with great care and caution and the Chairman AWHO (Public Auth) is therefore requested and “strongly advised” to read every part and every sentence of this long communication very carefully so as to have the correct picture of the whole case and thus to adopt the correct course of action.

1. The consequences that may follow in the event of non or evasive reply: This is to inform you that your failure to comply to legal expectation as stated herein before, may compel me/us to

   (a) Institute Writ of Mandamus before High Court/ Supreme court, at your personal (exemplary) cost, taking aid of law settled by Hon’ble Supreme Court of India in Salem Advocate Bar Association, Tamilnadu Vs. Union of India and many other countless judgments given by our Constitutional courts, for directing you to record reasoned reply to me/us; or/ and

   (b) I/ we will seek the Writ of Quo Warranto against you.I/ we may specifically plead before the Court of law to remove you from the present public office because you have voluntarily abstained yourself

   2 http://www.indiankanoon.org/doc/342197/
in performing your legal duties, the duties which you have voluntarily undertaken & promised to perform while assuming charge of this Public Office. The Writ of Quo Warranto is resourceful enough to take care of this pleading; or / and

(c) I/ we may register an FIR with Police or may file a complaint before the competent Magistrates Court under section 166, 217, 218, 409, as applicable, of Indian Penal Code, 1860.

(d) I/ we may pray for initiating disciplinary proceedings for dereliction of duty constituting “Misconduct”;

(e) Whereas your inaction will result in frustration of my / our fundamental rights, I/ we will seek damages for the same from the concerned Public Auth, which may finally be recovered from you. You may please kindly refer Supreme court judgments wherein the Honble court have fastened the liability on public servants for their negligent acts of commission and omission.

2. Your kind attention is invited to Judgment of SC in Salem Advocate Bar Association, Tamil Nadu Vs. Union of India, Please find Annexure A

3. Your attention is further invited to fact that I have a Right of Reply. Please refer Annexure C in this regard.

4. Discretion in reality means a power given to a person with the authority to choose between two or more alternatives or possibilities each of which is lawful and permissible. The concept of discretion imports a duty to be fair, candid and unprejudiced; not arbitrary, capricious or biased; much less, warped by resentment or personal dislike.

5. Recording of reasons will show application of mind and probably this recording of reasons is the only remaining visible safeguard against possible misuse of powers conferred upon administrators of a nation.

6. I seek to recall an historic incident of Indian freedom struggle, occasioned with Mohandas Karamchand Gandhi (His Journey towards Mahatma). In the year 1893, when in South Africa, while holding a First Class Compartment ticket and traveling in, Gandhi was thrown out of the train, for in those times Blacks were not allowed to travel in the First Class Compartment, notwithstanding they hold a valid ticket. It was 9.00 in the chill night. That designated Black sent a Telegram to the
General Manager of the Railways and registered his complaint. The Complaint of that designated Black was attended, forthwith, the General Manager instructed the Station master to secure that complainant reaches his destination safely. Complainant was accommodated in the very next morning train to his destination.

7. It is my case that grievance of the people must be promptly and properly attended instead of waiting and allowing for it to be translated into court litigation. It does no credit to the State or public servant to be involved in large number of disputes as an oppressive ruler.

8. It is my case that the giving of satisfactory reply is a healthy discipline for all who exercise powers over others.

9. It is my case that a complaint to any public/statutory authority is the most legitimate incident of a democracy.

10. In the event no reply is received from you, then I/we will request the Hon’ble Court to take a very serious view of this aspect.

I conclude with this quote from the India’s Apex Court:

The jurisdiction and power of the courts to indemnify a citizen for injury suffered due to abuse of power by public authorities is founded as observed by Lord Hailsham in Cassell & Co. Ltd. v. Broome on the principle that, an award of exemplary damages can serve a useful purpose in vindicating the strength of law’. An ordinary citizen or a common man is hardly equipped to match the might of the State or its instrumentalities. That is provided by the rule of law. It acts as a check on arbitrary and capricious exercise of power. In Rookes v. Barnard it was observed by Lord Devlin, 'the servants of the government are also the servants of the people and the use of their power must always be subordinate to their duty of service'. A public functionary if he acts maliciously or oppressively and the exercise of power results in harassment and agony then it is not an exercise of power but its abuse. No law provides protection against it. He who is responsible for it must suffer it. Compensation or damage as explained earlier may arise even when the officer discharges his duty honestly and bona fide. But when it arises due to arbitrary or capri-
cious behavior then it loses its individual character and assumes social signification. Harassment of a common man by public authorities is socially abhorring and legally impermissible. It may harm him personally but the injury to society is far more grievous. Crime and corruption thrive and prosper in the society due to lack of public resistance. Nothing is more damaging than the feeling of helplessness. An ordinary citizen instead of complaining and fighting succumbs to the pressure of undesirable functioning in offices instead of standing against it. Therefore the award of compensation for harassment by public authorities not only compensates the individual, satisfies him personally but helps in curing social evil. It may result in improving the work culture and help in changing the outlook.

Chandra Nath, Complainant

I POST SCRIPT

Whereas you are a Public Servant and therefore this is to inform you about some of the offences that may be committed in the discharge of their official duties, u/s 119, 166, 167, 213, 217, 218, 219, 409 or under any other Section of IPC 1860 or offence under section 7, 8, 9, 10, 11, 13, 14 of Prevention of Corruption Act, 1988;

SECTION 166 OF INDIAN PENAL CODE declares that when a Public Servant, in the discharge of his official duty, knowingly refuses to do what he is under obligation to do under the law and knowing that thereby he will cause injury to any person, commits the offence under this section. Section 44 of Indian Penal Code defines the scope of Injury within the meaning of offences defined under Indian Penal Code. Injury implies the doing of any act causing unlawful harm to reputation, harm to property, causing mental alarm, bodily harm.

SECTION 217 OF INDIAN PENAL CODE declares that when a Public Servant, in the discharge of his official duty, acting contrary to law, knowingly conduct himself in such a manner, thereby knowing that his act will— (a) save a person from any legal punishment or to secure lesser punishment for that person to which he is liable for; (b) save a property from forfeiture or charge to

Thanking you in the anticipation of your effective action in this regard. And if you fail to act, the heavy hand of the law will soon be coming down hard on you. As a proud veteran I would hate to see that day!

With Regards

---

which that property is liable to, commits offence under this section.

SECTION 218 OF INDIAN PENAL CODE declares that when a Public Servant, in the discharge of his official duty, who has been charged with the duty of preparation of any Record or any Writing, knowingly prepares incorrectly such record or writing, with the knowledge that by preparing such incorrect Record or Writing he will cause (a) loss or injury to Public or to any person (b) save a person from any legal punishment or to secure lesser punishment for that person to which he is liable for; (c) save a property from forfeiture or charge to which that property is liable to, commits offence under this section.

SECTION 409 OF INDIAN PENAL CODE declares that any public servant who is in any manner entrusted with any property, or with any dominion over property in his capacity of a public servant, if “commits breach of trust” in respect of that property, commits the offence under this section and shall be punished with 1[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

What is Criminal breach of trust is defined under Section 405 of Indian Penal Code. The section says that any person (including a public servant) who is in any manner entrusted with any property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do, commits “criminal breach of trust”.

Public servants are under the same liability as that of the private citizens for all their unjustified acts and omissions. Cases decided by Apex Court locating the personal accountability of Public Officer:

1. For abusing the process of court the public officer was held responsible and was liable to pay costs from his own pocket; Where the public servant has caused a loss to the public exchequer, the court has allowed the government to recover such loss personally from the erring officer. State of Kerala V Thressia 1995 Supp (2) SCC 449.

2. For adopting casual approach by which land could not be purchased by the authority and instead purchased by private builder, held officer personally liable. State of Maharashtra v. P.K. Pangare, 1995 Supp (2) SCC 119.

3. For irregularities committed

http://www.indiankanoon.org/doc/417950/
http://www.indiankanoon.org/doc/772100/
in auction of land resulting in loss to public held official held responsible for the loss. DDA v Skipper construction co. (1996) 1 SCC 272.

4. “We are of the view that the legal position that exemplary damages can be awarded in a case where the action of a public servant is oppressive, arbitrary or unconstitutional is unexceptionable. The question for consideration, however, is whether the action of Capt. Satish Sharma makes him liable to pay exemplary damages. In view of the findings of this Court in Common Cause Case - quoted above - the answer has to be in the affirmative. Satish Sharma’s actions were wholly arbitrary, mala fide and unconstitutional. This Court has given clear findings to this effect in the Common Cause case. We, therefore, hold that Capt. Satish Sharma is liable to pay exemplary damages.” Common Cause (Petrol pump matter) v UOI (1996) 6 SCC 593.

5. For abuse of power while exercising discretionary power in granting State largess in an arbitrary, unjust, unfair and malafide manner, public servant can be held personally liable. Shivasagar Tiwary v UOI (1996) 6 SCC 558.

6. For granting illegal promotion with retrospective effect resulting in frittering in huge public funds, held that erring officers shall be personally liable. H R Ramachandriah v State of Karnataka (1997) 3 SCC 63.

7. For abuse of power for extraneous reason in acceptance of tender, held all public officers concerned including Minister shall be liable to punishment. Dutta Associates v Indo Mercantiles (1997) 1 SCC 53.


II Annexure A: Obligations of a Public Authority

Your kind attention is invited to Judgment of SC in Salem Advocate Bar Association, Tamil Nadu Vs.
Union of India, wherein the Court, inter alia, observed as

Whereas it is a common experience and in fact judicially recognized by Hon’ble SC in one service matter before it that once a decision is taken, there is a tendency to uphold it, and a representation may not yield a fruitful purpose. Thus, attempts by aggrieved to show any logical base for his grievance or to highlight the lack of reason in the administrative decision, to an unwilling authority, results in rejection of the representation with perverse or no reason. It is also a common experience that once a grievance is ventilated by an employee, he is subject to more neglect and hostile attitude....that they are treated in a manner contrary to reason and conscience and that decision of administrative authority smack of caprice and whims. The callous attitude of the authority often breeds a sense of perpetual injustice. AIR 1986 SC 686.

I/ we wish to inform you that in Salem Advocate Bar Association, Tamil Nadu Vs. Union of India (UOI), (2005) 6 SCC 344, the Hon’ble Supreme Court, among other things, has observed and directed –

The Governments, government departments or statutory authorities are defendants in a large number of Cases pending in various courts in the country. Judicial notice can be taken of the fact that in a large number of cases either the notice is not replied to or in the few cases where a reply is sent, it is generally vague and evasive. It not only gives rise to avoidable litigation but also results in heavy expenses and costs to the exchequer as well.

A proper reply can result in reduction of litigation between the State and the citizens. In case a proper reply is sent, either the claim in the notice may be admitted or the area of controversy curtailed, or the citizen may be satisfied on knowing the stand of the State.

Having regard to the existing state of affairs, we direct all Governments, Central or State or other authorities concerned, whenever any statute requires service of notice as a condition precedent for filing of suit or other proceedings against it, to nominate, within a period of three months, an officer who shall be made responsible to ensure that replies to notices under Section 80 or similar provisions are sent within the period stipulated in a particular legislation.

The replies shall be sent after due application of mind. Despite, if the court finds that either
the notice has not been replied to or the reply is evasive and vague and has been sent without proper application of mind, the court shall ordinarily award heavy costs against the Government and direct it to take appropriate action against the officer concerned including recovery of costs from him.

III Annexure B: National Litigation Policy

I/ we invite your attention to the National Litigation Policy [For short NLP]. I/ we am /are of view that Wednesday the June 23, 2010, 14:14 Indian Standard Time is one of a historic moment for India when Dr. M. Veerappa Moily, Minister of Law and Justice released a Document called National Litigation Policy.

The principal aim of this Policy is to transform Government into an Efficient and Responsible litigant. EFFICIENT LITIGANT under the Policy is desired as focusing on the core issues involved in the litigation and addressing them squarely; and Managing and conducting litigation in a cohesive, coordinated and time-bound manner.

RESPONSIBLE LITIGANT under the Policy is desired as, which in my view is more important, that litigation will not be resorted to for the sake of litigating. This Policy, in point no. 2. of Chapter II of Vision/ Mission exhorts that Government must cease to be a compulsive litigant. The easy approach, Let the court decide, must be eschewed and condemned.

It is equally remarkable to note that when this policy, in the very first point of Vision/ Mission reaffirms that it is the responsibility of the Government to protect the rights of citizens and those in charge should never forget this basic principle.

This Policy, in point no. 4(A) of Chapter II of Vision/ Mission delves the responsibility on Heads of various Departments, Law Officers and Government Counsel, and individual officers to secure the strict implementation of this Policy.

In the light of this National Litigation Policy, the (Public authority) is empowered to take appropriate legal opinion about the merit of the submissions made by us in the background of facts of the case, so as to avoid unwarranted litigation in the court of law against the Government functionaries.

IV Annexure C: I have Right of Reply

(i) A note was struck by Apex Court in Superintending Engineer, Public health, U.T. Chandigarh V Kuldeep Singh, 1997(9)SCC 199, when it observed: Every Public servant is a trustee of the society; and in all facets of public administration every public servant has to exhibit hon-
esty, integrity, sincerity and faithfulness in the implementation of the political, social, economic and constitutional policies to integrate the nation, to achieve excellence & efficiency in public administration. ...

(ii) The right to reply can be traced in the Constitution of India, and, particularly in equality Article 14 of it. In vast, beautiful, geographical landscape of Independent INDIA, i.e. Bhaarat, the Constitution of INDIA came into existence on 26th January 1950, is the supreme & fundamental Governing Volume.

This epic Governing Volume makes a categorical announcement in its introductory passage that We, THE PEOPLE OF INDIA are the architect of this Volume. This announcement is intelligent, designed and purposeful. The announcement assumes significance because by this announcement, the framers of our Constitution intended to acknowledge and give tribute to selfless sacrifice of every man woman who devoted his/her life for the independence of INDIA.

There are three chief organs outlined in this Governing Volume – they are Legislature, the Govt and the Judiciary; and all these three organs derive their origin and all their powers from this peoples' Governing Volume. The dicta of the Constitution is crystal clear; namely, the goal of good governance.

Equality is a dynamic concept with many aspects and dimensions. In respect of content and reach of the great equalizing principle enunciated in Article 14, there can be no doubt that it is a founding faith of the Constitution. It is a pillar on which, the foundation of our Democratic Republic rests. Hence the Courts in our country do not subject this Article to a narrow approach.

A very fascinating aspect of Article 14 which the courts in India have developed over the time is that Art.14 embodies “a guarantee against arbitrariness”. A man “acting without reason” is acting arbitrarily. Any action that is arbitrary must necessarily involve the negation of equality. Abuse of power is hit by Art.14. AIR 1974 SC 555; AIR 2005 SC 2021.

In wealth of the Judgments delivered by our Courts, it is repeatedly affirmed that public authorities must exercise their discretionary powers in a reasoned and justified manner, failing which inescapable violence to Article 14 is imminent.

It is my case that individuals Right of Reply is inherent in Duty to reasoned exercise of discretion by Public authorities, a duty which is consistently cast upon public/statutory authorities by our Constitutional Courts, in their series of judgments.

It is my case that when the Courts, in their wealth of judgments, lay so much emphasize on recording of reasons by public authorities, in the discharge of their duties even when administrative in nature, the recording of reason in their decision

http://www.indiankanoon.org/doc/367586/
itself presupposes the obligation of giving reply, and not only a mere reply but a reasoned reply. It cannot be said that whereas authorities are under obligation to make reasoned reply but they are at liberty to not to make any reply.

It is my case that in wealth of judgments, the Courts have insisted upon recording of reasons by administrative authorities on the premise that such a decision may be subject to judicial scrutiny / review and the courts cannot exercise their duty of review unless courts are duly informed of the consideration of the public / statutory authorities underlying the action under review. A statement of reasons serves purposes other than judicial scrutiny / review, inasmuch as the reasons promote thought by the public / statutory authority and compel it to cover the relevant points and eschew irrelevancies and assures careful administrative consideration.

When, in the case of M Krishna Swamy versus UOI reported in (1992) 4 SCC 605, the Honble Supreme Court held that any action, decision or order of any statutory or public authority bereft of reasoning would be arbitrary, unfair and unjust violating article 14 of the Constitution of India, then, then, it is my case that non-reply of any complaint received by any public / statutory authority, is a positive act of omission, an arbitrary, unfair and unjustified decision of that public / statutory authority to not to make a reply, thereby frustrating citizens fundamental right enshrined under Article 14.

When, in the case of Srilekha Vidyarthi versus State of UP reported in AIR 1991 SC 537, it was held by the Hon’ble SC that in order to satisfy the test of Article 14, every State action must be informed by reasons and that an act uninformed by reasons, is arbitrary, and arbitrariness is the very negation of the Rule of Law, then, it is my case that non-reply of any complaint received by State, is an act of omission of the State not informed by reason and thus arbitrary, and thus does not pass the test of Article 14.

When in the case of Dwarkadas Marfatia versus Port Trust Bombay, reported in AIR 1989 SC 1642, it was held by the Honble SC that every action of public authorities must be subject to rule of law and must be informed by reason and when there is arbitrariness in their acts and omissions, Article 14 springs in and judicial review strikes it down and thus whatever be the activity of the public authority, it should meet the test of Article 14, then, it is my case that when a public authority does not reply to my complaint, I can safely allege that the said public authority is acting arbitrarily, and Article 14 springs in and gives me the locus of being aggrieved and jurisdiction to the High court under Article 226 to strike down that alleged act of arbitrariness, i.e. the act of un-replied compliant.

Similarly, when, in the case of Union of India Vs Mohan Lal Capoor reported in (1973) 2 SCC 836, the Honble Supreme Court said Rea-
sons disclose how the mind is applied to the subject matter for a decision whether it is purely administrative or quasi judicial; and reveal a rational nexus between the facts considered and conclusions reached, then, it is my case that non-reply of any complaint received by any public /statutory authority implies that although mind was applied to the complaint and arbitrary decision was taken by the administrative authority that no reply should be made.

Inaction by itself is an independent cause of action and the High Courts can effectively deal with the same. It cannot be said that a person is left without a remedy to challenge any omission or inaction on the part of the authority. It may be informed that in a case, reported in AIR 2003 SC 1115, relating to grievance of the Public servant, the Honble SC held that the inaction on the part of the authority can be challenged in the High Court by filing a WP under Article 226 of the Constitution of India.

Chandra Nath
Part II

Messages to AWHO
“It’s not unpatriotic to denounce an injustice committed on our behalf, perhaps it’s the most patriotic thing we can do.” – E.A. Bucchianeri, *Brushstrokes of a Gadfly*
Chapter 2

An Inquiry into the Rule of Law, AWHO & We the People

Delivered to MD, Chairman, AWHO & COAS 6 February 2013

Real Courage is found, not in the willingness to risk death, but in the willingness to stand, alone if necessary, against the ignorant and disapproving herd. Jon Roland, 1976

What we desire to accomplish is, the protection of rights: What we have to inquire is: The means by which protection may be afforded....That men are susceptible of happiness, only in proportion as rights are protected, is a proposition, which, taken generally, it is unnecessary to prove. The importance of the inquiry, therefore, is evident.

I  INTRODUCTION

A WHO was established as a Society under the Rule of Law expressly for the welfare of its members and NOT established as a foray by Army Headquarters into Real Estate business in a thriving real estate market at this particular stage in the country’s economy. If latter was the aim, the risks of the enterprise were not appreciated fully. For all of us who are proud to swear to uphold, protect and defend our constitution from its enemies, foreign and domestic, we, the people will establish a governance of, and by and for us, we the people. “We, the people,

declare today that the most evident of truths— that all of us are created equal—is the star that guides us still; just as it guided our forebears. We, the people, still believe that enduring life, liberty, pursuit of happiness and lasting peace do not require perpetual conflict and adversarial adjudication between AWHO and its members. We, the people, still believe that our obligations as proud Indians and more importantly, as proud veterans, are not just to ourselves, but to all posterity for creating a Society of equals and not divide ourselves into “Rulers” (powerful, autocratic and ever ready to exploit the powerless) and powerless “Subjects”.

Edmund Burke asks a key question of political theory: quis custodiet ipsos custodes? (how is one to be defended against the very guardians who have been appointed to guard us?) (1756)

We need to ask a similar question: How is one to be defended against usurpation, if any, of power of AWHO, a Society created for the “welfare” of the very members whose rights are usurped?

Man, when perfected, is the best of animals, but when separated from law and justice, he is the worst of all.

II BOARD OF MANAGEMENT AWHO

Board of Management (BoM) have fiduciary responsibilities as “independent directors” of AWHO to take action and question actions of AWHO and BoM will be failing in their duty if they fail to fulfill these fiduciary responsibilities towards member-allottees who have very high stakes running to Rs Half a Crores each these days.

This appeal is being addressed to the members of the Board of Management of AWHO and may be brought to the attention of the Independent Directors and Members of the Board.

How Board of Management (BoM) of AWHO violated the Property rights guaranteed by the constitution and statutes of India and passed Rules against the property rights of the Members of AWHO can be seen below. Is it because the Members were deprived of voting to approve/pass these Rules governing the Society? Would they have passed these rules if they had the voting rights? The English radical individualist philosopher Herbert Spencer (1820-1903) distinguished between rights properly so-called (such as the rights to life, liberty and property)

---

2Barrack Obama, Presidential Inaugural Address 2013
3Quis custodiet ipsos custodes? is a Latin phrase traditionally attributed to the Roman poet Juvenal from his Satires (Satire VI, lines 3478), which is literally translated as “Who will guard us from the guards themselves?”
4 Aristotle, Politics (c340 BC)
and political rights so-called (such as the right to vote). In his mind the latter were merely an “appliance” or an “instrument” for achieving the former. While we are not certain that if voting rights were given, the Property Rights would have been preserved, but it is true that denying of voting rights have ensured the denial of property rights because the BoM are not there to preserve the property rights of members but were there to usurp the property rights of the members and that too by a MD, AWHO, a Servant of the Society!

III An Appeal to Board of Management

AWHO is established as a Society under the Rule of Law expressly for the welfare of its members. AWHO from its practices over number of years seem to follow the practice:

The illegal we do immediately. The unconstitutional takes a little longer.  

You have fiduciary responsibilities as “independent directors” of AWHO to take action and question actions of AWHO and you will be failing in your duty if you fail to fulfill these fiduciary responsibilities towards member-alloitees who have very high stakes running to Rs Half a Crores each these days.

This appeal is being addressed to the members of the Board of Management of AWHO and may be brought to the attention of all the Independent Directors and Members of the Board.

IV Strict Interpretation of Powers

While meeting the “Strict Statutory Requirements”, the following is required to be used in interpretation of Constitution, statutes, MoA and original rules as registered with Registrar of Societies while Registering the Society:

A Strict Interpretation of Powers

Whether Powers be are right is determined by the rule:

1. *Potestas stricte interpretatur.* A power is strictly interpreted.

2. *In dubiis, non prae-sumitur pro poten-tia.* In cases of doubt, the presumption is not in favor of a power.

---

5As quoted in “Sunshine Week Document Friday! Kissinger Says, The illegal we do immediately; the unconstitutional takes a little longer. But since the FOIA, I'm afraid to say things like that. in Unredacted : The National Security Archive, unedited and uncensored
Right to the Presumption of Non-authority:

1. The right to the presumption of non-authority does not depend on the support of a court, but defaults to a finding of non-authority even if a court declines to grant oyer and terminer. All that is necessary is to file or notice the court, notice the respondent and wait the customary 3-20 days for the response. It is the respondent official who has the right to oyer and terminer in such a case, to support his claim of authority if he has such authority.

2. The un-enumerated rights are not limited to the right to a presumption of non-authority, which is the basis for the prerogative writs, but also include rights to the positive duty of officials to report and disclose their activities, and not resist such disclosure without strong justification. They include the derivative rights to be assisted or facilitated in prosecuting rights, or to have the means to do so.

3. The natural rights are those that arise out of the laws of nature, and include the right to have official acts be logical, reasonable, and rational. One may not be required to do the impossible.

4. Delegations of power are never plenary, but are further constrained, beyond their subject matter, to what is reasonable and pursuant to a legitimate public purpose.

In summary:

1. There is a right not to be subjected to laws or official acts that are unknown, unknowable, incomprehensible, or too vague to allow for easy interpretation, or to have the rules governing ones behavior change adversely between the contemplation of an action and the enforcement of the law or application of the due process.

2. There is a right not only not...
to have ones rights legislatively impaired, disabled, or disfavored, but also not to have some accorded special privileges or protections that favor them over the rest of the people, in ways not essential to the performance of public duties. This means official immunity for damages extends only to each act under color of law for which an official has authority and that is not an abuse of discretion, not to everything an official might do while on the job.

3. There is a right to have delegated powers construed narrowly, and complementary rights or immunities construed broadly, and when in doubt, the decision must always be in favor of the claimed right against an action of government over the claimed power of an official to so act.

4. One can recognize in these precepts the principles of natural right and justice that most of us take for granted, or that are embedded in our public processes, but which are not always made explicit or stated as positive rights.

B ONUS OF PROVING AUTHORITY LIES WITH THE USURPER

Can AWHO provide the legitimate public purpose served by these unconstitutional, illegal and unlawful rules? The onus of proving that MD, AWHO has the powers to pass these rules lies with the one who has usurped the powers and the onus to prove that the usurper has no authority to pass these rules does not lie on the Member.

V LIBERTY RIGHTS AND CLAIM RIGHTS

The “Liberty Right” to do welfare activity of any welfare society (including AWHO) comes with no ‘duty’ on part of the individuals or Government to protect it. “Liberty Rights” can only survive if and only if (and it is a very BIG IF) it does not trample over the “individual rights” guaranteed under the constitution and statutes. Where as the “Claim Rights” of the individual guaranteed under the constitution and statutes comes with corresponding “duty” to respect and protect it by AWHO not to talk of the Government and these are enforceable with the might of the State and Police, by force, if necessary. The difference lies in fundamentals between “liberty rights” and “claim rights”. Legal Philosophers and political scientists make a distinction between claim rights and liberty rights.

A claim right is a right which entails responsibilities, duties, or obligations on other parties regarding the right-holder. In contrast, a
liberty right is a right which does not entail obligations on other parties, but rather only freedom or permission for the right-holder. The distinction between these two senses of “rights” originates in American jurist Wesley Newcomb Hohfeld’s analysis.  

If you do NOT understand this, you do not understand competing “claim rights” of citizen viz a viz “liberty rights” of welfare societies to do continued welfare activities. The complexity of the idea is no excuse for ignoring the difference and taking liberties with “claim rights” of mostly senior citizens which constitute the profile of AWHO Members because some of these are protected as Fundamental Rights under the constitution of India and protected under art 14 of the constitution of India as Equality before laws Equal Protection of laws: “The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.” If you have problem with these, do not proceed before clarifying the fundamental concepts.

VI PROPERTY AS AN IMPORTANT RIGHT

A LIFE, LIBERTY AND PROPERTY

What were the three most important things man look up to from its government and society? What are they?

“life, liberty and property” appear three times in the US Constitution. These words mean:

Life: Needs no elaboration

Liberty: Needs no elaboration

Property: Executes one’s expression of liberty and insures pursuit of one’s life. Never forget that private property is not simply ‘a thing’. It is the relationship between a person and a thing. This relationship allows individual citizens to use and enjoy private property. George Washington described the essence of that relationship when he said: “Private property and freedom are inseparable.”

---

7Wesley Newcomb Hohfeld, “Fundamental Legal Conceptions, As Applied in Judicial Reasoning and Other Legal Essays”. See

B  **RULES OF AWHO**

How BoM of AWHO violated the Property rights guaranteed by the constitution and statutes of India and passed Rules against the property rights of the Members of AWHO can be seen below.

C  **GOVERNANCE BY CONSENT ONLY**

And even if this charity were not commanded by reason, such a strategy for gaining dominion would prove only that the foundation of government lies in consent.... The hypothetical rise of property and civilization, in the process that the only legitimate governments are those that have the consent of the people. Therefore, any government that rules without the consent of the people can, in theory, be overthrown.  

The consent of people who are ruled are obtained either directly by the participation in law making or through their representatives. In AWHO, both are non-existent by a clever manipulation/interpretation of rules. This devious trick played on the members is obtained by the ruling that the members are NOT members but “allottees” with no right to participation in the democratic functioning of the Society. This is ridiculously equivalent to, say a Mubarak declaring that they have democracy where only the ruling junta are the citizen with power to deliberate and vote for law making and the actual citizen are just “residents” with no right to participation as citizen in democratic governance.

---

*John Locke, Two Treatises of Government 1689*
the Middle Ages, allodial property generally became feudal, and numbers of the poorer freemen voluntarily made themselves and their posterity serfs of some military lord.\footnote{John Stuart Mill in The Principles of Political Economy (1848)}

D AWHO CONCENTRATION OF POWER

When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty; because apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner. There would be an end of every thing, were the same man, or the same body, whether of the nobles or of the people, to exercise those three powers, that of enacting laws, that of executing the public resolutions, and of trying the causes of individuals.\footnote{Montesquieu (1689-1755) The Spirit of the Laws (1748)}

That is exactly what has happened with AWHO. All power is concentrated in one person: The Adjutant General and Chairman, AWHO and more ridiculously, that BoM are both the rule makers and the citizens of the society and the rest of the highest stake holders are just the “allottees”. If the BoM are the only members, why have a Board of Management? When the Society is to be disbanded, BoM will resolve as management and then approve with 3/5 majority as members of the Society! This is ridiculous indeed and is derived by ignoring the Rules of Interpretation of Powers detailed above.

VII AWHO RULES THAT VIOLATE RULES OF LAW

Some AWHO rules that violate property rights of the Members guaranteed by the constitution and statutes are:

1. Rule 80 No sale/transfer/assigning of a dwelling unit to a third party shall be effected by an allottee. without prior permission in writing of the Organisation, AWHO (the Builder)

2. Rule 81: The Organisation (the builder) reserves the right in its absolute discretion to refuse permission to sell the dwelling unit.

3. Rule 82: the Organisation (the builder) reserves the right in absolute discretion to cancel the allotment of such dwelling unit to the original allottee and to take over possession of the dwelling unit.
4. Rule 83.: the Organisation (the builder and NOT the Owners Association) will charge Rs 10000/= from the seller and the buyer as transfer fee.

5. Rule 84: No allottee shall mortgage/pawn the dwelling unit for the purpose of securing any loan at any stage, except with the permission of the MD, AWHO.

6. Rule 100. MD, AWHO (the Builder) has final authority to accept/reject the application and his decision shall be conclusive and final.

7. Rule 101. MD AWHO (the Builder) has the final word on interpretation of the Rules and his decision is binding and not open to appeal/representation.

8. Rule 102. The board of management/ executive Committee of AWHO (the Builder) has the right to alter, add or delete any rules and it shall be binding.

The above rules are fit only for an empire and not for a Society bound by law in a democratic country like ours.

An empire is a despotism, and an emperor a despot, bound by no law or limitation but his own will; it is a stretch of tyranny beyond absolute monarchy.

Ours is a democratic republic, a government of laws, and not of men. Even the British constitution is nothing more nor less than a republic, in which the king is the first magistrate. This office being hereditary, and being possessed of such ample and splendid prerogatives, is no objection to the governments being a republic, as long as it is bound by fixed laws, which the people have a voice in making, and a right to protect and defend and if necessary, change.

The AWHO Rules violate even the rights “we, the people” won from the King Emperor of England as a result of Magna Carta in 1213 AD:

1. No man shall be disseised, that is, put out of seison, or disposed of his free-hold (that is) lands, or livelihood, or of his liberties, or free customs, that is, of such franchises, and freedoms, and free customs, as belong to him by his free birth-right, unless it be by the lawfull judgement, that is, verdict of his equals (that is, of men of his own condition) or by the Law of the Land (that is, to speak it once for all) by the due course, and processe of Law.

12Leveller Richard Overton, 'An arrow against all tyrants' 12 October 1646 http://www.constitution.org/lev/eng_lev_05.htm
2. We shall deny to no man Justice or Right.

3. We shall defer to no man Justice or Right.

A VOX POPULI, VOX DEI

Even as we pride ourselves on having a democracy, itself normatively defined as government of the people, by the people and for the people, in Abraham Lincoln’s famous phrase, it has enhanced the definition, by sharpening the distinction between what is public from what is private. This is against the background that in a democracy, politicians become people’s representatives and bureaucrats as public servants precisely because these functions are deemed to be conducive to the common good. It is tragic that in such a society, we permit the servant of Society to assume powers of the King Emperor. MD AWHO is not the King but a Servant of the Society.

The Christian kings of Europe once believed they were answerable to no one except God. This idea became known as the Divine Right of Kings. The divine right of kings began to be questioned, and its hold on the public mind was gradually weakened, until, finally, it was repudiated altogether, and the opposite principle substituted, that all governmental power is derived from the people; and instead of the king being the vicegerent of God, and the people subjects of the king, the king and other officers of the government were the servants of the people, and the people became the real sovereign through the officials. Vox populi, vox Dei, became the popular answer to all complaints of the individual against the encroachments of popular government upon his rights and his liberty. ¹³

B LOCAL SELF-GOVERNMENTS RIGHTS

The above quoted Rules violate not only the constitution of India and Statutes but also local self-governments rights of the AWHO Colony residents:

1. The State shall guarantee, to THE PEOPLE, local governments of the democratic republic form, and that they shall be confined to the rule of law. These regimes shall be based on rights.

¹³The American legal scholar Christopher Tiedeman (1857-1903): these pages are affectionately inscribed to my wife, HELEN SEYMOUR TIEDEMAN, whose scrupulous regard for the rights of others, and tender sympathy for their weaknesses, have been my guide and inspiration.
2. The State shall guarantee the protection of individual rights that no majority of even the co-operatives shall be able to take away.

3. The legislative, executive, and judiciary powers shall be segregated into different departments and a system of checks and balances shall be infused into the structure, that are sufficient to ensure that no branch can become stronger than the others.

4. The State shall guarantee the supremacy of the interests of THE PEOPLE that live or will live in housing developments, over the interests of those that plan, develop, build or sell services to them. (If as a home owner, I cannot elect the the board of management/executive Committee of the organisation (AWHO), then that organisation has no right to make laws that govern my life and enjoyment of the property.)

5. The builder/developer should vanish from the scene once the property is registered as freehold and the owners take charge the governance in a democratic way. Any thing more that this is defective in law and hence not enforceable.

VIII RESPONSE TO DEMOCRATIC GOVERNANCE

The attitude of AWHO towards democratic governance of a Society registered under Societies Registration Act 1860 seems clear from the actions by them so far.

We have seen already, that if one man has power over others placed in his hands, he will make use of it for an evil purpose; for the purpose of rendering those other men the abject instruments of his will. If we, then, suppose, that one man has the power of choosing the Representatives of the people, it follows, that he will choose men, who will use their power as Representatives for the promotion of his sinister interest.

We have likewise seen, that when a few men have power given them over others, they will make use of it exactly for the same ends, and to the same extent, as the one man. It equally follows, that, if a small number of men have the choice of the Representatives, such Representatives will be chosen as will promote the interests of that small number, by
reducing, if possible, the rest of the community to be the abject and helpless slaves of their will. 14

I have always thought the actions of men the best interpreters of their thoughts. 15

So what do you expect Chairman, AWHO to do for the Members of the Society? Nothing unexpected:

1. Defined that members of the BoM will be ex-officio succession only.

Peoples protector who, once having tasted blood, turns into a wolf and a tyrant. 16

2. There will be no General Body meeting

To every individual in nature is given an individual property by nature not to be invaded or usurped by any. For every one, as he is himself, so he has a self-propriety, else could he not be himself; and of this no second may presume to deprive any of without manifest violation and affront to the very principles of nature and of the rules of equity and justice between man and man. Mine and thine cannot be, except this be. No man has power over my rights and liberties, and I over no mans. I may be but an individual, enjoy my self and my self-propriety and may right myself no more than my self, or presume any further; if I do, I am an encroacher and an invader upon another mans

3. In fact there will be no general body as the the Members are only “allottees” and not Members.

That is the perfect rape of democracy in the society that should function as required under the statutes.

4. Members of the BoM will be the only Members of the Society. That way, democratic approval of the Members can be done away with.

Radical James Mill (1773-1836) on the sinister interests of those who wield power (1825) ), http://goo.gl/DneHs

5. Where General Body approval is required for a decision, BoM will propose the measure first and then later vote as “General Body”.

John Locke, An Essay Concerning Human Understanding, Volume 1 MDCXC, Based on the 2nd Edition, Books 1 and 2

6. All decisions taken and rules made by BoM will be forced on the Member Allottees by coercion and not by “Consent of the Governed”

Plato In Book VIII of The Republic (340s BC)
right to which I have no right.

.. Nature and laws would be in an ill case, if slavery should find what to say for itself, and liberty be mute: and if tyrants should find men to plead for them, and they that can master and vanquish tyrants, should not be able to find advocates. And it were a deplorable thing indeed, if the reason mankind is endowed withal, and which is the gift of God, should not furnish more arguments for men's preservation, for their deliverance, and, as much as the nature of the thing will bear, for making them equal to one another, than for their oppression, and for their utter ruin under the domineering power of one single person. Let me therefore enter upon this noble cause with a cheerfulness, grounded upon this assurance, that my adversary's cause is maintained by nothing but fraud, fallacy, ignorance, and barbarity; whereas mine has light, truth, reason, the practice and the learning of the best ages of the world, of its side.

When I look around me in society, and see the nations of the earth most celebrated for the rigour and despotism of their government, groaning under the most grievous calamities, while ours from her freedom has had safety ensured to her; can these calamities be possibly traced to any other cause than this despotism, which has destroyed every manly feeling. Can the rise of despotism in any society be ever so well resisted as at first. The first step it takes gives it additional power to take a second. It goes on thus increasing, till men's opinions are bound up in its sanctity, and then it is irresistible.

Implicit submission to any leader, or the uncontrolled exercise of any power, even when it is
intended to operate for the good of mankind, may frequently end in the subversion of legal establishments. This fatal revolution, by whatever means it is accomplished, terminates in military government; and this, though the simplest of all governments, is rendered complete by degrees.  

A Violation of Rule of Law

The existing rules of AWHO which have come to the present stage of illegality and robs the Member-allottee of their financial and property rights and interests protected under the Constitution of India because of

1. Non-application of mind by the independent Directors/ Members of the Board of Management (BoM). the BoM having only special interests of COAS and NOT the highest stakeholder, Member-allottee whose individual stakes these days run to Rs Half a crore and these investments are made purely based on trust and trust alone in the Society.

2. By these fiduciary duties, you are required to have undivided loyalty to the Members-Allottees of AWHO who have reposed their complete trust on you.

3. No contract exists and no contract is possible between Society and its own members and more importantly, there can be no law that protect the couple of “public servants” to engage in real estate business if you are engaged in selling Real Estate to people outside of the Society.

4. The biggest stake-holders’ interests are not being represented in the decision making process even though these decisions impact their and their family members’ and heirs’ and successors’ property rights for his life time and beyond!

5. Consent of the Governed (Member-Allottees) being non-existent due to non-compliance with statutes protecting such consent.

6. lastly it violates even Article 21 The Universal Declaration of Human Rights. Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law. “Will of the people shall be the basis of any authority”

7. If “we the people” do not have authority to approve and if necessary to change the rules, then “Consent of the governed” is

---

20 Adam Ferguson, SECTION VI. “Of the Progress and Termination of Despotism” in “Philosophical History”
absent and hence it is a violation of Universal Declaration of Human Rights for which India is a signatory.

If this is allowed to continue, it will be failure of fiduciary duties by the members of BoM towards the Member-allottees and a failure of fiduciary duties is a Criminal Breach of Trust.

B Prostitution of Rule of Law

1. Rules of AWHO are so cleverly construed by AWHO lawyers (and innocently or foolishly or perhaps maliciously) approved by the Board of Management to deny the Property Rights of individuals who procure their houses from AWHO.

2. If AWHO is a Society and we are members of the Society, no Rules can be formulated without the consent of the Members.

3. For arguments sake, if we assume that we are NOT members of a Society but we are just customers of AWHO, a developer/builder from whom we are buying the houses, then AWHO do NOT have power to make rules which it can force on the buyers, their family, their heirs and successors and rule over the buyers for the rest of their lives and beyond.

4. MD, AWHO is NOT an Almighty King Emperor (even King Emperor of England lost absolute power to make law/rules in 1215 AD with magna carta, and coming to modern times, even President of USA, PM of England or President/PM of India do NOT have powers to make laws/rules with out consent of “we the people”) that he can make rules in his sole discretion and no one can question him.

5. If we are members of the Society, MD AWHO is just a “servant of the Society” and if we are not the members of the Society, then, he is just an employee of the builder/developer.

Does it require great legal acumen to understand this basic principle of law, equity and governance? Do you have problem with this? If yes, there is a big problem.

C AWHO Rules: Strict Statutory Criteria

The Rules have to meet the following strict statutory requirements:

1. Rules should be consistent with Constitution of India and NOT violative of it.

2. Compliance with statutes not only Registration of Society 1860 under which AWHO is registered but also all other statutes dealing with consumer protection and the case laws
protecting the real estate consumer against the builder and developer.

3. The compliance status of the AWHO as a Registered Society has to be maintained at 100% or else the AWHO has no locus standi as a Society and can only revert to “Sole Proprietor Real Estate Business” engaged by couple of “Public Servants” as defined under IPC (Section 21 in The Indian Penal Code, 1860).

4. Under the Prevention of Corruption Act 1988 Section 11, it is an offence for a “public servant” to accept or agree to accept or to attempt to obtain for himself or for any other person any valuable thing without consideration or for a consideration which he knows to be inadequate from any person whom he knows to have been or to be likely to be concerned in any proceeding or business transacted or about to be transacted by such public servant or from any person, he knows to be interested in or related to the person so concerned. “No Profit No Loss” can not be left to trust but should be verifiable by full disclosure.

5. The process for passing of the new Rules should satisfy the statutory requirements of voting by members and the original Rules submitted with the MoA of the Society. If not, any changes made to the original rules is illegal and invalid and null and void.

6. Any rule not meeting the above criteria are illegal/invalid/ and in the case of violation of the constitutional protections, ultra vires.

D Core fiduciary duties

The BoM have fiduciary duties towards the Member Allottees who have extremely high stakes (running to Rs half a crore) in the Society while Members of BoM have no stakes at all except loyalties to authorities outside of the Society which itself is a violation of fiduciary duties of absolute and undivided loyalty to beneficiaries. Core Fiduciary duties itself impose on the trustees the following:

1. Core fiduciary duties of care

2. Absolute and undivided loyalty to beneficiaries

3. Prudence in dealing with trust funds

4. Disclose all material information (“Sunlight is said to be the best of disinfectants; electric light the most efficient policeman.” OTHER PEOPLE’S MONEY - CHAPTER V — The Louis D. Brandeis) when seeking trust outgoes and income and their nature and disposal

5. Conflicts of interest
IX Wherever law ends, tyranny begins

Wherever law ends, tyranny begins, if the law be transgressed to another’s harm; and whoever in authority exceeds the power given him by the law, and makes use of the force he has under his command, to compass that upon the subject, which the law allows not, ceases in that to be a magistrate; and, acting without authority, may be opposed, as any other man, who by force invades the right of another. This is acknowledged in subordinate magistrates. He that hath authority to seize my person in the street, may be opposed as a thief and a robber, if he endeavors to break into my house to execute a writ, notwithstanding that I know he has such a warrant, and such a legal authority, as will empower him to arrest me abroad. And why this should not hold in the highest, as well as in the most inferior magistrate, I would gladly be informed.  

For AWHO, law has ended the very moment it started a real estate business under the garb of a Society and the Real Estate business does not fall under Society and that too under the non-democratic and tyrannical rule of a self-appointed Chairman and BoM which does not meet the requirements of functioning of the Society on democratic lines under the Registration of Society Act 1860.

The rot has deep roots and are not just cosmetic.

But the great security against a gradual concentration of the several powers in the same department, consists in giving to those who administer each department, the necessary constitutional means, and personal motives, to resist encroachments of the others. Ambition must be made to counteract ambition. The interest of the man, must be connected with the constitutional rights of the place. It may be a reflection on human nature, that such

---

21 John Lock, Section 202 of Chap. XVIII “Of Tyranny” in Book II of the Two Treatises of Government that even magistrates must abide by the law: [http://files.libertyfund.org/pll/quotes/115.html](http://files.libertyfund.org/pll/quotes/115.html)
devices should be necessary to control the abuses of government. ...  

Remember always and every time what history teaches: James Madison on the need for the separation of powers because men are not angels, Federalist 51 (1788)

X  AWHO Rules & Equity, Justice & Fiduciary Duties

“Equity refuses to confine within the bounds of classified transactions its precept of a loyalty that is undivided and unselfish. Certain at least it is that “a man obtaining his locus standi, and his opportunity for making such arrangements, by the position he occupies as a partner, is bound by his obligation to his copartners in such dealings not to separate his interest from theirs, but, if he acquires any benefit, to communicate it to them.” Certain it is also that there may be no abuse of special opportunities growing out of a special trust as manager or agent..... A trustee is held to something stricter than the morals of the market place. Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior. As to this there has developed a tradition that is unbending and inveterate. Uncompromising rigidity has been the attitude of courts of equity when petitioned to undermine the rule of undivided loyalty by the “disintegrating erosion” of particular exceptions. Only thus has the level of conduct for fiduciaries been kept at a level higher than that trodden by the crowd. It will not consciously be lowered by any judgment of this court.”

A  Principles of Natural Right and Justice

1. There is a right not to have officials take actions, under color of delegated authority, that may be convenient or that may tend to achieve the outcome sought by the exercise of a delegated authority, but only to make the reasonable effort such a delegation authorizes, which need not be sufficient to attain

---


XI Who is the enemy of Society?

1. The Board of Management who retains absolute power and control if necessary even by failing the commands of rule of law and denying even Membership privileges and the protection of Fundamental Rights: Equality before law and Equal Protection of Laws to the stake-holders.  

2. Or, those who assert their own Fundamental Rights and Equal Protection of Laws
You be the judge.

2. There is a right to have delegated powers construed narrowly, and complementary rights or immunities construed broadly, and when in doubt, the decision must always be in favor of the claimed right against an action of authority over the claimed power of an official to so act.

3. One can recognize in these precepts the principles of natural right and justice that most of us take for granted, or that are embedded in our public processes, but which are not always made explicit or stated as positive rights.
From CPC Nath,
C 679 Sarita Vihar,
New Delhi 110076
nath@computer.org

To MD AWHO,
South Hutments,
Kashmir House,
Rajaji Marg,
New Delhi - 110011
Fax : 23010599
E-mail : awho@vsnl.com

OPTION LETTER FOR SPECIFIC DWELLING UNIT

Sir,

1. It is brought to your notice that the AWHO vide their undertaking to the lender had promised on 6/12/2004:

“It is certified that the
AWHO is controlled by
a Board of Management
headed by Adjutant General as ex-officio Chairman. All other members of
the Board are serving senior officers of the Army,
the MD of AWHO, the
civilian officers of Ministry
of Defense(Finance). It
is certified that the land
is totally unencumbered at
present and in future no
action will be taken by
AWHO which will make it
encumbered”

These assurances and the trust reposed on the builder (AWHO) as the Trustee that I and my lender bank relied heavily in our consideration without personally inspecting the local body clearances and permits etc. and the transfer deed doc-
uments of the land held in trust on behalf of the veteran (the beneficiary) that I and my lenders relied heavily and entrusted 95% of the enhanced cost of Rs 48.5 Lakhs without visiting the site even once or examining any papers/documents for its authenticity.

2. Part of the land was acquired for the highway passing through the colony and thus the allottees common area stands reduced to the extent. The compensation received was not distributed to the allottees though the builder (AWHO) was only holding it in trust on behalf of the beneficiary (the allottees).

3. With the builder (AWHO) as trustee, I was fully confident that my interest as beneficiary would be safeguarded with full fiduciary responsibilities.

4. With the above as background, the latest option letter came as a bombshell exploding my confidence in the exercise of the fiduciary responsibilities of the trustee.

5. Please read my comments on each aspect suitably numbered for easy reference. Information is sought to enable to decide commitment to invest up to Rs 38 Lakh in addition (almost 100% additional investment) is given in the form of questions for you to respond well on time so that I can give options as desired by you.

6. Your Reference Para: The project is nearing completion and the Dwelling Units (DUs) are likely to be ready for handing over with effect from 15 Oct 2012.

1. Comments/Observation: We are excited at the fact that the project is nearing completion albeit after a delay of 5 years.(2007)

2. Information Sought:
   (a) How much %age of investment on common area and facilities/infrastructure has been completed?
   (b) What items of common facilities and infrastructure have been completed and what items are left?
   (c) What are the target dates for completion?

7. Your Reference Para: The sizes of the plots, in general, for DSUs in approx 400 Sq yds plots have been considered as 3572 sq ft and in case of DSUs in 300 Sq yds plots the same have been considered as 2652 sq ft to accommodate Maximum number of plots on the ground.

1. Comments/Observation
   (a) Where the options are 400Sq yrd (3600 sq ft) and 300 sq yrd (2700 sq ft), then rounding it off to 3572 sq ft instead of 3600 Sq ft and 2652 sq ft instead of 2700 sq ft sound totally irrational especially when the reason assigned is to accommodate maximum number of plots. If that was the rationale, how come you have recklessly assigned more excess land going up to 3328 sq ft to plots of size both 400Sq yrd and 300 sq yrd.?
(b) By bringing in 3572 Sq ft and 2652 sq ft, you have made it possible for pricing the excess area allocated higher than had it been 400 sq yrd and 300 sq yrd. This resulted in a conflict of interest and thus failing in your fiduciary duties as a trustee.

(c) These notional figures are important because you are charging for land in excess of these figures!

(d) Trustee is bound by a duty of loyalty and thus avoid self dealing by fully aligned and being in any position in which the Trustee has interest to serve other than that of the trust is violation of fiduciary duty a

2. Information Sought:
   (a) What exactly is your logic for this notional figure 3572/2652 sq ft which is neither related to 400 Sq Yrds/300 Sq Yrds nor to rounding off of 3600/2700 sq ft as these figures are already rounded and more importantly, nor to the actual size of the lots as it emerged after division into lots of much bigger sizes by wantonly allocating from the common areas held by you in trust for the benefit of the beneficiary?

8. Your Reference Para: However, it is seen on the ground that there are some plots in which the areas are less by up to 45 sq ft.

   1. Comments/Observation
      (a) If you add up the number of larger size lots, there are none left for smaller than normal. Is there something we are not getting?

2. Information Sought:
   (a) Will pricing be adjusted for short fall of 45 sq ft?
   (b) If so, at what rates per sq ft? 2005 rates or 2012 rates?
   (c) Rates as on 2004/5 when the land was purchased (both individual allotted share 400 sq yrd and share of common area) by the builder (AWHO) on behalf of the allottees and held in trust on behalf of the beneficiaries or rates as on 2012?

9. Your Reference Para: There are also a number of plots whose areas are more than the standard sizes given above and the maximum additional area of plot is 3328 sq ft..
Option Letter for Specific Dwelling Unit - BANGALORE
VASANTH VIHAR PROJECT

(b) This fails the test of legal, equity, ethical and moral grounds in dealing with the interest of the beneficiary (veteran).

(c) The trustee investments are adjudged by the prudent person standard. Under the traditional formulation of this rule, a trustee must exercise the degree of care and level of skill that a person of ordinary prudence would exercise in dealing with that person’s own property. Under this, wanton and incompetent division into lots have increased the monetary burden on the customer (almost 100% of the cost i.e. almost Rs 38 lakhs payment when the customers ability to raise loans have already been exhausted fully) but also the common area is substantially reduced due to this incompetent division of lots and also the highway.

(d) Trustees are generally under an absolute and unqualified duty to make trust distribution to the correct person. A trust makes an improper distribution (in terms of land or in cash because of a gross error in size of the lots is essentially this) is liable even though the trustee exercised reasonable care and made the mistake in good faith.

(e) This duty is stricter than the standards applicable to other aspects of trust management because the beneficiary is the owner of the equitable title and is entitled to the reasonable and just distribution of plot size, share of common area and cash surplus in distribution.

2. Information Sought:

(a) What is your legal, equity, ethical and moral justification which can stand scrutiny in a court of law for Criminal Breach of trust, conflict of interest, self-dealing and conflict of interest of combined beneficiary (common area) vs individual beneficiary.

10. Your Reference Para: With a view to improve the level of satisfaction and to give a chance to the allottees to opt for the size of the plot of their choice, it has been decided to seek options for the same from the allottees of Duplex Single Units (DSUs) mentioned at Para 2 (a) to (d) above so as to facilitate the allotment of specific DSUs to the above allottees.

1. Comments/Observation:

(a) As a trustee, your fiduciary responsibilities are clouded by self dealing. (You are acting as seller for the excess land and maximizing the price by pegging it at 2012 prices and as a buyer
for the common area held in trust from which these pieces originally come from and pegging the price as the price as of 2004, the price at which the land was originally purchased not as a purchaser but as trustee on behalf of the beneficiary (allottees)!

(b) A trustee may not purchase trust assets for the trustees personal use. Likewise a trustee cannot sell the trustees personal assets to the trust. A trustee cant be expected to act fairly in these situations because as a purchaser the trustee wants to pay as little as possible and as a seller the trustee wants to receive a favorable price.

(c) You have totally played havoc with your role as a trustee and the fiduciary duties by creating conflict of interest and self dealing!

(d) This is gross criminal breach of trust and may attract criminal liability not as MD AWHO but in your individual capacity as a person Major General xyz!

(e) The seriousness of this was not realized by you and the current decision to make money by sale of the excess land to the allottees by selling their own land held by you as trustee. After knowing the complexity of the issue, if you still go ahead with this criminal breach of trust, the mens rea for the criminal action will be established. If the matter goes to court, which we all want to avoid, we will be washing the dirty linen in the public at a time least conducive for our institution, you would establish a landmark case (not just for India but for the whole world) of failure of fiduciary responsibilities and committing criminal breach of trust!

(f) And it is adding insult to injury to sell this idea saying that it is to With a view to improve the level of satisfaction. This fails the test of legal, equity, ethical and moral grounds in dealing with the interest of the beneficiary (veteran).

(g) The trustee investments are adjudged by the prudent person standard. Under the traditional formulation of this rule, a trustee must exercise the degree of care and level of skill that a person of ordinary prudence would exercise in dealing with that persons own property. Under this, wanton and incompetent division into lots have increased the monetary burden on the customer (almost 100% of the cost i.e.almost Rs 38 lakhs payment when the customers ability to raise
loans have already been exhausted fully) but also the common area is substantially reduced due to this incompetent division of lots.

(h) Trustees are generally under an absolute and unqualified duty to make trust distribution to the correct person. A trust makes an improper distribution (in terms of land or in cash because of a gross error in size of the lots is essentially this) is liable even though the trustee exercised reasonable care and made the mistake in good faith.

(i) This duty is stricter than the standards applicable to other aspects of trust management because the beneficiary is the owner of the equitable title and is entitled to the reasonable and just distribution of plot size, share of common area and cash surplus in distribution.

2. Information Sought:
   (a) What is your legal, equity, ethical and moral justification which can stand scrutiny in a court of law?

11. Your Reference Para: Medium, Bigger and Large Size Plots. Rs 1.35 Lakhs for 135 sq ft to Rs 33.30 Lakhs for 3330 sq ft.

1. Comments/Observation:
   (a) Pricing as seller at 2012 prices and realizing the moola from the beneficiary (allottee) as a trustee (builder) while pricing as buyer from the beneficiary common property purchased in 2005 and held in trust with you.

(b) Moreover, this shifting the burden of your incompetent division of plots into financial ruin of the beneficiary as the poor veteran is burdened heavily due to cost escalation from 15.5 Lakh to 48.5 Lakh all due to your failure in starting the project without appropriate clearances in the first place. (See court ruling: DHL Case here: http://goo.gl/gmEqP

(c) AWHO being a WELFARE organization for the veteran and claim to work on a NPNL (No Profit No Loss), you are allowed only to charge the beneficiary for money actually spent for purchase of land and actual cost of construction. As trustee builder, no money is spent for corner plot and park vicinity, this decision to charge will be failing your duty as a welfare org for the veteran (NPNL), self dealing, conflict of interest and attract criminal breach of trust charges! If you still want to go ahead, you are further establishing mens rea for the criminal prosecution authority!
2. Information Sought:
   (a) Your legal justification?

12. Your Reference Para Park(s) in the Vicinity. There are a number of DSUs which are either facing a park or have park on the side or rear. Additional amount of Rs 2.50 Lakhs will be charged for such DSUs.

1. Comments/Observation:
   (a) Same as above.

2. Information Sought:
   (a) What is AWHO's legal, equity, ethical and moral justification to depart from the time tested practices of AWHO of last 20+ years?

13. Your Reference Para Some DSUs are located at the corners and are having two sides open and offer considerable advantage to the allottees. An additional amount of Rs 2.50 Lakhs will be charged to allottees of such DSUs. Corner Plots with Park(s) in the Vicinity. DUs which are located at the Corner and have Park(s) in the vicinity will be charged Rs 5.00 Lakhs extra.

1. Comments/Observation:
   (a) AWHO being a WELFARE organization for the veteran and claim to work on a NPNL (No Profit No Loss), it is only rational that you charge the beneficiary for money actually spent for purchase of land and actual cost of construction. As trustee builder, no money is spent for corner plot and park vicinity, this decision to charge will be failing your duty as a welfare org for the veteran (NPNL), self dealing, and conflict of interest and attract criminal breach of trust charges! If you still want to go ahead, you are further establishing mens rea for the criminal prosecution authority.

   (b) You are in violation of your own Master Brochure (Clause 61) existing in 2005, Clause 61 of current Master Brochure as amended upto 1 Sep 2010 and further reinforced by Booking letter Para 15 of 13 Oct 2004 and Para 6 of Appendix C (which refers to Para 12 of AWHO Booking letter dated 20 April 2010) which specifically say no corner plot, park vicinity or combined Park vicinity and Corner plot charges but purely computer draw as a process of fairness! This is authoritarian single handed action of the dominant party against the vulnerable weak allottee.

2. Information Sought:
   (a) What is AWHOs legal, equity, ethical and moral justification to depart from Master Brochure committed and the time tested practices of AWHO of last 20+ years?

14. Your Reference Para Allottees are requested to forward their 4 choices, in the order of preference,
based on the size of plots they would like to possess as per the format given at Appendix A

1. Comments/Observation:
   (a) Though it is called options, it is actually forced choices at the point of a gun because essentially the beneficiary (veteran) have no choices!
   (b) Further you are making us to commit us by forcing to give a certificate that we will commit to pay the additional payment along with the choices. This is devious and against all fair trade practices. Commitment to pay additional amount has been cleverly concealed within the choices!

2. Information Sought:
   (a) What is AWHO's legal, equity, ethical and moral justification to depart from Master Brochure committed the time tested practices of AWHO of last 20+ years?

15. Your Reference Para . The allotment of specific DU, will be based on the choices given by the allottees, taking first choice first. This will be followed by the second, third and fourth choice draws, where there is availability of DUs after the first and subsequent choice draws of various size of plots have been conducted... In view of the foregoing, you are requested to exercise your option

1. Comments/Observation: This compensation belongs to the trust beneficiary( allottees) whose property is held in trust by the builder (AWHO) and hence the money is to be distributed as on date and not delayed till accounts are settled many years hence in view the time value of the money. See
DHL Case court order: [http://goo.gl/gmEqF](http://goo.gl/gmEqF)

2. Information Sought:

(a) What is AWHO’s legal, equity, ethical and moral justification to depart from Master Brochure committed the time tested practices of AWHO of last 20+ years?

17. Although inter related, loyalty duties and investment duties are different. Loyalty duties deal with self dealing, and conflict of interest that could affect any aspect of trust administration. Loyalty duties are breached if the prohibited conduct occurred, the trustee breached the duty. No evaluation need be done.

18. I am awaiting your answer to the questions before I can provide the options.

19. If AWHO tries to answer the questions I raised, it may become obvious that their position becomes untenable legally, morally, ethically and from equity point of view.

20. In view of the above, it would only be prudent not only from the point of legal and moral point of view but also from the point of view of welfare to withdraw the Option letter. No one in the right senses would expect AWHO to provide free bonanza to the allottees. Any decision taken should make business sense also without harming the allottees because that is what should be uppermost in the mind of a welfare organization. An amicable solution would be to follow the Brochure and the booking letter strictly and follow the procedure of allotment by lottery.

21. If at all some have to be charged for the marginal errors committed by AWHO in making lots, it will have to be at rates that existed in 2004 when the property in trust was obtained. That raises a moral/ethical question how those who did not benefit from the lottery have to be compensated for the reduced common area compared to what AWHO had promised them. That is a question that will have to be resolved in consultation with the allottees in general because everyone is affected by the gross errors committed by AWHO in dividing the lots. To pass on the negative consequences of faulty division to the beneficiary is breach of trust as it is divided loyalty and co-mingling of funds. The fundamental rule of equity here is:

*Trustees are generally under an absolute and unqualified duty to make trust distribution (in terms of land, building and surplus cash) to the correct beneficiary in the correct proportion. A trustee makes an improper distribution is liable even though the trustee exercised reasonable care and made the mistake in good faith.*

21. In view of the above, in order to ensure no one questions AWHO, I would sincerely recommend that where ever the excess land is substantial, one could take away these and make it common area even in between houses and landscape it and
provide some landscaping structure like a gazebo for common use. A good example would be some of the following at this link: [http://goo.gl/cYZWn](http://goo.gl/cYZWn). Thus major legal tangle can be avoided and yet it will merge beautifully with the landscape even if it is in between the houses and will be available for use by the whole community! I am awaiting your answer to the questions before I can provide the options.

Yours sincerely,

Sd/= 

CPC Nath

I Appendix A: Criminal Breach of Trust

Section 405 of IPC defines Criminal breach of trust in the following words- Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do, commits criminal breach of trust.

That is to say that the beneficial interest in the property in respect of which the offence is alleged to have been committed was vested in some person other than the accused, and that the accused held the property on behalf of that person. A relationship is created between the transferor and transferee, whereunder the transferor remains the legal owner of the property and the transferee has only the custody of the property for the benefit of the transferor himself or someone else. At best the transferee, obtains in the property entrusted to him only a special interest limited to a claim for his charges in respect of safe retention, and under no circumstances does he acquire a right to dispose of that property in contravention of the entrustment[1]. The offence of criminal breach of trust is committed when a person who is entrusted in any manner with property or with dominion over it, dishonestly misappropriates it, or converts it to his own use, or dishonestly uses it or disposes it of in violation of any direction of law prescribing the mode in which the trust is to be discharged, or of any lawful contract, express or implied, made by him touching such discharge, or willfully suffers any other person so to do. The following ingredients are necessary to attract the operation of section 405.

1. The accused must be entrusted with property or dominion over the property; and
2. The person so entrusted (i.e., the accused) must-
   (a) dishonestly misappropriate, or convert to his own use, that property, or
   (b) dishonestly use or dispose of that property or willfully suffer any other person to do so in violation of
3. any direction of law, prescribing the mode, in which such trust is to be discharged, or

4. any legal contract made touching the discharge of such trust.

The Trustee must keep the trust property separate from trustees own assets and property of others.

A Fiduciary

The trustee is subject to broad range of fiduciary duties. The trustee must exercise a high standard of care when investing trust property and otherwise manage the trust. Trustee is bound by a duty of loyalty and thus avoid self dealing be fully aligned and being in any position in which the Trustee has interest to serve other than that of the thrust. If the trustee fails to comply with the requirements and duties of trust administration, the trustee can be held personally liable. A breach of duty may result in civil and criminal penalties. The trustee is personally liable for losses only if the trustee conduct falls beneath applicable standard of care. Prudent Person Standard The trustee investments are adjudged by the prudent person standard. Under the traditional formulation of this rule, a trustee must exercise the degree of care and level of skill that a person of ordinary prudence would exercise in dealing with that persons own property. The trust must examine the investments potential to appreciate in value.

B Standard of Care

Trustees are generally under an absolute and unqualified duty to make trust distribution to the correct person. A trust makes an improper distribution is liable even though the trustee exercised reasonable care and made the mistake in good faith. Duty of Loyalty A trustee owes to the beneficiary duties of undivided loyalty and utmost good faith wrt all trust matters. In other words, trustee must avoid all self dealings and all other conflict of interest situation. The trustee owes these duties to all beneficiaries and consequently the trustee cannot favor one beneficiary over another.

C Buying & Selling Trust Property

A trustee may not purchase trust assets for the trustees personal use. Likewise a trustee cannot sell the trustees personal assets to the trust. A trustee cant be expected to act fairly in these situations because as a purchaser the trustee wants to pay as little as possible and as a seller the trustee wants to receive a favorable price.

D Conflict of Interest

Although inter related, loyalty duties and investment duties are different. Loyalty duties deals with self dealing, and conflict of interest that could affect any aspect of trust administration. Loyalty duties are breached if the prohibited conduct occurred, the
trustly breached the duty. No evaluation need be done.

E What Is Criminal Breach Of Trust?

The offence of criminal breach of trust, as defined under this section, is similar to the offence of embezzlement under the English law. A reading of the section suggests that the gist of the offence of criminal breach of trust is dishonest misappropriation or conversion to own use another’s property, which is nothing but the offence of criminal misappropriation defined u/s 403. The only difference between the two is that in respect of criminal breach of trust, the accused is entrusted with property or with dominion or control over the property. As the title to the offence itself suggests, entrustment or property is an essential requirement before any offence under this section takes place. The language of the section is very wide. The words used are in any manner entrusted with property. So, it extends to entrustments of all kinds—whether to clerks, servants, business partners or other persons, provided they are holding a position of trust. The word entrust is not a word of art. In common parlance, it embraces all cases in which a thing handed over by one person to another for specific purpose. It need not be express it may be implied. It not only covers the relationship of a trustee and beneficiary between the complainant and the accused, like master and servant, guardian and ward, and the pledgor and pledge. It connotes that the accused holds the property for, and on behalf of another. Hence in all such transactions like that of a consignor and consignee, bailor and bailee and hirer and hiree, there is an element of trust implied in the transaction because in all such relation, the property entrusted to the accused is property of another person.

In order to constitute a legal entrustment, therefore, the complainant must be the owner of the property; there must be a transfer of possession; such transfer must be actual transfer, and not a fictional or notional one; such transfer should be made to somebody who has no right excepting that of a custodian, and such entrustment must be made to a person, and not to a company or a firm. These are the panchsheel of a legal entrustment. Mere transaction of sale cannot amount to an en-
trustment; entrustment means that the person handing over any property, or on whose behalf that property is handed over to another, must have confidence in the person, taking the property, so as to create a fiduciary relationship between them.[8]. The word entrustment in this section, governs not only the words with the property immediately following it, but also the word or with any dominion over the property, occurring thereafter. Similarly, the managing director of a company, including the amounts received from the subscribers, and dominion is as good as entrustment for the purpose of this section. For a valid entrustment it is not necessary that the accused should receive the money directly from the complainant. In the case of Dwarkadas Haridas v Emperor[9] Where under the terms of a contract, some goods were entrusted to the accused, who was to sell those goods, obtain money for them, and that money on account of the complainant, it was held that though he didn’t actually receive the money from the complainant, he was entrusted with it within the meaning of this section.

G Property

The definition in a 405 does not restrict the property to movables or immovable alone. In the case of R K Dalmia vs Delhi Administration[10], the Supreme Court held that the word property is used in the Code in a much wider sense than the expression moveable property. There is no good reason to restrict the meaning of the word property to moveable property only, when it is used without any qualification in s 405. Whether the offence defined in a particular section of IPC can be committed in respect of any particular kind of property, will depend not on the interpretation of the word property but on the fact whether that particular kind of property can be subject to the acts covered by that section. The word dominion connotes control over the property. In Shivnatrayan vs State of Maharashtra, it was held that a director of a company was in the position of a trustee and being a trustee of the assets, which has come into his hand, he had dominion and control over the same.

Explanations (1) and (2) to the section provide that an employer of an establishment who deducts employees contribution from the wages payable to the employee to the credit of a provident fund or family pension fund or employees state insurance fund, shall be deemed to be entrusted with the amount of the contribution deducted and default in payment will amount of the contribution deducted and default in payment will amount to dishonest use of the amount and hence, will constitute an offence of criminal breach of trust. In the case Employees State Insurance Corporation vs S K Aggarwal[11], the Supreme Court held that the definition of principal employer under the Employees State Insurance Act means the owner or occupier. Under the circumstances, in respect of a company, it is the com-
pany itself which owns the factory and the directors of the company will not come under the definition of employer. Consequently, the order of the High Court quashing the criminal proceedings initiated u/ss 405 and 406, IPC was upheld by the Supreme Court.

H Misappropriation

Dishonest misappropriations is the essence of this section. Dishonesty is as defined in sec.24, IPC, causing wrongful gain or wrongful loss to a person. The meaning of wrongful gain and wrongful loss is defined in sec 23, IPC. In order to constitute an offence, it is not enough to establish that the money has not been accounted for or mismanaged. It has to be established that the accused has dishonestly put the property to his own use or to some unauthorized use. Dishonest intention to misappropriate is a crucial fact to be proved to bring home the charge of criminal breach of trust.

Proof of intention, which is always a question of the guilty mind or mens rea of the person, is difficult to establish by way of direct evidence. In Krishan Kumar V UOI[12], the accuse was employed as an assistant storekeeper in the Central Tractor Organisation (CTO) at Delhi. Amongst other duties, his duty was the taking of delivery of consignment of goods received by rail for CTO. The accused has taken delivery of a particular wagonload of iron and steel from Tata Iron and Steel Co, Tatanagar, and the goods were removed from the railway depot but did not reach the CTO. When questioned, the accused gave a false explanation that the goods had been cleared, but later stated that he had removed the goods to another railway siding, but the goods were not there. The defence version of the accused was rejected as false. However, the prosecution was unable to establish how exactly the goods were misappropriated and what was the exact use they were put to. In this context, the Supreme Court held that it was not necessary in every case to prove in what precise manner the accused person had dealt with or appropriated the goods of his master. The question is one of intention and not direct proof of misappropriation.

The offence will be proved if the prosecution establishes that the servant received the goods and that he was under a duty to account to his master and had not done so. In this case, it was held that the prosecution has established that the accused received the goods and removed it from the railway depot. That was sufficient to sustain a conviction under this section. Similarly, in Jaikrishnadas Manohardas Desai vs State of Bombay[13], it was held that dishonest misappropriation or conversion may not ordinarily be a matter of direct proof, but when it is established that property, is entrusted to a person or he had dominion over it and he has rendered a false explanation for his failure to account for it, then an inference of misappropriation with dishonest intent may readily be made. Prosecution need not
establish the precise mode of dishonest misappropriation of conversion.

In Surendra Prasad Verma v State of Bihar[14], the accused was in possession of the keys to a safe. It was held that the accused was liable because he alone had the keys and nobody could have the access to the safe, unless he could establish that he parted with the keys to the safe.

The offence under section 405 can be said to have committed only when all of its essential ingredients are found to have been satisfied. As in the case of criminal misappropriation, even a temporary misappropriation could be sufficient to warrant conviction under this section. Even if the accused intended to restore the property in future, at the time misappropriation, it is a criminal breach of trust.

I Doctrine of Public Trust and Interpretation of Law Courts

In the case of Common Cause, A Registered Society v Union of India[15] and in the case of Shiva Sagar Tiwari v Union of India[16], it was held by the Supreme court that a minister is in a position of trustee in respect of public property under his charge and discretion, and he must therefore deal with peoples property in just and fair manner, failing which he or she would be personally liable for criminal breach of trust.

In the case of Common Cause, the apex court imposed a fine of Rs 50 lakh on Captain Satish Sharma, former petroleum minister in the P V Narsimha Raos government for arbitrary exercise of discretionary power of minister in allotment and distribution of petrol pumps and cooking gas agencies; and ordered the central Bureau of Investigation. To probe into the allotment scam and institute criminal proceedings for committing breach of trust against Captain Satish Sharma for abuse of office during his tenure as minister. The bench consisting of justices Kuldeep Singh and Faizanuddin, setting aside order of allotment of petrol pumps said: Not only the relatives of most of the officials working for Captain Satish Sharma but even his own driver and the driver of his additional Private Secretary have been allotted a petrol pump and a gas agency respectively. There is nothing on the record to indicate that the Minister kept any criteria in view while making the allotments... no criteria was fixed, no guidelines were kept in view, none knew how many petrol pumps were available for allotment, applications were not invite and the allotments of petrol pumps were made in an arbitrary and discriminatory manner.

The court explained that in a welfare state the Government provides a large number of benefits to the citizens and held:

A Minister who is the executive head of the department concerned distributed these benefits and largesse (generosity)s. He is elected by the people and is elevated to a position where he holds a trust on behalf of the people. He has to deal with the peoples property in a fair
and just manner. He cannot commit breach of the trust reposed in him by the people.

In the case of Shiv Sagar Tiwara v Union of India[17], the apex court levied a fine of 60 lakhs on Mrs. Sheila Kaul, former Union Minister for Housing and Urban Development and former governor of Himachal Pradesh and cancelled the allotment of 52 shops and kiosks (stalls) for arbitrarily, oppressively and unconstitutionally allotting the shops to her relatives, friends and staff members during her tenure as Minister. The court directed the Government to formulate an allotment policy within two months and complete the process of allotment within four months.

Justice Kuldeep Singh and Justice Hansaria, while imposing the fine said Since the properties she was dealing with were Government properties, the government by the people has to be compensated for breach of public trust. Mrs. Kaul should pay for causing pecuniary loss to the exchequer for action in an oppressive and mala fide manner, while making shop allotments.

However the apex court in a review petition filed by Mrs. Kaul, quashed the damages on compassionate ground having regard to the peculiar facts and circumstances of Mrs. Kaul, who was stated to be old, ailing and passing through great hardship[18].

It was thought that these decision have set at rest the controversy in respect of exercise of discretionary power by the Ministers, Governors etc., and have established jurisprudence of public accountability and transparency in the Governments working and would be an eye opener to persons in high positions to exercise powers with restraint so as not to make it farce and mockery of rule of law and democratic process. But to the dismay of common man and disappointment to legal fraternity in a review petition, a three member bench of the Supreme Court consisting of the Justices Saghir Ahmed, Venkatswami and Rajendra Babu turned down its earlier decision of November 4 1996 and ordered for the refund of sum of Rs. 50 lakh to the petitioner and quashed the order of the court for launching of prosecution against Capt. Sharma for criminal breach of trust under section 406, IPC.

While endorsing the findings, it was found by the court that the conduct of the Minister was wholly unjustified, the court said nevertheless it falls short of misfeasance; and the petitioner Common Cause, not being an applicant for allotment, it could not claim to have suffered any damage or loss on account of conduct of Minister. There has to be an identifiable plaintiff or claimant whose interest are damaged by the public officer (tortfeasor) maliciously or with the knowledge that the impugned section was likely to injure the interest of that person. As regards the imposition of pecuniary damages, it was said by the court: State cannot derive itself the right of being compensated by its officers on the ground
that they had contravened or violated the fundamental rights of a citizen. Directing the Minister to pay, a sum of 50 lakh to the Government, would amount to asking the government to pay exemplary damages to itself, which is not tenable under law.

Lastly, it was said by the court that the Doctrine of Public Trust is not applicable in the case of ministers in discharging their duties. I fail to understand the logic of such a farfetched argument that though the act of the Minister is wrong, it is not actionable, it also a derogation from the maxim of Ubi jus ibi remedium, this should not be so especially in a democratic country like India where public trust is the breath of the system. With due respect to the court that in a democracy the court cannot shirk from its constitutional responsibility by pleading its inability to provide remedy applying the colonial theory of the king can do no wrong. Another assumption of the court, that the minister does not assume the role of a trustee in the real sense, nor does a trust comes into existence, is misleading. Moreover the fact that there is no injury to a third person in the present case is not enough to make the principle of public accountability inapplicable in as much as there was injury to the high principle of public law, that a public functionary has to use its power for the bona fide purpose and in a transparent manner.

Section 409 of IPC says Criminal breach of trust by public servant, or by banker, merchant or agent. Whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with [imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

The acts of criminal breach of trust done by strangers is treated less harshly than acts of criminal breach of trust on part of the persons who enjoy special trust and also in a position to be privy to a lot of information or authority or on account of the status enjoyed by them, say as in the case of a public servant. That is why section 407 and 408 provide for enhanced punished of up to seven years (which is generally three years or/with fine) in the case of commission of offence of criminal breach of trust by persons entrusted with property as a carrier, wharfinger or warehouse-keeper.

In respect of public servants a much more stringent punishment of life imprisonment or imprisonment up to 10 years with fine is provided. This is because of special status and the trust which a public servant en-
joys in the eyes of the public as a representative of the government or government owed enterprises. Under section 409, IPC, the entrustment of property or dominion should be in the capacity of the accused as a public servant, or in the way of his business as a banker, merchant broker, etc. The entrustment should have nexus to the office held by the public servant as a public servant. Only then this section will apply.

In the case of Superintendent and Remembrance of Legal Affairs v. S K Roy[19], the accused a public servant in his capacity as a Superintendent of Pakistan unit of Hindustan Cooperative Insurance Society in Calcutta, which was a unit of LIC, although not authorized to do so, directly realized premiums in cash from Pakistani policy holders and misappropriated the amounts after making false entries in the relevant registers.

To constitute an offence of criminal breach of trust by a public servant under sec 409, IPC, the acquisition of dominion or control over the property must also be in the capacity of a public servant. The question before the court was whether the taking of money directly from the policy holders, which was admittedly unauthorized, would amount to acting in his capacity as a public servant. The Supreme Court held that it is the ostensible or apparent scope of a public servants authority when receiving the property that has to be taken into consideration. The public may not aware of the technical limitations of the powers of the public servants, under some internal rules of the department or office concerned. It is the use made by the public servant of his actual official capacity, which determines whether there is sufficient nexus or connection between the acts complained of and the official capacity, so as to bring the act within the scope of the section. So, in this case it was held that the accused was guilty of the offence under sec 409.

K Dishonest Intention

Unless dishonest intention is shown, an offence under sec 405, IPC, cannot be committed. Every breach of trust in the absence of mens rea, is not criminal. The court should ascertain whether the state of mind in which the accused was, did not exclude the existence of dishonest intention which is an essential ingredient of the offence of criminal breach of trust. Evidence is certainly relevant for purpose of ascertaining whether the state of mind of accused render it possible or likely for him to have entertained dishonest intention when he dealt with the moneys entrusted to him. If the accused was really unable to form the criminal intention, he cannot be guilty of the offence under section 406.

In the case of Mohanlal Mulchand v Mehta Kanaiyalal Pranshanker[20], certain title deeds were entrusted to the accused for the purpose of making enquiries about some land. The accused did not return the documents and said that he had lost the bundle and that the task was not completed. It was found that the accused had used the title deeds to
harm the transferee. Under these facts, it was held that the offence was complete when the documents were used to harm the transferee and that taking of money was not necessary to constitute the offence.

The prosecution is not bound to establish the mode in which the accused has appropriated the amount of entrustment. Dishonest misappropriation may be inferred from the established facts. Dishonest intention was held to have been proved in the case of a post master who entered an amount in the saving bank pass book of a depositor without entering the same in his account book[21]. Where the accused took a gold jewel from a goldsmith for showing it to his wife and placing an order for a similar jewel but failed to return it and retained it with him towards some debt due to him by the goldsmith and claimed it to be his own, it was held that the accused was guilty of dishonestly retaining it and claiming it to be his by misappropriating it[22].

Every breach of trust gives rise to a suit for damages, but it is only when there is an evidence of mental act of fraudulent misappropriation that the commission of embezzlement of any sum of money becomes a panel offence punishable as criminal breach of trust. A mere breach of contract is not synonymous with criminal breach of trust. It is the mental act of fraudulent misappropriation that distinguishes an embezzlement, amounting to a civil wrong or tort, from the offence of criminal breach of trust. If there is no mens rea, or if other essential ingredients are lacking, the same set of facts would not sustain a criminal prosecution though a civil action may lie. A mere failure to repay the loan would not constitute a criminal breach of trust. Where the managing agents acted dishonestly, it was held that they were not liable for criminal breach of trust even though there has been a breach of contract causing loss to the policy holders of the company[23]. The mere fact that the payment was delayed in no ground for imputing a criminal intention on the part of the accused, when there is no particular obligation to pay it at a certain date.

II Appendix B: Competition Commission Landmark Ruling

BEFORE THE COMPETITION COMMISSION OF INDIA

Case No. 19 of 2010 Belaire Owners Association V DLF Limited

Some extracts

See judgment original at http://goo.gl/gmEqF

Competition Commission

It has been alleged in the information that by abusing its dominant position, OP-1 (DLF) has imposed highly arbitrary, unfair and unreasonable conditions on the apartment allottees of the Housing Complex the Belaire, which has serious adverse effects and ramifications on the rights of the allottees. It has also been alleged that OP-2 and DTCP OP-3 have approved and permitted OP-
1 to act in illegal, unfair and irrational manner as they have allotted land and given licenses, permissions and clearances to OP-1 when it is ex-facie clear that OP-1 has violated the provisions of various Statutes including Haryana Apartment Ownership Act, 1983, the Punjab Scheduled Roads and Controlled Areas (Restriction of Unregulated Development) Act, 1963 and Haryana Development and Regulation of Urban Areas Rules, 1976.

2.2 The informant has submitted that OP-1 has used its position of strength in dictating the terms by which while on the one hand it has excluded itself from any obligations and liabilities, on the other hand it has put the apartment allottees in extremely disadvantageous conditions. The allegations of the informant are summarized in the paragraphs below.

Consequently, not only the areas and facilities originally earmarked for the apartment allottees are substantially compressed, but the project has also been abnormally delayed. The fall-out of the delay is that the hundreds of apartment allottees have to bear huge financial losses, as while on one hand, their hard-earned money is blocked, on the other hand, they have to wait indefinitely for occupation of their respective apartments.

2.2.2 The informant has submitted that as the Apartment Buyers Agreements were signed months after the booking of the apartment and by that time the allottees having already paid substantial amount, hardly had any option but to adhere to the dictates of OP-1. In this case, OP-1 had devised a standard form of printed Apartment Buyers Agreement for booking the apartments and a person desirous of booking the apartment was required to accept it in toto and give his assent to the agreement by signing on the dotted lines, even when clauses of the agreement were onerous and one-sided.

2.2.3 The informant has stated that agreement stipulates that OP-1 has the absolute right to reject and refuse to execute any Apartment Buyers Agreement without assigning any reason, cause or explanation to the intending allottee. Thus, there is neither any scope of discussion, nor variation in the terms of the agreement. Page 3 of the agreement containing the Representations B and C shows that the OP-1 neither on the date of announcing the Scheme The Belaire, nor while executing the Apartment Buyers Agreement had got the Layout Plan of Phase-V approved by OP-3. The decision of OP-1 to announce the Scheme, execute the agreement and carry out the construction without the approved Layout Plan has serious irreparable fall-outs for which the entire liability in normal course would have been on it, but the consequences have been shifted to the allottees. Further, the agreement, stifles the voice of the buyers by inserting the waiver clause in the agreement clause that no consent of the apartment allottee is at all required, if any change or condition is imposed by OP-3 while approving the Layout Plan.
2.2.4 The informant has further submitted that the action of OP-1 in advertising the project and issuing Allotment letter without preparing and submitting the building plans/lay-out plans of the project to the Town Planner is in defiance of decision rendered in a case involving OP-1 by the National Consumer Disputes Redressal Commission, New Delhi. By inserting Representation E, OP-1 reserves to itself the exclusive and sole discretion not only to change the number of zones but also their earmarked uses from residential to commercial etc. Further, as per representation F, the land of 6.67 acres earmarked for the multi-storied apartments could even be reduced unilaterally by OP-1 pursuant to the approval/sanction of the Layout Plan by the OP-3.

2.2.5 According to informant, OP-1 has inserted clauses J and K to the effect that the apartment allottee would not even be permitted to carry out any investigation and would not be entitled to raise any objection to the competency of OP-1. Vide clause 1.1, the apartment allottee is to pay sale price for the Super Area of the apartment and for undivided proportionate share in the land underneath the building on which the apartment is located. Out of the total payment made by the apartment allottee, OP-1 has authorized itself vide clauses 3 and 4 that it will retain 10% of the sale price as earnest money for the entire duration of the apartment on the pretext that the apartment allottee complies with the terms of the agreement.

2.2.6 The informant has stated that the agreement does not contain the proportionate liability clause to fasten commensurate penalty/damages on OP-1 for breach in discharge of its obligations. Since the apartments are sold without the approval of the Layout/Building Plan, clause 1.5 stipulates that due to the change in Layout Building Plan, if any amount was to be returned to the apartment allottee, OP-1 would not refund the said amount, but would retain and adjust this amount in the last instalment payable by the apartment allottee. Further, the apartment allottee would not be entitled to any interest on the said amount either. Similarly, if there is a change in the super area at the time of completion of building and issuance of occupation certificate, although the total price shall be recalculated but the amount, if any is required to be returned, the apartment allottee would not get the refund and rather OP-1 would retain this amount, with the right to adjust this refund amount against the final instalment as well. The apartment allottee also in the process has to forego the interest thereon.

2.2.7 It has been submitted by the informant that as per clause 1.7, against the total price paid by the apartment allottee, he is promised the ownership right of his apartment as also prorate ownership right of land beneath the building. Apart from the said right, the apartment allottee has paid and accordingly, has pro-rata right of common areas and facilities within the Belaire and pro-
portionate share of club and other common facilities outside the Belaire as also the common facilities which may be located anywhere in the said complex. Although the apartment allottee has paid for the proportionate share in the ownership of the said land, OP-1 has reserved to itself the sole discretion to modify the ratio with the purpose of complying with Haryana Apartment Ownership Act, 1983.

2.2.8 According to informant, clause 8 also indicates arbitrary and one-sided stipulations of the agreement. While time has been made essence with respect to apartment allottees obligations to pay the price and perform all other obligations under the agreement, OP-1 has conveniently relieved itself by not making time as essence for completion in fulfilling its obligations, more particularly, handing over the physical possession of the apartment to the apartment allottee. The arbitrariness and unreasonableness of the Apartment Buyers Agreement is also seen in clause 10.1 where under it is provided that OP-1 would complete the construction within a period of three years but the exception to this clause have been kept wide open to keep apartment allottee totally at the mercy of OP-1.

2.2.9 The informant has submitted that as per clause 9.1, in future the apartment allottee shall be at the mercy of OP-1 who has reserved to itself the right not only to alter/delete/modify building plan, floor plan, but even to the extent of increasing the number of floors and/or number of apartments. While the common areas and facilities might stand largely compressed on account of increased number of floors, the said clause has absolutely debarred the apartment allottees from claiming any reduction in price occasioned by reduction in the area. The only right given to the apartment allottee vide clause 9.2 is that it would receive a mere formal intimation. In case the apartment allottee refuses to give consent, OP-1 has the discretion to cancel his agreement and to refund the payment made by the apartment allottee that too with the interest @ 9% per annum, which is wholly arbitrary as in case of default by the apartment allottees, the rate of interest/penal interest is as high as 18%.

2.2.10 The informant has further submitted that clause 10.1 prescribes a period of three years from the date of execution of the agreement. However, while OP-1 starts collecting the payment from the allottees w.e.f the date of allotment, it is not at all bothered that its collection of money must be commensurate with the stage-wise completion of the project.

2.2.11 The informant has also submitted that another arbitrary and unconscionable clause 11.3 stipulates that in the event of OP-1 failing to deliver the possession, the apartment allottee shall give notice to OP-1 for terminating the agreement. OP-1 thereafter has no obligation to refund the amount to the apartment allottee, but would have right to sell the apartment and only thereafter repay the amount. In the
II Appendix B: Competition Commission Landmark Ruling

process, OP-1 is neither required to account for the sale proceeds nor even has any obligation to pay interest to the apartment allottee and the apartment allottee has to depend solely on the mercy of OP-1. The quantum of compensation has been unilaterally fixed by OP-1 at the rate of Rs. 5/- per sq. ft. (or even Rs. 10/- per sq. ft.) of the super area which is mere pittance.

2.2.12 According to the informant, the terms of the agreement are one sided as can further be seen from clause 11.1 in so much so that non-availability of steel, cement and other building materials has also been given the colour of force-majeure. Clause 22 is also inequitable as it not only gives exclusive discretion to OP-1 to put up additional structures upon the said building but also makes the additional structure the sole property of the OP-1 although the land beneath the building is owned by the apartment allottee. Further, clauses 23 and 24 make serious encroachment on rights of the apartment allottees as although both the land beneath the building and the super areas of the building have been paid by the apartment allottees and for all practical purposes these areas belong to the apartment allottees, yet OP-1 unilaterally has reserved to itself the right to mortgage/create lien and thereby raise finance/loan. In an event of OP-1 DLF not able to repay or liquidate the finance/loan, the apartment allottee may be direct sufferer, a clause which is not reconcilable to the provisions of Section 9 of the Haryana Apartment Ownership Act, 1983 as well.

2.2.13 According to informant, under clause 32 of the agreement, OP-1 can abrogate all that has been promised to the apartment allottee as in exercise of the power under that clause it is permitted to unilaterally amend or change annexures to the agreement. The annexure appended to the agreement describe the apartment area, super area, common areas and facilities, club, etc. as also the nature of equipments, fittings, which the DLF has contractually committed to provide to the Apartment Allottee.

2.2.14 It has further been submitted by the informant that clause 35 brings to the fore the arbitrary mismatch between the buyer and seller, whereby the apartment allottee has been foist with the liability to pay exorbitant rate of interest in case the allottee fails to pay the instalment in due time i.e. 15% for the first 90 days and 18% after 90 days. When this lop-sided provision is compared to clause 11.4 the unfairness of the agreement is amply demonstrated as OP-1 would pay only Rs. 5/- sq. ft. to the allottee for per month delay, i.e. 1% per annum.

2.2.15 According to the informant, the unfair and deceptive attitude is reflected form the Brochure issued by OP-1 for marketing the Belle when compared with the Part E of Annexure-4 to the agreement. While through the Brochure a declaration is made to the general public that innumerable additional facilities, like, schools, shops and commer-
cial spaces within the complex, club, dispensary, health centre, sports and recreational facilities, etc. would be provided to the allottees, however, Part E of the agreement stipulates that OP-1 shall have absolute discretion and right to decide on the usage, manner and method of disposal etc.

2.2.16 It has been submitted by the informant that there are various other terms and conditions of the Apartment Buyers Agreement which are one sided and discriminatory. The Schedule of Payment unilaterally drawn up by OP-1 was not construction specific initially and it was only after OP-1 amassed huge funds unmindful of the delay caused in the process, it made the payment plan construction-linked arising out of the compulsion of increase in the number of floors from 19 to 29.

2.2.17 According to informant, OP-1 from the very beginning has concealed some basic and fundamental information and being ignorant of these basic facts, the allottees have entered into and executed the agreement reposing its total trust and faith on OP-1. Giving specific instances, the informant has submitted that on 04.09.2006 one of the allottee Mr. Sanjay Bhasin, has applied for allotment by depositing the booking amount of Rs. 20 lakh pursuant whereto on 13.09.2006 OP-1 issued Allotment Letter for apartment No. D-161, the Belaire, DLF City, Gurgaon. On 30.09.2006 a Schedule of Payment for the captioned property was sent. According to the said Schedule, the buyer was obligated upon to remit 95% of the dues within 27 months of booking, namely, by 04.12.2008. The remaining 5% was to be paid on receipt of Occupation Certificate. The Apartment Buyers Agreement, however, was executed and signed on 16.01.2007. By that date, OP-1 had already extracted from the allottee an amount of Rs. 85 lakh (approx.) without the buyer being aware of the sweeping terms and conditions contained in the agreement and also without having the knowledge whether the necessary statutory approvals and clearance as also mandatory sanctions were obtained by OP-1 from concerned Government authorities.

2.2.18 It has been submitted that because of the initial defaults of OP-1 in not applying for and obtaining the sanction of the building plan/lay-out plan, crucial time was lost and delay of several months had taken place. This delay was very much foreseeable but OP-1 deliberately concealed this fact from the apartment allottees. After keeping the buyers in dark for more than 13 months, OP-1 intimated the buyers on 22.10.2007 that there was delay in approvals and that even the construction could not take off in time. By that time, OP-1 had enriched itself by hundreds of crore of rupees by collecting its timely instalments from scores of buyers. Before a single brick was laid, the buyers had already paid instalments of November, 2006, January, 2007 March, 2007, June, 2007 and Sept. 2007, up to almost 33% of the total consideration. 2.2.19 According to the informant, only through the
letter dated 22.10.2007, the allottees were further ex-post-facto conveyed by OP-1 in an oblique manner that the original project of 19 floors was scrapped and a new project with 29 floors with new terms has been envisaged in its place.

2.2.20 The informant has submitted that the decision to increase the number of floors was without consulting the allottees and while payment schedule was revised based upon the increase in the number of floors, there was no proportionate reduction in the price to be paid by the existing allottees whose rates were calculated purely on the basis of 19 floors and the land beneath it although their rights/entitlements of the common areas and facilities substantially got compressed due to increase in number of floors and additional apartments, which is in violation of the provisions of the Haryana Apartment Ownership Act, 1983, more particularly, Sections 6(2) which says that the common areas and facilities expressed in the declaration shall have a permanent character and without the express consent of the apartment Owners, the common areas and facilities can never be altered and Section 13 which makes it mandatory that the floor plans of the building have to be registered under the Indian Registration Act, 1908.

2.2.21 The informant has cited the case of one of the members of Belaire Owners Association, the RKG Hospitality Private Ltd. It was submitted that concerned with delays, RKG Hospitality Private Ltd. in its communication dated 03.06.2009, informed OP-1 that the project had already been delayed by 8 months and also expressed resentment that the number of storeys had unilaterally gone up from 19 to 29. In its reply dated 07.07.2009, with respect to the arbitrary and unilateral increase in the number of floors, OP-1 took refuge in clause 9.1 of the Apartment Buyers Agreement. In its reply, without explaining the delay of 8 months, OP-1 tried to assure that it would deliver the possession within the time frame. OP-1 also stated that even if there was delay, compensation @ Rs. 5 per sq. ft. per month was already stipulated to meet the plight of the allottees. In an admission that lay-out plans/building plans were not shown to the allottees, OP-1 agreed that the same could be verified by any authorized representative of RKG. RKG, expressing its disapproval of the stand taken by the OP-1, sent a rejoinder on 27.07.2009, that Apartment Buyers Agreement was unfair, unreasonable and unconscionable.

2.2.22 According to informant, on 25.08.2009, OP-1 responded stating that the buyer had signed the agreement after going through and understanding the contents thereof and as such no objection could be raised that the agreement was one-sided. On 18.09.2009, when the representatives of the RKG visited the office of OP-1 for the purpose of verification / inspection of the building plans they were told by an officer of OP-1 that he didn't have the sanctioned building plans. However, the
perusal of title deeds, licensees, etc. revealed that various companies/entities were involved in the transaction. On 21.09.2009, RKG conveyed all of their concerns to OP-1.

2.2.23 It has been submitted by the informant that while the discount given to the prospective buyers after the revised plan was as high as Rs 500 per sq. ft., OP-1 had offered only Rs 250 per sq. ft to the older buyers. The buyers of the apartments, who invested huge amount of money starting from October, 2006 in The Belaire and November, 2006 in DLF Park Place had been put to a disadvantageous position vis-à-vis prospective buyers in November, 2009 i.e., after a period of 3 years. Against all these, on 21.12.2009, RKG raised grievance before the Ministry of Housing and Urban Poverty Alleviation showing the helplessness of the buyers who did not have any option even to opt out as the exit route was too heavily tilted in favour of OP-1 and on 28.01.2010 the Association in its detailed representation to OP-1 raised many pertinent issues pointing to the illegal acts of omission and commission of OP-1. The Association categorically registered its protest by stating that the agreement was arbitrary, lopsided and unfair, with apparent double standards with respect to the rights and obligations of OP-1 vis-à-vis the investors. In its reply dated 09.03.2010, OP-1 did not furnish any convincing response except for referring to the one-sided clauses of the agreement.

2.2.24 The informant has submitted that the manner in which OP-1 has exercised its arbitrary authority is evidenced by the letter dated 13.04.2010, which it has written to Mr. Pankaj Mohindroo cancelling the allotment of his apartment for alleged non-payment of dues and unilaterally went to the extent of forfeiting an amount of over Rs.51 lac, notwithstanding the fact that Mr. Mohindroo has adhered and fulfilled his obligation of making regular payments of all the installments totalling over Rs.1.29 crore, while OP-1 has defaulted in all its obligations including the targeted date of completion and physical handing over the possession.

2.2.25 The informant has submitted that at the time of seeking permission for public issue of its equity shares in May, 2007, OP-1 gave information to SEBI with regard to Belaire as under: The Belaire is expected to be completed in fiscal 2010 and consisting of 368 residential units approximately 1.3 million square feet of saleable space in five blocks of 19 to 20 floors each. This information given to SEBI almost after six months of the allotment of the apartment to the allottees clearly brings out the fact that either the information given to SEBI was incorrect and misleading or for reasons not known to the allottees, OP-1 scrapped the original project in October, 2007.

2.2.26 It has been submitted by the informant that the OP-2 has framed Haryana Urban Development Authority (Execution of Building) Regulation, 1979 which inter-alia specifies various parameters for any building. The max-
imum FAR therein is 175% of the site area and population density is 100 to 300 persons per acre 5 persons per dwelling unit. So far as the maximum height of the building is concerned, the Regulation prescribes that in case of more than 60 mts. height, clearances from the recognized institutions like ITTs, Punjab Engineering College (PEC), Regional Engineering College/National institute of technology etc. and for the fire, safety clearance from institute of Fire Engineers, Nagpur will be required. There is hardly any material to show that the buildings of The Belaire have been constructed in adherence to the said Regulations and there has been violation on account of both FAR and density per acre.

2.2.27 As per the informant, engineering norms prescribe that the foundation of a building is laid out keeping in mind a margin of 25% as safety factor. This means if a building is to be constructed upto 19 floors, the foundation work would be such that the 25% more load can be sustained thereon. This 25% extra cushion is only a safety measure and is never utilized in making extra construction. OP-1, however, has increased the height upto 29 floors while the foundation laid out underneath the building is suited only to sustain the load of 19 floors.

2.2.28 It has been submitted by the informant that the fact that the project could not be completed in the stipulated time was either within the contemplation of OP-1 or it was reasonably foreseeable by OP-1 from the very threshold stage as the statutory approvals and clearances were not obtained by OP-1. The Act of OP-1 in concealing this fact, therefore, amounts to suppresio-veri. From the very beginning it was in the knowledge of OP-1 that the project has been inordinately delayed. Yet it never informed the apartment allottees of the factum of delay till the time it extracted substantial payment from them. In the said circumstances, the action of collecting the money is absolutely fraudulent and unwarranted.

2.2.29 According to informant, acts and deeds of OP-1 are culpable both in attracting the buyers by making promises in the colourful brochure/advertisement to enter into the contract only to be followed by gross and deliberate carelessness in performance of the contract. The informant has contended that in the present form, the agreement is heavily weighted in favour of OP-1. Taking shelter of the expression Sole Discretion, OP-1 can act arbitrarily without assigning any reason for its inaction, delay in action, etc. and yet disowned its responsibility or liability arising there from. The informant has alleged that the various clauses of the agreement and the action of OP-1 pursuant thereto are ex-facie unfair and discriminatory attracting the provisions of Section 4 (2)(a) of Competition Act, 2002 and per-se the acts and conduct of DLF are acts of abuse of dominant position by OP-1.

2.2.30 The informant finally has also alleged that it is not clear
how the various Government Agencies, more particularly, OP-2 and OP-3 have approved and permitted OP-1 to act in this illegal unfair and irrational manner. Various Government and statutory authorities have allotted land and given licenses, permissions and clearances to OP-1 when it is ex-facie clear that OP-1 has violated the provisions of various Statutes including Haryana Apartment Ownership Act, 1983, the Punjab Scheduled Roads and Controlled Areas (Restriction of Unregulated Development) Act, 1963 and Haryana Development and Regulation of Urban Areas Rules, 1976.

(i) OP-1 is restrained from cancelling allotment of apartment allottees of Belaire Residential Complex located in Phase-V in DLF City Gurgaon, Haryana without leave of the Commission; (ii) OP-1 is further restrained from creating third party rights by selling, alienating or transferring in any manner whatsoever the apartments and the common areas and facilities relatable to any cancellation of allotments so far, without leave of the Commission.

5.7 As regards the question of provision of services, DG in his report has stated that it would be worthwhile to discuss the definition of service within the meaning of Section 2(u) of the Act, which states as under; “..."service” means service of any description which is made available to potential users and includes the provision of services in connection with business of any industrial or commercial matters such as banking, communication, education, financing, insurance, chit funds, real estate, transport, storage, material treatment, processing, supply of electrical or other energy, boarding, lodging, entertainment, amusement, construction, repair, conveying of news or information and advertising;”

5.8 Thus, according to DG, under the provisions of the Act, the service has been defined as service of any description and it includes the provision of services in connection with business of any industrial or commercial matters such as real estate. The intent of the legislature is therefore to include service of any description including for real estate as clearly provided in the Section. DG has also stated that in the context of Service Tax, in the Finance Act, 2010, an Explanation has been added w.e.f. 1.7.2010, to the definition of commercial or industrial construction and construction of residential complex, as follows -

Explanation. For the purposes of this sub-clause, construction of a complex which is intended for sale, wholly or partly, by a builder or any person authorised by the builder before, during or after construction (except in cases for which no sum is received from or on behalf of the prospective buyer by the builder or a person authorised by the builder before the grant of completion certificate by the authority competent to issue such certificate under any law for the time being in force) shall be deemed to be service provided by the builder to the buyer.

5.9 As per Section 65(105)(zzzzu)
of Finance Act, 1994 (inserted w.e.f.
1-7-2010), any service provided or to
be provided, to a buyer, by a builder
of a residential complex, or a com-
mercial complex, or any other person
authorised by such builder, for pro-
viding preferential location or devel-
opment of such complex but does not
include services covered under sub-
clauses (zzg), (zzq), (zzzh) and in re-
lation to parking place, is a taxable
service. Explanation. For the pur-
poses of this sub-clause, preferential
location means any location having
extra advantage which attracts ex-
tra payment over and above the basic
sale price. 5.10 In this context, rele-
vant portion of Notification dated 1st
July 2010 D.O.F.No.334/03/2010-
TRU Dated : 01/07/2010 issued by
Ministry of Finance, Department of
Revenue, Tax Research Unit has also
been quoted by DG

13. Decision under section 27 of
the Competition Act, 2002 13.1 In
the preceding discussion, this Com-
mision has concluded that the in-
stant case is within the jurisdiction of
the Competition Act, 2002. There-
fore, in accordance with provisions
of the Act it has delineated the rel-
vant market as the market for ser-
vices of developer / builder in respect
of high-end residential properties in
Gurgaon. In the relevant market,
OP-1, DLF Ltd. has a dominant po-
lition within the meaning of the term
as per Explanation (a) to section 4,
read with section 19 (4). Finally, the
Commission has concluded that DLF
Ltd. is in contravention of section 4
(2) (a) (i) by imposing unfair con-
ditions on the sale of its services to
consumers.

13.2 In the facts and circum-
stances of the case, the Commission
has examined the role of Opposite
Parties 2 and 3, viz. HUDA and
DTCP of Government of Haryana.
It is seen that these are agencies or
authorities of the State Government
whose role is limited to granting var-
ious approvals to builders / devel-
opers. They are not providing any
services of a commercial nature of
the kind provided by the DLF group
or its competitors. Thus their con-
duct does not come within the am-
bit of section 4 of the Act. 13.3 In
paras 12.90 and 12.95 supra, this or-
der lists conditions imposed by DLF
Ltd. and its group companies on its
consumers / buyers in detail. These
conditions have been held to be un-
fair in terms of section 4 (2) (a) (i) of
the Act and hence in contravention
of section 4. In view of the above,
and in exercise of powers under sec-
tion 27 (a) of the Act, the Commis-
sion directs DLF Ltd. and its group
companies offering services of build-
ing / developing:- i. to cease and de-
sist from formulating and imposing
such unfair conditions in its agree-
ments with buyers in Gurgaon. ii.
to suitably modify unfair conditions
imposed on its buyers as referred to
above, within 3 months of the date
of receipt of this order.

13.4 The abuse of dominant po-
lition in this case is in respect of
the basic necessity of housing. The
earlier deliberation on the elements
and extent of abuse make it clear
that DLF has been grossly abusing
its dominant position, and that too
against a vulnerable section of consumers, who have little ability to act or organize against such abuse. The penalty, therefore, has to be commensurate with the severity of the violation through such blatant abuse of dominance.

13.5 There appear to be no mitigating factors for taking a lenient view as the abusive practices referred to above have been carried with the object of undue economic gains and business profits. On the other hand, the consistent practice of executing unfair conditions and holding out false representations and exploiting the dominant position has come on record which are certainly aggravating factors. In the view of the Commission, the conduct of the OP-1 in abusing its dominant position requires to be taken very seriously and thus, the Commission is required to adopt a deterrent approach so that recurrence of such conduct is stopped.

13.6 The facts of this case and the conduct of the OP-1, as discussed above, particularly the size and resources of OP-1 and the duration during which this abuse has continued to the advantage of DLF Ltd. and to the disadvantage of consumers, warrant imposition of a heavy penalty. Keeping, in view the totality of the facts and circumstances of the case, the Commission considers it appropriate to impose penalty at the rate of 7% of the last three preceding financial years on OP-1. Therefore, in exercise of powers under section 27 (b) of the Act, the Commission imposes penalty on DLF Ltd. as computed below:

Turnover for year ended 31.03.2009 Rs 10,035.39 crores
Turnover for year ended 31.03.2010 Rs 7,422.87 crores
Turnover for year ended 31.03.2011 Rs 9,560.57 crores
Total Rs 27,018.83 crores
Average (Total 3) Rs 9006.27 crores
7% of average Rs 630.43 crores
Penalty rounded off to nearest number Rs 630 crores
(or Rs 6.3 billion)
Chapter 4

Copies of Original Statutory Documents of AWHO Society

from: CPC cpcnath@gmail.com
to: dymd@awhosena.in
date: Sun, Sep 2, 2012 at 12:46 PM
subject: Copies of Original Statutory Documents of AWHO Society
mailed-by: gmail.com

Dear Brigadier,

Continuing with the topic of discussion we had on 30 August 2012.

Will you be kind enough to make available copies of the following original statutory documents by email or better still, put these documents at appropriate place on your website and send me pointers to the same:

1. Memorandum of Association of AWHO Society as originally filed by the Founders with Registrar of Companies, Delhi

2. Rules of the AWHO Society as originally filed by the Founders with Registrar of Companies, Delhi

3. AWHO “Conflict of Interest Policies and their Management” if you have any such or similar Policies.

Item 3 should be there considering that you have to fulfill your important Fiduciary obligations/responsibilities towards the Trust Beneficiaries. Just in case you have no such policies, how do you ensure that the “servants of the Society” report all possible conflicts of interest and the process of how do you typically manage the same? Has any one ever in the past stated their Conflicts of Interests and how they were managed.

In case you determine that these documents are confidential and you can not share these with me, please state the same explicitly. Or, if you have any other reason why you cannot share these documents with me,
you may also state the same explicitly against each document.

Do let me know if you have any questions or queries in this connection. I should be able to clear these instantly.

Hoping to hear from you soon.

With sincere regards.

CPC Nath

Member, AWHO Society

26948083

_________________________________________________________________________

CPC cpcnath@gmail.com  9/6/12

to dymd

Dear Brigadier, I am still awaiting your reply to this request.

CPC Nath

_________________________________________________________________________

from: CPC cpcnath@gmail.com
to: dymd@awhosena.in,

secretary@awhosena.in,

AWHO awho@awhosena.org

cc: md@awhosena.in
date: Mon, Sep 10, 2012 at 1:58 AM

subject: Re: Copies of Original Statutory Documents of AWHO Society

mailed-by: gmail.com

For awho@awhosena only: Please retransmit to Adjutant General (Chair Person of AWHO) at Army Hq as his email id is not held by me.

Dear Brigadier,

My request for relevant documents have been stone walled with deadly silence:

1. Our (AWHO and Members of Society) rights/duties/obligations are delineated in these original documents.

2. The “AWHO Master Brochure” only tells how our rights are constrained and bound under the powers of MD AWHO. There is not even one word of the duties owed by MD AWHO to wards the members of the Society. For an analysis of the Brochure in ways it violates the Statutes, please go to AWHO Consumer Blog. You will have to go to the entry dated Monday, 21 February 2005 at the bottom. (It is dated and AWHO has added more rules to the 2005 Brochure that are yet to be validated.)

3. Every change in Rules (Master Brochure) needs to meet the following criteria:

   (a) The change should have been approved with majority in the General Body.

   (b) Approved changes should have been filed with Registrar of Societies in the yearly filing. Societies registered under Societies Registration Act are required by law to operate as Democratic bodies in letter and spirit.

   (c) The Approved changes should NOT be in conflict with any of the following:
i. AWHO Memorandum of Association or the original Rules submitted to Statutory authority.

ii. In compliance with the requirements of the Society Registration Act 1860.

iii. Any other statutes as amended from time to time currently in force in the laws of the land.

iv. Constitution of India as amended from time to time.

(d) AWHO Brochure Clause No:82 violate the Constitution of India with respect to right to property:

i. Clause 82 AWHO Brochure states: In case of unauthorized sale/transfer/assigning of dwelling unit by an allottee to a third party comes to the notice of the AWHO, the AWHO reserves the right in its absolute discretion to cancel the allotment of such dwelling unit to the original allottee and to take over the possession of such a dwelling unit.

ii. Article 13 (2) Constitution of India: The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void

iii. 14. Equality before law The State shall not deny to any person equality before the law (as against the current state that we the Members have to follow the law faithfully where as YOU are totally exempt from it!) or the equal protection of the laws within the territory of India.

iv. Article 300. A Persons not to be deprived of property save by authority of law No person shall be deprived of his property save by authority of law.

If Parliament has NO authority to make laws which will deprive a person of the property save authority of law, how can MD AWHO deprive the property of a Member of AWHO? How can AWHO reserve the right “in its absolute discretion” to cancel the allotment of such dwelling unit to the original allottee and take over possession long after taking possession and registering the property as a free hold under the laws of the land. We live in a country where Rule of Law should apply as against Rule of Men!

This clearly is violation of the Constitution of India. Just be-
cause no one questioned it so far, does NOT make it legal! For more violation of statutes, go to the pointer above.

So, the Rule Book passed unilaterally by AG may be NOT even be valid/legal and perhaps even be a criminal Breach of Trust against the members of the Society and Beneficiaries.

AWHO (including all the “servants of the Society”) owes a fiduciary responsibility for the Beneficiaries (Members of AWHO) and the test whether the fiduciary duties are violated is a clear cut criteria:

(a) The trustee must display throughout the administration of the trust complete loyalty to the interests of the beneficiary, and must exclude all selfish interest: One of the most fundamental duties of and over all consideration of the interests of third persons.

(b) The duty of fidelity required of a trustee forbids the trustee from placing itself in a situation where there is or could be a conflict between its self interest and its duty to the beneficiaries.

(c) Trustees cannot make a profit from the trust funds committed to them, by using the money in any kind of trade or speculation, nor in their own business.

(d) The trustees must account for every rupee received from the use of the trust-money and they will be absolutely responsible for it if it is lost in any such transactions.

(e) Many forms of conduct permissible in a workaday world for those acting at arm’s length are forbidden to those bound by fiduciary ties.

(f) A trustee is held to something stricter than the morals of the market place.

(g) Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior. As to this there has developed a tradition that is unbending and inveterate.

(h) Uncompromising rigidity has been the attitude of the courts of equity when petitioned to undermine the rule of undivided loyalty by the ‘disintegrating erosion’ of particular exceptions. *

** Only thus has the level of conduct for fiduciaries been kept at a level higher than that trodden by the crowd. It will not consciously be lowered by any judgment of this court.

(i) The duty of loyalty requires the fiduciary to act solely for the benefit of the person to whom the duty is owed with respect to all matters within the scope of the fiduciary relationship.

(j) The duty requires the fidu-
ciary to subordinate his own interests to those of the beneficiary.

(k) A trustee is under a duty to keep accurate books and records regarding what constitutes the trust receipts and disbursements to and from the trust estate, all receipts and disbursements to and from the trust estate and, where applicable, records of all allocations of receipts and disbursements between the principal account and the income account.

Criminal Breaches of the duty of loyalty include:

(a) receiving a secret profit on a transaction within the scope of the fiduciary relationship;

(b) secretly acting for the account of the fiduciary as to a matter within the scope secretly acting for an adverse party in a matter within the scope of the fiduciary relationship.

(c) competing as to a matter within the scope of the fiduciary relationship;

(d) acting on behalf of a party whose interests conflict with those of the person to whom the fiduciary duties are owed. (This is extremely important as it was revealed in the meeting that the officials work of AWHO with loyalty towards and compliance with Army Hq as opposed to its own beneficiaries, there surely is a conflicts of interest. Conflict of interest rules are exceptionally precise!)

(e) Where the fiduciary enters into a transaction with a party to whom a fiduciary duty is owed, he or she must disclose all relevant facts to the party and, even then, may enter into a deal only on fair terms. In addition, the burden is on the accountant-fiduciary to prove both the fairness of the transaction and the disclosure of all material facts.

A fiduciary may NOT:

(a) deal with the assets of the plan in his own interest or for his own account, in his individual or in any other capacity act in any transaction involving the plan on behalf of a party

(b) (or represent a party) whose interests are adverse to the interests of the plan or the interests of its participants or beneficiaries.

A fiduciary has a duty to

(a) disclose all relevant facts as to matters within the scope of the fiduciary relationship

Under all the above, you may yourself be committing a criminal breach of trust by ignoring the requests:

(a) An act or omission violating any of the above duty
owed Especially:

i. Not responding to request for documents/information which is even available to the public through the Registrar of Societies.

ii. With holding documents/information at the instance/directions of any third party.

iii. Acting on behalf of a party whose interests conflict with those of the person to whom the fiduciary duties are owed.

Needless to remind you that Criminal Breach of Trust is a crime committed under IPC (and attributable to individual as a person and not the office of the person as the same is a crime committed against the Society):

(a) 405. Criminal breach of trust
(b) 406. Punishment for criminal breach of trust
(c) 408. Criminal breach of trust by clerk or servant
(d) 409. Criminal breach of trust by public servant, or by banker, merchant or agent

Considering that you are a Public Servant (Serving Officer of the Army) it is all the more important that these things are taken extremely seriously to protect your person.

(Punishment Imprisonment for life, or imprisonment for 10 years and fine Cognizable Non-bailable Triable by Magistrate of the first class Non-compoundable.) Needless to remind you that you have followed orders from others will not be an excuse because the orders are contrary to law and hence illegal and are NOT to be complied with. Not only that, this taking of orders establishes that you do NOT have undivided loyalty to the “beneficiaries” and that itself is a Criminal Breach of Trust!

The decision to deny the the democratic rights of Members of the Society granted by the English Parliament passed in Registration of Societies Act 1860 can not be taken away by dictat of any authority much less an authority outside the Society that is not accountable to the Members of the Society. In view of this, it is relevant to find out which power exactly decided when, where, what and why these democratic rights of the members were taken away and under what authority? And if this is illegal, then the Act of ordering the same against the interests of the members is illegal and perhaps the first Criminal Breach of Trust.

The fundamental democratic principles laid down by the British Parliament back in 1860 through Registration of Societies Act 1860 for the people
of the dominion forming Society require

(a) Change of Rules of Society requires passing in the General Body by simple majority.

(b) Change of purpose of Society requires passing by three fifth of members.

(c) Closure or merger with another society requires passing by three fifth of the members.

When General Body itself is made non functioning, the above powers of the Society remain suspended for ever. So change to MoA or Rules are possible neither is suspension or closure.

“...The power to impose tax is undoubtedly a legislative power. That power can be exercised by the legislature directly or subject to certain conditions the legislature may delegate that power to some other authority. But the exercise of that power, whether by the legislature or by its delegate is an exercise of a legislative power. The fact that the power was delegated to the executive does not convert that power into an executive or administrative power.” (Supreme Court in Narinder Chand Hem Raj v. Lt. Governor, Union Territory, Himachal Pradesh [(1971) 2 SCC 747] while interpreting the Constitution of India) To charge a “tax” (Refer Master Brochure Rule Section 83) in addition to registration charges paid to State Governments while transferring a freehold property is patently illegal. A tax without representation had caused a whole revolution against the Britain and America was born, how can those who do not even represent the interests of the members of the Society charge a Transfer tax which is totally illegal under the laws of the land? If the State Executive can not do it, surely Adjutant General as Chairman of AWHO can not do it (impose a tax). Supposing some one refuses to pay such a tax, under what article of the Constitution or Statute can it be enforced? A tax that can not be enforced under Rule of Law in the courts is patently illegal.

Deputy MD does not/should not wait for instructions from AG (Chair Person AWHO) for sharing information/documents which is asked for from him, Waiting for such instruction is a failure in undivided loyalty and also of fiduciary duties owed by Dy MD. Even if AG expressly denied permission to share information/Documents, still Dy MD can not take shelter under the fact that he is “just following orders” because he is failing in his fiduciary duties towards the beneficiaries and hence personally liable for Criminal Breach of Trust in addition to the Chair Person AWHO failing in his fiduciary duties and thus liable for Crim-
inal Breach of Trust in his personal capacity. (As a former research subject wrote to Yale psychologist Stanley Milgram in 1970, “Few people ever realize when they are acting according to their own beliefs and when they are meekly submitting to authority.”)[http://www.salon.com/2012/08/19/i_was_just_following_orders/]

The ultimate guarantee against abuse of power, legislative, judicial and executive, lies in the political and legal safeguards against such abuse, is a vigilant public opinion, and in a sense of justice in the people generally. I am attempting my best to warn you of the bad consequences of thoughtless actions and hence to bring modicum of responsible legal behavior expected of a fiduciary. That in NO way means that I have any adversarial relationship with you. If we partner together to take corrective action, our Society will be a true “Welfare Society” which we can all be proud of. This may thus be taken as an opportunity for improvement of “Our Society”.

CPC Nath
Chapter 5

4th Reminder and Yet No Original Statutory Documents

---

Forwarded message

--- From: CPCcpcnath@...

Date: Sun, Sep 23, 2012 at 3:28 AM

Subject: Re:AWHO Society Statutory Compliance

To: dymd@..., AWHO awho@..., awhosena@..., md@...

For awhosena@... only: Please retransmit to Adjutant General (Chair Person of AWHO) at Army Hq as his email id is not held by me.

Dear Brigadier,

This is the 4th reminder requesting you for the MoA and the Original Rules of AWHO Society. The fact that you have NOT responded reveal that these are things you want to conceal from the Members of the Society. You may have a Conflict of Interest in your enthusiasm in serving your masters in the Army Headquarters as against serving your beneficiary.(motive)

When the judicial rulings on Constructive Trusts pronounce judgments on “full disclosure”, they are talking of full disclosure of the trust accounts, transactions, Conflict of Interest and even his (trustees) own misconduct (and NOT such basic documents because such documents are never denied by even imprudent fiduciary! )

The fiduciary should disclose any thing that is of interest to the principal.

1. IS V FASSIHI: F was a director and he encouraged the MD to act in a bad way to scare away business (so he could do it himself). HELD: F should disclose this misconduct. The fundamental duty that a director owes as a fiduciary to act in good faith
in the best interests of the beneficiary includes a requirement to disclose his own misconduct.

2. Principal’s Interests: IDC V COOLEY: F was an MD and was offered a commercial opportunity in his private capacity. He resigned and exploited that opportunity for his benefit. Had the company known he had been offered that opportunity, it would not have agreed to release him. HELD: Information of use to principal must be disclosed. Whether obtained in private capacity or not is irrelevant.

http://en.wikipedia.org/wiki/Boardman_v_Phipps

The “Cooley principles” In Cooley Roskill J quoted four principles of Lord Upjohn (dissenting) in Boardman v Phipps v. [1967]:

1. “The facts and circumstances must be carefully examined to see whether there is a fiduciary relationship.

2. Once the relationship is established it must be examined to assess duties scope and ambit.

3. Having defined the scope...... one must see whether he has committed some breach thereof and by placing himself within the scope and ambit of those duties in a position where his duty and interest may possibly conflict. It is only at this stage that any question of accountability arises.

4. Finally, having established accountability it only goes so far as to render the agent accountable for profits made within the scope and ambit of his duty.”

“It is perhaps stated most highly against trustees or directors in the celebrated speech of Lord Cranworth L.C. in Aberdeen Railway v. Blaikie, 136 where he said:And it is a rule of universal application, that no one, having such duties to discharge, shall be allowed to enter into engagements in which he has, or can have, a personal interest conflicting, or which possibly may conflict, with the interests of those whom he is bound to protect.” The phrase “possibly may conflict requires consideration. In my view it means that the reasonable man looking at the relevant facts and circumstances of the particular case would think that there was a real sensible possibility of conflict; not that you could imagine some situation arising which might, in some conceivable possibility in events not contemplated as real sensible possibilities by any reasonable person, result in a conflict.”

Here you are failing to reveal even things that are of public nature (available for the public from public sources: Registrar of Companies Delhi) like:

1. Memorandum of Association of the Society (AWHO)

2. Rules (AWHO) originally filed with the Registrar.

3. Conflict of Interest Policies of the Society (AWHO)

http://www.linklaters.com/Publications/Publication1005Newsletter/PublicationIssue20041008/Pages/PublicationIssueItem17.aspx
It is generally agreed that the essential elements of a crime are voluntary action or failure to act and a certain state of mind. Failure to act includes not doing something an individual is required to do by law:

1. Mens rea refers to the crime’s mental elements of the defendant’s intent. This is a necessary element that is, the criminal act must be voluntary or purposeful. (the denial documents is purposeful)

2. actus reus. That is, a criminal act or an unlawful omission of an act, must have occurred. (the denial has occurred)

3. Concurrence mens rea and actus reus must occur at the same time that is, the criminal intent must precede or coexist with the criminal act, or in some way activate the act.

4. Causation causal relationship between conduct and result is demonstrated if the act would not have happened without direct participation of the offender. (Denial of full disclosure could NOT have occurred with out the your act of denying the rightful information.

Even a child should understand that if fiduciary has duty to the beneficiary for full disclosure, denying such basic documents will constitute reckless and willful neglect of a fiduciary duty owed by the trustee to the beneficiary. The questions asked are:

1. Was there a breach of a duty owed to the member of the Society (not merely an employment duty or a general duty of care)?
2. Was the breach more than merely negligent or attributable to incompetence or a mistake (even a serious one)?
3. Did the defendant have a subjective awareness of a duty to act or subjective recklessness as to the existence of a duty?
4. Did the defendant have a subjective awareness that the action or omission might be unlawful?
5. Did the defendant have a subjective awareness of the likely consequences of the action or omission.
6. Did the officer realize (subjective test) that there was a risk not only that his or her conduct was unlawful but also a risk that the consequences of that behavior would occur?
7. Were those consequences ‘likely’ as viewed subjectively by the defendant? Did the officer realize that those consequences were ‘likely’ and yet went on to take the risk?
8. Regard must be had to motive: It seems to be denial of an opportunity to the Member AWHO to study how far the Trustees have violated laws and imposed illegal rules on the members!

No prudent person would commit such willful flagrant violation of law and hence a crime by denying such basic documents to a Member of the Society. If you are bend upon committing such a crime, I can only conclude that you are totally imprudent or that you are under advise of a reckless adviser.
This is the last communication I will be writing to you on the provision of these basic documents. If you still fail to provide these, or even to respond, all I can say is NOT many people can help you defend your actions.

An Example Society: The following example might be helpful to convince you how a respectable Society registered right here in Delhi makes these documents public!

International Academy of Law (IAL) was established in May, 2008 in New Delhi, India to bridge the widening disconnect between law and justice. There is a common belief that law is not giving justice to the ordinary citizen. The whole body of law and justice is under the public scanner because law is unable to meet the challenges of the fast changing meta-digital multi-reality world where individual aspirations have crossed traditional boundaries.

The Academy has been founded not just to teach law but to hone skills in every participant aspiring to be involved in legal process regulations to promote justice. It will be center of Excellence using law as a driver of change and good governance. The Academy’s mission is to stimulate debate on application of law on trans border issues such as cyber space, cyber security, climate change, environment, corporate governance, corporate social responsibility and global governance through its research programs, workshops and conferences and simplification of domestic laws to align them with global needs and practices thereby developing the “next level” jurisprudence.

Here is how they provide these documents in their website: http://www.internationalacademyoflaw.org/index.html

Needless to mention that the Governing Council consists of the very best Legal luminaries of the country!

Do you need a better example of disclosure of basic documents? Don’t they put you to shame?

Do you, in your wildest of dreams, think that you would be able to state that the documents asked for are NOT of any interest to the Members of the Society and hence has to be be kept confidential from them?

I think you have a dire need to apply your mind when acting as a fiduciary!

Thanking you, Yours sincerely,
CPCNath, Member AWHO Society

———

Recklessness and stupidity are two separate things, but normally they run hand in hand. Andrew Rockwell

———
Chapter 6

AWHO Society: Seeking of Information Relevant to Members of the Society

“Publicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most efficient policeman.”- Justice Louis Brandeis, Other Peoples Money and How Bankers Use It (1914).

from: CPC cpcnath@gmail.com
dymd@awhosena.in,
AWHO awho@awhosena.org,
awhosena@gmail.com
cc: md@awhosena.in
date: Thu, Sep 27, 2012 at 3:56 PM
subject: AWHO Society: Seeking of Information Relevant to Members of the Society

For awhosena@gmail.com... only: Please retransmit to Adjutant General (Chair Person of AWHO) at Army Hq as his email id is not held by me.

Dear Brigadier,

Please provide the following information that resulted in denial of rights of the members of the Society and failure of Fiduciary duties owed by AWHO to the Members of the Society:

1. The name of the person(s) who initiated the proposal along with their rationale/justification that:
   (a) AWHO members will be deprived of the right to vote for electing their office bearers of the Governing Council as provided in the Statutes.
   (b) AWHO Members will be deprived of the right to vote and pass the changes in the Rules of the Society as and when they are changed during the course of business as provided in the Statutes.
   (c) AWHO will have a ex-officio
Chair person in Adjutant General, Army Headquarters instead of an elected one as per their rights stated in the statutes.

(d) AWHO members will be deprived of the right to vote for the usual replacement of the members of the Governing Council.

(e) AWHO members will be deprived of the right:
   i. To adopt the Annual Report of Governing Council on the affairs of the Society.
   ii. To adopt the audited Balance Sheet and Income Expenditure Account of the Society.
   iii. To appoint auditors to hold office until the conclusion of the next Annual General Meeting and to fix their remuneration.
   iv. To elect-re-appoint office bearers of the Governing Council for elections designed primarily to achieve the democratic governance of the Society.
   v. To consider, with the permission of chair, any other matter that may be given notice of by any member or brought forward at the meeting.

(f) AWHO NOT to file once in every year, a list of the office bearers of the Governing Council of the society and the latest democratically passed Rules of the Society with Registrar of Societies, Delhi as required under section 4 of the societies Registration Act 1860.

2. Also please provide the members of the Governing Council who participated in the above Governing Council decision making and the extract of the above decisions along with the dates.

3. One of the staff of AWHO claimed to a Member of the Society (Lt Col Thomas Thomas on the meeting on 21 September 2012) that a Supreme Court judge has concurred denial of Democratic rights delineated in the statutes above. Are we following Rule of Law or Rule of Men albeit judicial? Please provide the full disclosure of the Supreme Court judge (name, court, judicial decision details and/or informal concurrence given by the Supreme Court judge in a private meeting and the name of the AWHO staff member to whom this concurrence was conveyed.

If the Supreme Court Judge has concurred with this denial of democratic rights, it is a clear case of Criminal Breach of Trust committed by the SC Judge and an appeal could be filed against the particular Supreme Court Judge’s decision/direction. The authority granted the Courts is specified by constitution and Statute of Parliament. The authority of Parliament to create law was established roughly in 1649 in Oliver Cromwell’s Declaration of the Commonwealth. This is historically
been known as the “Supremacy of Parliament”. The problem with case law is that there are so many cases where rulings contradict one another that lawyers can find case law on the books to reinforce almost any argument they want in court. In some cases, “case law” cases have become so perverted and so far from the intent of constitutional rights and freedoms, that case law has become nothing more than a way that lawyers and judges can deliver injustice in the court and say that they were following “Case Law” which gives the perception of legitimacy to their illegal decision. Case law has become nothing more than a way that judges and lawyers can use to pass the buck. For those who want to know more about how case law subverts justice, read the article “How Stare Decisis subverts the law” by Jon Roland. Although it is written with American supporting references, the underlying principles of Stare Decisis remain the same for India.

“There are two variants on the doctrine of stare decisis. The problem we have discussed here is with the strong form, which treats precedents as binding. However, there is a weaker form, which treats precedents as merely persuasive. In this second variant, a dissenting opinion could be more persuasive than the prevailing opinion, if the person citing it agreed with it. In this variant, precedent becomes merely a convenient way to save time and words by citing the reasoning in another case, saying “My reasoning is similar to that”, and nothing more. Historically, what came to be treated as binding started as persuasive. Returning to treatment of precedents as merely persuasive would solve the problem discussed here, but history shows us that judges are prone to drift back to treating them as binding unless some corrective mechanism is instituted to prevent it. Finding such a check would then be an essential component of any lasting reform.

Stare decisis is the way judges seek the safety of the herd. We need to demand they exhibit more courage, and return to fundamental principles, resorting to stare decisis only when the positions lie on the fuzzy boundary of the region of legitimacy. — “How Stare Decisis subverts the law” by Jon Roland

These denial of rights of the Members of the Society are failure of Fiduciary duties that are sure case of Criminal Breach of Trust as defined in the statutes. This assumes immense importance in view of the statutory requirements that the Society will be run on democratic lines and NOT as an Army, Corps, Division or Brigade or other formations of the Army. Currently, the AG has cir-
cumvented the laws for conducting a Real estate Construction business by starting a Society for the “welfare” of the veterans but running the same by going against the Constitution of India and the statutes of the country.

Denying the veteran the protection of laws is itself a violation the fundamental rights of the veteran and thus violation of Article 14 of the constitution of India. Constitution of India Article 14 declares that “the State shall not deny to any person equality before the law or equal protection of the laws within the territory of India”. The phrase “equality before the law” occurs in almost all written constitutions that guarantee fundamental rights. Equality before the law is an expression of English Common Law while “equal protection of laws” owes its origin to the American Constitution. Would AWHO, or Army like to deny the fundamental Rights of the very Members of the Society it professes to serve as a welfare provider?

If Indian Society is deprived of the rights on the above lines, the results for the democracy would be disastrous as given below: We the people are deprived of the voting rights to choose the rule makers for the Parliament and state assemblies. India will be governed by ex-officio Chief of Army Staff as the President/the Prime Minister and the CEO like Gen Musharraf was in case of Pakistan. Laws imposed on the people will NOT be the one passed by those who are elected by “We the people” but one passed by the single dictator! The budget will NOT be passed by WE the people or their elected representative but imposed on them by the dictator. The accounts of the Exchequer will NOT be audited by the auditors appointed by We the people or their elected representative. The finances itself is kept secret from them. That will be classic RAPE of the Democratic Rights of WE the People of India.

In case you determine that these documents/information requested are confidential and you cannot share these with me, please state the same explicitly. Or, if you have any other reason why you cannot share these documents/information with me, you may also state the same explicitly against each documents/information. Do let me know if you have any questions or queries in this connection. I should be able to clear these instantly.

AWHO defended in courts of law that it is NOT subject to RTI because it is a Society not funded by public money. The fundamental principle is that Government activity is funded by the tax payer and hence the public tax payer has right to information from the Government. AWHO is funded from the members funds and hence Members have a right to information from the Society (in fact much more because AWHO has fiduciary duties towards its beneficiaries!) and AWHO is accountable to its Members for its functioning. Members of the Society are NOT just the “customers” of AWHO!

Hoping to hear from you soon. Needless to mention that silence will be deemed denial of statutory infor-
mation with out giving the reason for such denial. Such silent denial will only establish Mens Rea. (The legal definition of Mens Rea is Latin for guilty mind; guilty knowledge or intention to commit a prohibited act.)

To deny the concept of democracy for registered Societies enshrined in laws passed in 1860 by the Constitutional Monarchy of Britain being totally thwarted by AWHO in the 21st century in a totally democratic country like India is a sad commentary of the totalitarian tendencies and even the Indian Constitution and Statutes are flagrantly violated deliberately and recklessly. Which legal luminary worth his salt would support such a stance is any body’s guess. That being the case, to say that AWHO has the sanction of the Supreme Court Judges is total breach of trust the beneficiaries re pose on AWHO who are the Trustees.

The reasons that rights of Members of any Society provide are particularly powerful or weighty reasons, which override reasons of other sorts. Rights give reasons to treat their holders in certain ways or permit their holders to act in certain ways, even if some social aim would be served by doing otherwise. As Mill wrote about the trumping power of the right to free expression:

*If all mankind minus one were of one opinion, mankind would be no more justified in silencing that one person than he, if he had the power, would be in silencing mankind.* (Mill 1859, 20).

It is not that we think it fitting to ascribe rights because we think it is a good thing that rights be respected. Rather we think respect for rights a good thing precisely because we think people actually have the mand that they have them because it is fitting that they should.–Quinn (1993, 173)

Within a status approach, rights are not means for the promotion of good consequences. They are rather, in Nozick’s phrase, side constraints on the pursuit of good consequences. A status approach frowns on any rights violation, even for the sake of maximizing the non-violation of rights overall (as in a utilitarianism of rights). Such an approach emphasizes the agent-relative reasons that each person has to avoid violating the rights of other. A status-based justification thus begins with the nature of the right holder and arrives immediately at the right. The fundamentally flawed instrumental approach (like AWHO seems to adopt) starts with the desired consequences (like maximum utility) and works backward to see which rights-ascrptions will produce those consequences.

AWHO has no escape from respecting the fundamental rights of its
members and providing its members equal protection from the laws of the land. To believe otherwise is a folly only fools will engage in. To say that they will close down AWHO rather than respect the rights of its members (as one of the AWHO staff recently claimed inadvertently during a meeting with a member) is nothing short of stupidity because even the closing of AWHO as per statutes requires 3/5 majority decision of the Members of the Society!

With sincere regards.
Thanking you,
Yours sincerely,
CPC Nath,
Member, AWHO Society

Recklessness and stupidity are two separate things, but normally they run hand in hand—Andrew Rockwell
Chapter 7

Building a Culture of Respect for the Rule of Law

“Publicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most efficient policeman.”- Justice Louis Brandeis, Other Peoples Money and How Bankers Use It (1914).

from: CPC cpcnath@gmail.com
to: webmaster.indianarmy@nic.in
cc: md@awhosena.in,
dymd@awhosena.in,
awho_bangalore@yahoogroups.com
date: Thu, Nov 8, 2012 at 2:14 AM
subject: Building a Culture of Respect for the Rule of Law

Dear Webmaster, Indarmy:

Please forward this message to Adjutant General Chief of Army Staff

Please do acknowledge.

To Adjutant General, Army Hq, New Delhi 11001

COAS, Army Hq, New Delhi 11001

Army Welfare Housing Organization

Dear General,

I am a Member of AWHO Society. I am writing this in the hope that some of the problems in the working of AWHO which boils down to simple compliance with Constitution and laws of the land are resolved voluntarily by authorities.

Considering that we as soldiers and officers swear to uphold, defend and protect the constitution and laws of the land (we ought to like in the US army: I, [name], do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reserva-
tion or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God.), this assumes very high importance.)

We have the case of a welfare organization of the Army (AWHO) and its Chair Person, the Adjutant General doing every thing to evade the constitutional rights and the equal protection of laws of land of the Members of the Society. This is bizarre and as the purpose of evasion is evident from all the actions taken over number of years.

This can be explained only as a reflection of lacking the culture of respect for the Rule of Law. The enclosed document is a must read to build a culture of respect for the Rule of Law:

“The cornerstone of democratic society, the rule of law is inextricably linked with an open society, where there is transparency in workings and institutions, and free exchange of opinions. A society that encourages dis-

course and commentary of the workings of institutions is less likely to come to a substantial divide between the views of the officials, and popular beliefs. Furthermore, in order for society to able to maintain a control on its institution, an independent, effective and impartial dispute resolution is quintessential for the rule of law to be equally applied to everyone, and thus be perceived to benefit the society as whole. Although a very complex task, development and preservation of the rule of law can be accomplished, if institutional reform is in accordance with public beliefs and is designed to lead to a institution bound by law, equality before the law, stable law and order, predictable, impartial and efficient dispute resolution, and respect for individual rights.”

CPC Nath 001 310 882 1945
Chapter 8

Computerized Draw of Lots
Bangalore Part A Project

from: CPC cpcnath@gmail.com
to: dymd@awhosena.in,
    md@awhosena.in,
    AWHO awho@awhosena.org,
    “awhosena.in”
    awhosena@awhosena.in,
    army welfare housing organisation awhosena@gmail.com
date: Sat, Feb 16, 2013 at 2:29 PM

subject: RE: Computerized Draw of Lots Bangalore Part A Project

For awhosena@gmail.com...
only: Please re-transmit to Adjutant General (Chair Person of AWHO) at Army Hq as his email id is not held by me.

Sir,

You had ignored my request to conduct transparent physical draw of lottery in place of opaque computerized draw. During the computerized draw conducted on 7 Feb 2013, the EDP team demonstrated how they can tamper the results by making an allotment to Lt Gen Girish a particular choice of plot as expressed by him. That proves my point that the computer program can be tampered by the EDP team if they want to bring a desired result! No more proof of tamper-ability is required.

Also, the lottery method of allocation is specifically to avoid all possibility of corruption viz: An allottee trying to get the best plot of his choice against the interest of other allottee and denying equal opportunity to other allottees. An allottee influencing the project manager/ AWHO for investing unreasonable amount of project money for better quality and better specification into a particular plot/house ( and surrounding area ) of his choice he has selected in advance. The very purpose of avoiding the above opportunity for corruption was thwarted by allowing Lt Gen Girish to choose a particular plot/house in advance outside of the lottery. It is learnt that Lt Gen Girish has been visiting the Project site and the Project Manager fre-


quently as to suspect undue influence to invest large sums of money in his pre-selected plot/house. This defeats the very purpose of the lottery and introduces Board of Management approved corruption.

BoM has no authority to circumvent the “due process” because it violates their fiduciary duty and any violation of fiduciary duty is a Criminal Breach of Trust which is an IPC offence 409 in case of a “Public Servant” and all members of BoM are “Public Servant” as defined by the IPC:

Section 409. Criminal breach of trust by public servant, or by banker, merchant or agent

Whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits breach of trust in respect of that property, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

CLASSIFICATION OF OFFENCE PunishmentImprisonment for life, or imprisonment for 10 years and fine Cognizable Non-bailable Triable by Magistrate of the first class and Non-compoundable.

We were told that BoM has decided that they will allocate the choice plots to any member who has ever served in the BoM. This itself is a gross violation of fiduciary duty and hence a “criminal Breach of Trust”:

The nature of fiduciary liability was extensively considered by Millet L.J. in Bristol & West Building Society v Mothew.\[1\]

Millet L.J. explained the core elements of the basic fiduciary duty of no conflict of interest. His Lordship explained that: A fiduciary is someone who has undertaken to act for or on behalf of another in a particular matter in circumstances which give rise to a relationship of trust and confidence. The distinguishing obligation of a fiduciary is the obligation of loyalty. The principal is entitled to the single-minded loyalty of his fiduciary. This core liability has several facets: a fiduciary must act in good faith; he must not make a profit out of his trust; he must not place himself in a position where his duty and his interest may conflict; he may not act for his own benefit or the benefit of a third person without the informed consent of his principal. This is not intended to be an exhaustive list, but it is sufficient to indicate the nature of fiduciary obligations.

Since I have no way of preventing you from committing a breach of Fiduciary duty and hence a Criminal Breach of Trust (IPC 409), a offence with PunishmentImprisonment for life, or imprisonment for 10 years and fineCognizableNon-bailableTriable by Magistrate of the first classNon-compoundable other

\[1\] http://www.bailii.org/ew/cases/EWCA/Civ/1996/533.html
than raising a red flag, which I have
done through this communication.

I hereby register a very strong
protest/objection to violation of
“due process” in allotment of a par-
ticular plot of choice to Lt Gen
Girish.

Please feel free to act according
to your free will.

We as soldiers have sown to pre-
serve and protect the Constitution
and the laws of the land and we do
not need any motivation to abide by
the laws other than the sense of Rule
of Law.

What is not Rule Of Law?

To illustrate I need to borrow the
wisdom of Dr Upendra Baxi, one of
the finest Indian Legal mind.

(1) As an Authority of Public
Power, I have this and that power. I
exercise it in this or that manner be-
cause I so wish. The only good rea-
son which I exercise my power this or
that manner is that I wish to exercise
it in this or that manner. (2) As an
Authority of Public Power- I may so
act as to favour some and disfavour
others; (3) As an Authority of Public
Power- I may so act as to give an im-
pression that I am acting within my
powers but in reality I may be act-
ing outside it; (4) As an Authority of
Public Power- I may decide by myself
what your rights and liabilities are
without giving you any chance to be
heard. Or I may make your opportu-
nity to be heard a meaningless ritual;
(5) As an Authority of Public Power-
I may decide but declines to let you
know the reasons or grounds of my
decisions or provide reasons without
being reasonable; (6) As an Author-
ity of Public Power- I may use my
power to help you only if I am grati-
fied in cash or in kind; (7) As an Au-
thority of Public Power- I may choose
to use my power only after a good
deal of delay and inconvenience to
people; (8) As an Authority of Public
Power- I may just refuse to exercise
the powers I have regardless of my
legal obligation to act and regardless
of social impact of my inaction;

Currently, the Rule of Law is ob-
served in its flagrant violation than
in compliance.

At a Glance View of Trust, Fidu-
ciary Duties and Duty of Undivided
Loyalty Etc.

Duties of the Trustees:

1. ascertaining the duties and pow-
ers of the trusteeship, and the
beneficiaries and purposes of the
trust;

2. collecting and protecting trust
property;

3. managing the trust estate to pro-
vide returns or other benefits
from trust property; and

4. applying or distributing trust in-
come and principal during the
administration of the trust and
upon its termination.

Other duties encompassed within the
scope of these broader duties are:

1. creating an inventory of the set-
tlers estate;

2. filing and providing the benefi-
ciaries with annual and final in-
ventories;

3. keeping accurate records;

4. filing estate and final income
taxes; and
5. distributing trust assets to beneficiaries and creditors of the settler's estate. Liabilities.

Where the trustee has or threatens to commit a breach of trust, the beneficiaries or co-trustees may initiate an action against the trustee seeking any number of remedies:

1. compelling the trustee to perform his or her duties;
2. enjoining the trustee from committing the breach;
3. compelling the trustee to redress the breach through the payment of money;
4. appointing a receiver or temporary trustee over the trust;
5. removing the trustee;
6. setting aside the trustees objectionable actions;
7. reducing the trustees compensation, or denying it all together;
8. imposing equitable liens or constructive trusts upon the trust property; or
9. tracing and recovering trust property for which there have been wrongful dispositions.

One final area of potential liability for a trustee is claiming ignorance of trust provisions or duties. Trust law is very clear that ignorance will not absolve a trustee from liability. The trustee has the duty to become familiar with the terms and purposes of the trust and to act so as to preserve the settler's intent.

Breach: Although a trustee can be held liable for failure to comply with any one of these duties, the overriding duties with which a trustee must comport are managing and administering the trust with care and skill and ensuring that he or she remains loyal to the trust beneficiaries in acting for their benefit.

The measure of damages for a breach of trust by a fiduciary is the greater of:

1. the amount required to restore the value of the trust property and trust distributions to what they would have been had the breach not occurred; or
2. the profit the trustee made by reason of the breach

2. A fiduciary has a duty of prudence: duty to act as a prudent person, in light of the circumstances, purposes, and terms of the trust. Prudence means that the trustee must exercise reasonable care, skill, and caution in administering the affairs of the trust. However, where the trustee has advanced skills as compared to an ordinary trustee, the trustee must utilize those skills in the exercise of his or her fiduciary role.

an attorney retained by the trustee to assist him or her in the administration of a trust is the attorney for the entire trust, including the beneficiaries. Courts have increasingly been inclined to erode the attorney-client privilege, thereby extending the designation of client to the beneficiaries of trusts.

3. Duties of fiduciary extend beyond the obligations expressly assumed

4. A suit may be brought as an action for breach of contract, as an ac-
tion in tort, as an action in equity, or as an action for declaratory judgment. Virtually every such action will seek to impose liability against the trustee for a breach of fiduciary duty.

5. The burden of proving that he or she disclosed all material facts and that the transaction was fair lies with the fiduciary. He bears the burden of proof on these issues, Fiduciary is at risk where the evidence on the questions is inadequate to reach a conclusion. Not disclosed. Transaction unfair.

6. In many breach of fiduciary duty cases, the plaintiff is not limited to compensatory damages. The client may recover any profit of the accountant from fiduciary regardless of whether the breach of fiduciary duty caused the client any injury or whether the contractual expectations of the client were met.

7. Since a fiduciary has a duty to disclose all relevant facts relating to matters within the scope of the fiduciary relationship, a failure to disclose may toll the statute of limitations. The plaintiffs trusted the accountant and relied upon his investment advice. Therefore, their failure to discover his wrongdoing was not the result of a lack of diligence on their part.

8. A fiduciary relationship exists where there has been a special confidence reposed in one who, in equity and good conscience, is bound to act in good faith and with due regard for the interests of the one reposing the confidence.

9. One party is accustomed to being guided by the judgment and advice of another or is otherwise justified in believing that another person will act in his or her interest, a fiduciary relationship exists.

10. A lawyer who represents a society may be held to owe fiduciary duties to members of the society.

11. A party is accustomed to being guided by the judgment or advice of another and there exists a long association, the party is justified in placing confidence in the belief that the other party will act in his best interest.

12. A party is a fiduciary where money or property belonging to a client is entrusted to the trust. AG, MD AWho, Project Director and the Lawyer are all in fiduciary relationship with the member.

13. All fiduciaries owed a fiduciary duty to the beneficiary and was required to account for his/her funds. AG, MD AWho, Project Director and the Lawyer.

14. A person who is a fiduciary with respect to land fund, building and management fund all owes fiduciary duties.

15. Fiduciary duties include:

1. A duty of loyalty,
2. A duty to disclose relevant facts and to render accounts
3. A duty of due care, and
4. A duty to maintain client confidences.

16. The trustee must display throughout the administration of the trust complete loyalty to the interests of the beneficiary, and must exclude
all selfish interest: One of the most fundamental duties of and over all consideration of the interests of third persons. The duty of fidelity required of a trustee forbids the trustee from placing itself in a situation where there is or could be a conflict between its self interest and its duty to the beneficiaries. Trustees cannot make a profit from the trust funds committed to them, by using the money in any kind of trade or speculation, nor in their own business. The trustees must account for every dollar received from the use of the trust money and they will be absolutely responsible for it if it is lost in any such transactions. Many forms of conduct permissible in a workaday world for those acting at arm’s length are forbidden to those bound by fiduciary ties. A trustee is held to something stricter than the morals of the market place. Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior. As to this there has developed a tradition that is unbending and inveterate. Uncompromising rigidity has been the attitude of the courts of equity when petitioned to undermine the rule of undivided loyalty by the 'disintegrating erosion' of particular exceptions. * * * Only thus has the level of conduct for fiduciaries been kept at a level higher than that trodden by the crowd. It will not consciously be lowered by any judgment of this court. The duty of loyalty requires the fiduciary to act solely for the benefit of the person to whom the duty is owed with respect to all matters within the scope of the fiduciary relationship. The duty requires the fiduciary to subordinate his own interests to those of the beneficiary.

17. Criminal Breaches of the duty of loyalty include

1. receiving a secret profit on a transaction within the scope of the fiduciary relationship;
2. secretly acting for the account of the fiduciary as to a matter within the scope secretly acting for an adverse party in a matter within the
3. scope of the fiduciary relationship
4. competing as to a matter within the scope of the fiduciary relationship;
acting on behalf of a party whose interests conflict with those of the person to whom the fiduciary duties are owed.

( This is extremely important as it was revealed in the meeting that the officials work with loyalty to and compliance with Army Hq as opposed to its own beneficiaries, there surely is conflicts of interest. Conflict of interest rules are exceptionally precise!)

18. Where the fiduciary enters into a transaction with a party to whom a fiduciary duty is owed, he or she must disclose all relevant facts to the party and, even then, may enter into a deal only on fair terms. In addition, the burden is on the accountant-fiduciary to prove both the fairness of the transaction and the disclosure of all material facts.

19. A fiduciary may NOT deal with the assets of the plan in his own interest or for his own account, in his
individual or in any other capacity act in any transaction involving the plan on behalf of a party (or represent a party) whose interests are adverse to the interests of the plan or the interests of its participants or beneficiaries.

20. A fiduciary has a duty to disclose all relevant facts as to matters within the scope of the fiduciary relationship.

21. A trustee is under a duty to keep accurate books and records regarding what constitutes the trust receipts and disbursements to and from the trust estate, all receipts and disbursements to and from the trust estate and, where applicable, records of all allocations of receipts and disbursements between the principal account and the income account.
Chapter 9

AWHO: An Appeal to COAS

“Publicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most efficient policeman.” - Justice Louis Brandeis, Other Peoples Money and How Bankers Use It (1914).

from: CPC cpcnath@gmail.com
to: nic.webmaster.indianarmy@nic.in
date: Mon, Mar 11, 2013 at 1:08 AM
subject: AWHO & Compliance with Laws
mailed-by: gmail.com
Dear Webmaster, Indianarmy:
Please forward this message to

General Bikram Singh, PVSM, UYSM, AVSM, SM, VSM, ADC
Chief of the Army Staff,
Please do acknowledge.

To

General Bikram Singh, PVSM, UYSM, AVSM, SM, VSM, ADC
Chief of the Army Staff
Integrated HQs of Armed Forces
(Army)

South Block, New Delhi-110011

My Dear General,
This is in regard to AWHO.
I believe the ten commandments of Bertrand Russel should be a wake up call for you:

Find more pleasure in intelligent dissent than in passive agreement, for, if you value intelligence as you should, the former implies a deeper agreement than the latter.

More below:

1. Do not feel absolutely certain of anything.
2. Do not think it worth while to proceed by concealing evidence, for the evidence is sure to come to light.
3. Never try to discourage thinking for you are sure to succeed.
4. When you meet with opposition,
even if it should be from your husband or your children, endeavor to overcome it by argument and not by authority, for a victory dependent upon authority is unreal and illusory.

5. Have no respect for the authority of others, for there are always contrary authorities to be found.

6. Do not use power to suppress opinions you think pernicious, for if you do the opinions will suppress you.

7. Do not fear to be eccentric in opinion, for every opinion now accepted was once eccentric.

8. Find more pleasure in intelligent dissent than in passive agreement, for, if you value intelligence as you should, the former implies a deeper agreement than the latter.

9. Be scrupulously truthful, even if the truth is inconvenient, for it is more inconvenient when you try to conceal it.

10. Do not feel envious of the happiness of those who live in a fools paradise, for only a fool will think that it is happiness.

I tried my best to bring this to your attention but you have been as stoic as the Western wall.

I am planning to forward the enclosed document [http://goo.gl/drq6x](http://goo.gl/drq6x) to appropriate authority for a compliance inquiry, audit and appropriate action.

Proud as I am about Army and its tradition of cleanliness, all my efforts to avoid washing the dirty linen in public has been rejected by stoic silence and I am left with no alternative but to seek remedy outside the Institution.

This is for your information and necessary action.

I would like to meet you and discuss this with you. It seems the correct perspective of the issue seems to escape you and a direct meeting might help to clear the clouds if you think it will be of some use. Do let me know if I could meet you in an appropriate venue to brief you on the vitals of the issue.

The more I research, the more I realize that the attitude of AWHO oligarchy fits exactly with the pre-French revolution oligarchs of Europe and it can not be an accident. I am in the process of writing a book title “The Rape of Democracy & the Benevolent Goal of Welfare” and I would obviously like your perspective for action/inaction on your part even after learning the rape of democracy and lack of transparency right under your nose in a Society in this 21st century. Even if the most articulate proponent of status quo can put across advocacy of status quo, I would like to hear the story.

You have sworn to protect the Constitution from its enemies both foreign and domestic and you have enemies of the constitution right under your roof. If you know this truth, you will look at the issue with an open mind.

The strongest argument for transparency is:

“Publicity is justly commended as a remedy for
social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most efficient policeman.” - Justice Louis Brandeis, Other Peoples Money and How Bankers Use It (1914).

In 21st century there is no need for argument for democracy.

1. Democracy is the worst form of government, except for all those other forms that have been tried from time to time—Sir Winston Churchill

2. When people put their ballots in the boxes, they are, by that act, inoculated against the feeling that the government is not theirs. They then accept, in some measure, that its errors are their errors, its aberrations their aberrations, that any revolt will be against them. It's a remarkably shrewd and rather conservative arrangement when one thinks of it—John Kenneth Galbraith, The Age of Uncertainty (1977), Chapter 12, p. 330.

With respectful regards,
CPCNath
Member AWHO
91 11 4 140 1679
91 11 2 694 8083

******************************************************************************
Chapter 10

Black-Box Analysis of Final Cost of AWHO DU

from: CPC cpcnath@gmail.com
to: “awhosena.in”
awhosena@awhosena.in,
md@awhosena.in,
dymd@awhosena.in,
awhosena@gmail.com
date: Thu, Mar 21, 2013 at 1:57 PM
subject: Re: FW: Instructions for Handing/Taking over of DU and Statement of Account : Bangalore, Yelahanka Part ‘A’
mailed-by: gmail.com

Sir,

I am enclosing a paper “Black-Box Analysis of Final Cost of AWHO DU” and an excel sheet for your perusal.

You may like to let me know if you want any of the figures revised with more accurate figures. Not revealing full disclosure makes AWHO look much worse than actually it is.

The welfare mode of thinking always lands us in shit.

Unless we start thinking in terms of the Rights, Duties, Liberties, Liabilities, Disabilities and Immunity, we will never get things right. And if you do not know the difference between these, you are not thinking right as a responsible and educated and aware citizen.

Study the enclosed documents and see where this welfare mode of thinking has landed us.

You may neither be interested nor be bothered about the actual figures but the Inferences and End Note should shake you out of your seat and complacent thinking.

Always remember:

Experience teaches us to be most on our guard to protect liberty when the governments purposes are beneficent. Justice Louis D Brandeis, Dissenting, Olmstead v. United States, 277 U.S. 438 (1928).

And, get out of this complacent “welfare” thinking. We are NOT on “welfare”! We are asking for our
rights as citizens, rights that are embedded in our constitution and the laws.

And the usual argument is “We are a nonprofit“. Nonprofit is pure bullshit and means nothing. Incidentally, Al Queda is also a non-profit org!

And, who has been taking us for a ride?

- Not UPA Government.
- Not disgusting babus we constantly complain about.
- Not RM and MoD civilians.
- Not Politicians,
- but the “welfare” organization created by “public servants” in the Army Hq and manned by fouji officers, JCOs and men!

Chandra Nath Member AWHO
Chapter 11

Analysis of Final Cost of AWHO DU

Revised Analysis
Revised analysis 9 May 2013
Cost: Original Final %age Incr
Total: 1550000 5304578 242.23%
Land: 524750 524750 0.00%
Mgt(3%): 46500 159137 242.23%
Constr: 978750 4620691 372.10%
As claimed by you, if we take 3% as est cost, construction cost and and
Mgt cost has gone up by 372 and 242% respectively. Industry data for these are well below 100%. Then again, it just does not add up.

If you can make yourself available on 11 AM on May 17, Friday, I can make myself available for the meeting you had suggested. If that is not suitable, I can make myself available on May 16th Thursday.

Please confirm.
Sir, It is with utter dismay I learned that AWHO has decided (as per BoM decision) to charge the members a fixed percentage (10, 15, 0r 20% per year still do not know) of land price appreciation irrespective of the fact that they used our money 10 years back to buy the land and develop it. That means we have risked our money in the investment and we ought to enjoy the fruits of appreciation or risk the loss in value if it collapses with a real estate bubble like it happened in US and Europe. Instead AWHO is charging the owners for the risk we have taken in the investment in real estate!

The decision shows a total lack of understanding of the finance, risk and uncertainty and every one in AWHO (including the Chairman) should be mandatorily made to do a course in Finance. Here is an opportunity to do the same from over the web from University of Michigan and it has started just today[1].

If decision makers had basic fundamental understanding of finance, risk and uncertainty they would not have taken such an irrational decisions. Reward or loss should always go to the principal who risks their money and NOT the agent who help the principal help invest their money!

I am still awaiting a response from AWHO (see the following trail).

With sincere regards
Chandra Nath

[1] https://www.coursera.org/course/introfinance
Chapter 13

AWHO & RTI

CPC cpcnath@gmail.com Jul 31
to: md AWHO,
dymd AWHO,
AWHO,
awhosena.in

Dear Sir,

The cost of stupidity (of AWHO management) is going to be very high for us poor veterans. AWHO, by persistently denying genuine, justified and prudent demand for financial/housing information of stakeholder members (those who contribute for house construction to help in their own decision making in connection with housing costs) over number of years, to day, the stakeholders (we veteran) will have to foot the cost of AWHO answering even stupid queries of any one (in the nation) who can spare Rs 10/=!

Is it right? Is it just? Is it equitable? Is it not perversion of Rule of Law?

This is the cost of stupidity of the "usurpers" of AWHO governance! The Directors of Society have two basic fiduciary duties, the duty of care and the duty of loyalty, owed to the society itself and the members. 1. Directors must act in good faith, with the care of a prudent person, and in the best interest of the society. 2. Directors must refrain from self-dealing, usurping society opportunities and receiving improper personal benefits. 3. Decisions made on an informed basis, in good faith and in the honest belief that the action was taken in the best interest of the society will be protected by the business judgment rule.

AWHO directors failed in these fiduciary duties towards the members of the Society, we the veteran!

This raises another important question. Why should AWHO be under the all-pervasive control of the senior serving Army officers? CIC has no responsibility/onus to raise this important question on behalf of the veteran.

But should we not raise it?

The “all-pervasive control of the senior serving Army officers” have been obtained by usurpation of a “private society of the veteran” ille-
gally by perverting the Rule of Law and that is costing us veteran very heavily.

There is one villain in the whole dirty and murky affair of AWHO: the legal counsel who kept advising AWHO on how to circumvent law against interests of the veteran. Here is one individual who perverted the constitution, statutes and case law decisions of various courts of India and advised AWHO on how to cheat the veteran of his constitutionally mandated right: Right to protection of laws of the nation. The “governance fraternity” of AWHO was stupid enough to listen to him and he was wicked enough to cheat the veteran of the rights conferred on the citizen by the constitution, statutes and case laws! Yes, our senior officers were committing “Criminal Breach of Trust” (CBT) by listening to his advise to pervert the Rule of Law and they were too naive to realize that they themselves were committing CBT!

Should we not go after this not just enemy of the veteran but the enemy of the Rule of Law? “An advocate should always remember that his loyalty is to the law, which requires that no man should be punished without adequate evidence.” And, we veterans have been punished all through by perversion of all the rule of law by this legal counsel of AWHO! Should this go unpunished?

This is not the time to rejoice the decision of CIC but time for deep reflection and and still deeper introspection.

Chandra Nath

To every individual in nature is given an individual property by nature not to be invaded or usurped by any. For every one, as he is himself, so he has a self-propriety, else could he not be himself; and of this no second may presume to deprive any of without manifest violation and affront to the very principles of nature and of the rules of equity and justice between man and man. – Richard Overton, An Arrow against all Tyrants and Tyranny (October, 1646)
Chapter 14

Declaration & Deed of Apartment of Vasant Vihar, Bengaluru

CPC cpcnath@gmail.com Aug 14
to md, dymd, AWHO, awho, Sunil

Dear Mr Managing Director,

Please confirm that AWHO Society has registered the Declaration under Clause 11 THE KARNATAKA APARTMENT OWNERSHIP ACT, 1972., the statute under which the Vasant Vihar, Bengaluru property has been built.

Please make a copy of the Declaration available on the website (or alternately, a hard copy may be provided to me and desirably to all the owners of the apartments/villas as they will require the same information too) and the details of the book, page and date of executing the Declaration, the date and serial number of its registration under the Registration Act, 1908 and the date and other reference if any, of its filing with the competent authority;

to facilitate me and other owners to register Deed of Apartment (for Villa P2/78 in my case and their respective properties).

This is extremely important in view of the clause 5. Ownership of apartments. (1) Each apartment owner shall be entitled to the exclusive ownership and possession of his apartment. (2) Each apartment owner shall execute a Declaration that he submits his apartment to the provisions of this Act and a Deed of Apartment in relation to his apartment in the manner prescribed for the purpose.

and also the clause 6. Common areas and facilities.-

Each apartment, together with its undivided interest in the common areas and facilities appurtenant to such apartment, shall for all purposes constitute heritable and transferable immovable property within the meaning of any law for the time
being in force in the State: and ac-
correspondingly, an apartment owner may
transfer his apartment and the per-
centage of undivided interest in the
common areas and facilities appur-
tenant to such apartment by way of
sale, mortgage, lease, gift, exchange
or in any other manner whatsoever
in the same manner to the same ex-
tent and subject to the same rights,
privileges, obligations, liabilities, le-
gal proceedings and remedies as any
other immovable property, or make
a bequest of the same under the laws
applicable to the transfer and succes-
sion of immovable property.

Declaration means the instru-
ment by which the property is sub-
mitted to the provisions of this Act,
as hereinafter provided, and such
Declaration as form time to time may
be lawfully amended;

Please note that under Clause 2.
Application of the Act.-
This Act applies only to property
the sole owner or all of the owners of
which submit the same to the pro-
visions of this Act by duly executing
and registering a Declaration as here-
inafter provided.

Without the registration of Dec-
lARATION and Deed of Apartment as
per the statute, the rights, privi-
leges, powers, immunity and liabili-
ties of the entities as per the statutes
are not applicable and that too af-
after having paid the full construction
linked installments and final install-
ment even though the common facil-
ities are non-existent on ground even
after declaration of completion of the
project and taking over the dwelling
units have been ordered.

With sincere regards

Chandra Nath (Allottee P2/78
Vasant Vihar) +91 11 414 01 679 C
679 Sarita Vihar, ND-76

11. Contents of Declaration.- (1)
The Declaration shall contain the fol-
lowing particulars, namely:- (a) de-
scription of the land on which the
building and improvements are or are
to be located; and whether the land
is freehold or leasehold; (b) descrip-
tion of the building stating the num-
ber of storeys and basements, the
number of apartments and the prin-
cipal materials of which it is or is
to be constructed; (c) the apartment
number of each apartment, and a
statement of its location, approxi-
mate area, number of rooms, and
immediate common area to which it
has access, and any other data nec-
essary for its proper identification;
(d) description of the common areas
and facilities; (e) description of the
limited common areas and facilities,
if any, stating to which apartments
their use is reserved; (f) value of
the property and of each apartment,
and the percentage of undivided in-
terest in the common areas and facil-
ities appurtenant to each apartment
and its owner for all purposes, in-
cluding voting; and a statement that
the apartment and such percentage
of undivided interest are not encum-
bered in any manner whatsoever on
the date of the Declaration; (g) state-
ment of the purposes for which the
building and each of the apartments
are intended and restricted as to use
(h) the name of a person to receive service of process in the cases hereinafter provided, together with the residence or place of business of such person which shall be within the city, town or village in which the building is located: (i) provision as to the percentage of votes by the apartment owners which shall be determinative of whether to rebuild, repair, restore, or sell the property in the event of damage or destruction of all or part of the property; (j) any other details in connection with the property which the person executing the Declaration may seem desirable to set forth consistent with this Act: and (k) the method by which the Declaration may be amended, consistent with the provisions of this Act.

12. Contents of Deeds of Apartments.-

(1) Deeds of Apartments shall include the following particulars, namely:- (a) description of the land as provided in section 11 of this Act or the post office address of the property, including in either case the book, page and date of executing the Declaration the date and serial number of its registration under the Registration Act, 1908 and the date and other reference if any, of its filing with the competent authority; (b) the apartment number of the apartment in the Declaration and any other data necessary for its proper identification; (c) statement of the use for which the apartment is intended and restrictions on its use, if any; (d) the percentage of undivided interest appurtenant to the apartment in the common areas and facilities; and (e) any further details which the parties to the Deed may deem desirable to set forth consistent with the Declaration and this Act. (2) A true copy of every deed of Apartment shall be filed in the office of the competent authority.
Declaration & Deed of Apartment of Vasant Vihar, Bengaluru
Chapter 15

Builder Interest vs Home Buyer Interest

CPC cpcnath@gmail.com Sep 5
(6 days ago)
to md, dymd, AWHO, awho, awho

Dear Mr Managing Director,

AWHO “Builder interest” hotly contested RTI though at the end they lost. It is the Members of the Society that sought AWHO to be brought under RTI and not just any member of the public. Does AWHO have a case against transparency for its own Members? If so, what public purpose is being served by such lack of transparency? Opportunity for corruption can not by any stretch of imagination be advanced as a “public purpose”!

Does AWHO realize that every argument for getting out of the RTI bring AWHO right back under transparency for its members?

Is it any secret that AWHO BoM represent the “builder interest” as against AWHO Members who represent the “Home buyer interest” and this by itself is “Total Conflict of Interest” and the advantage of co-operative movement of Members owning the “business/service provider” is totally lost due to defects in governance structure of AWHO. Worse still, “builder interest” determines what “rules” will be imposed on the Members and that is many times worse than the arms length transaction between builder and home buyer in the open real estate market!

Does it require any legal acumen or intelligence to realize that it is the “builder interest” that opposes the transparency demanded by the “home buyer interest”?

Just think about it.

AWHO “builder interest” quotes some characteristic of AWHO (Welfare, NPNL, Registered Society and Self-financing) as special characteristics that provide them with special powers, rights, privileges and immunities. The saddest fact is that it does not provide any of this. If any
thing, it binds some duties, liabilities
and disabilities on AWHO.

Please read the enclosed paper
“An Inquiry into Some Fundamen-
tals of AWHO” to realize that this
is so and there is NO case against
transparency for AWHO, a society of
home buyers.

Chandra Nath +91 11 414 01 679
C 679 Sarita Vihar, ND
Chapter 16

An Inquiry into Some Fundamentals of AWHO

Real Courage is found, not in the willingness to risk death, but in the willingness to stand, alone if necessary, against the ignorant and disapproving herd. Jon Roland, 1976

What we desire to accomplish is, the protection of rights: What we have to inquire is: The means by which protection may be afforded.... That men are susceptible of happiness, only in proportion as rights are protected, is a proposition, which, taken generally, it is unnecessary to prove. The importance of the inquiry, therefore, is evident.  

I Introduction

WHO was established as a Society under the Rule of Law expressly for the welfare of its members and NOT established as a foray by Army Headquarters into Real Estate business in a thriving real estate market at this particular stage in the country’s economy. We, the people, still believe that our obligations as proud Indians and more importantly, as proud veterans, are not just to ourselves, but to all posterity for creating a Society of equals and not divide ourselves into “Rulers” (powerful, autocratic and ever ready to exploit the powerless) and powerless “Subjects”.

Edmund Burke asks a key question of political theory: quis custodiet ipsos custodes? (how is one to be defended against the very guardians who have been appointed to

---

1 Jurisprudence, Supplement to Encyclopaedia Brittanica http://files.libertyfund.org/files/1760/0886_Bk.pdf
guard us?) (1756)

Man, when perfected, is the best of animals, but when separated from law and justice, he is the worst of all.

II AWHO and Welfare Activities

This does not provide any special powers, rights, privileges or immunities to AWHO. This is a “Liberty right” and NOT a “Claim Right” ala Hohfeld. One of the subjects of traditional jurisprudence is the analysis of the most general legal concepts, for example rights and duties. Contemporary philosophers of law similarly ask, What do we mean by a right? This is not a merely academic question, for it arises in legal practice. Wesley Newcomb Hohfeld examined the writings of lawyers and judges and found that they used a right indiscriminately to express four very different legal concepts, that of a liberty (or privilege), claim, power or immunity... Hohfeld believed that lawyers and judges need to distinguish between these fundamental legal conceptions to define the precise issue before a court.

A claim right is a right which entails responsibilities, duties, or obligations on other parties regarding the right-holder. In contrast, a liberty right is a right which does not entail obligations on other parties, but rather only freedom or permission for the right-holder. The distinction between these two senses of “rights” originates in American jurist Wesley Newcomb Hohfeld’s analysis thereof in his seminal work Fundamental Legal Conceptions, As Applied in Judicial Reasoning and Other Legal Essays.

This liberty right is provided only as long as the Society fulfills its duties to its Members:

1. The Society has a duty to respect the rights of its members.
2. Society has a duty to abide by the Constitution of India and also honor the fundamental and constitutional rights of its members.
3. Society has a duty to abide by the statute under which it was created viz. Registration of Societies Act 1860.

Quis custodiet ipsos custodes? is a Latin phrase traditionally attributed to the Roman poet Juvenal from his Satires (Satire VI, lines 3478), which is literally translated as “Who will guard us from the guards themselves?”

Aristotle, Politics (c340 BC)

Hohfeld, Fundamental legal conceptions as applied in judicial reasoning http://plato.stanford.edu/entries/rights/#2.1 and http://www.archive.org/stream/fundamentallegal00hohfuoft#page/n3/mode/2up
http://ivr-enc.info/index.php?title=Rights
http://www.law.harvard.edu/faculty/cdonahue/courses/prop/mat/Hohfeld.pdf
III No Profit No Loss

4. Society has a duty to abide by all the applicable statutes and case laws (Consumer protection laws, Property laws: State Apartment Owners Act, Transfer of Properties Act, Indian Trusts Act 1882 etc.)

5. Society has a duty to abide by the tax laws applicable to non-profit societies.

III No Profit No Loss

No Profit No Loss (NPNL) is often being cited by AWHO as bestowing some special powers, rights and privileges [1]. The saddest fact is that it does not provide any of this. If anything, it binds AWHO. What are these duties? Undoubtedly,

1. AWHO has a duty not to make any profit out of its dealings/transactions with its members.

2. AWHO has a duty to its members to charge its members at cost price and cost price alone.

3. AWHO has a duty to its members NOT to charge for those items for which it has not paid any price or incurred any expense.

4. AWHO has a duty to its members to distribute surpluses if any at the end of the Project.

5. AWHO has a duty to its members to be transparent to establish the truth of all of the above.

IV AWHO is a Registered Society

This again does not provide any special powers, rights or privileges to AWHO. If anything, it binds AWHO to fulfill its duties to its members. What are these duties?

1. The Society has a duty to its members that it will be governed democratically as required by the statute.

2. Society has a duty to provide equal rights to its members to be eligible to election to its Board of Management as required by the statute.

3. Society has a duty to provide all the members right to vote as required by the statute.

4. Society has a duty to provide the right to approve all the rules that apply to the Society Members as required by the statute.

5. Society has a duty to seek approval of the members of its audited accounts as required by the statute.

6. Society has a duty to seek approval of the members (3/5th majority) in case the Society has to be closed as required by the statute.

V AWHO builds houses on a self-financing Basis

This again does not provide any special powers, rights or privileges to AWHO. If anything, it binds AWHO to fulfill its duties to its members. What are these duties?

1. The Society has a duty to its members that it will respect the fiduciary Responsibilities applicable for trustee to its beneficiaries.

2. Society has a duty to provide the trusteeship duties towards its beneficiaries.

3. Society has a duty to provide all the members undivided loyalty.

4. Society has a duty to provide all the Members a duty of care.

5. Society has a duty to refrain from any activity that may engender any conflict of interest.

VI Conclusions

It can easily be verified that any or all the above do not provide AWHO any special powers, rights or privileges. On the other hand each of the above imposes certain duties on the part of AWHO to its members. AWHO is found to quote the above in many courts of law to escape, on some pretext, the requirements to abide by the duties imposed. The above analysis lays bare the duties of AWHO to abide by the Rule of Law.

Chapter 17

Real Estate (Regulation & Development) Bill

From: CPC cpcnath@... Date: Tue, Aug 20, 2013 at 12:02 PM Subject: REAL ESTATE (REGULATION & DEVELOPMENT) BILL

To: md@..., dymd@..., AWHO HQ awhosena@..., AWHO awho@...

Dear Mr Managing Director, The real estate regulation and development bill that seeks to protect home buyers from dishonest builders was tabled in the Rajya Sabha on Wednesday.

The cabinet had approved the bill on June 4. The bill has provisions like a jail term of up to three years if developers put up misleading advertisements about projects.

Draft Real Estate (Regulation & Development) Bill, 201 (See under Part III of this Compilation)

Many practices of AWHO become punishable under this bill!

unfair practice means a practice which, for the purpose of promoting the sale or development of any immovable property adopts any unfair method or unfair or deceptive practice including any of the following practices.

AWHO is engaged in many “unfair practices” like:

1. Represent that AWHO is a registered Society but members are denied participation in governance in every way possible virtually turning it into a “Sole Proprietor business” (or at best a partnership of the Board of Management!) of a “public servant” (Adjutant General says: “we make rules, you just obey”)

2. Draw up rules which are with out “legitimacy” (rule makers have no legitimacy under statute) and are “illegal” (violate constitution, statutes and case laws established in the courts of law).

3. Makes a false or misleading representation concerning the services:

   (a) Claim that the property is developed under a State Apartment Act but fails to take appropriate actions to provide protection of the Act to the “allottee members”.

   (b) Claims that it will be built on “No Profit No Loss” basis but resist persistently to provide verification of the same.

   (c) Resist transparency in costing to conceal possible profiteering and speculation in land prices.

   (d) Violate laid out process to favour friends of the Board of Management.

   (e) Makes misleading claims about cheaper cost (Rs/square foot) by deliberately taking wildly inflated super area in case of AWHO but taking carpet area in case of other builders.

4. Not providing mandatory information as per chapter III section 8 (including the carpet area of each unit)

5. Violate the rule: if the person affected by such incorrect, false statement contained in the advertisement or prospectus, intends to withdraw from the proposed project, he shall be returned his entire investment along with interest at such rate as may be prescribed (and NOT paltry 5%)

6. Violating the clause: “a promoter shall not accept any sum of money as an advance payment or deposit, from a person without first entering into a written agreement for sale along with specifications and external development, works, the dates and the manner by which payments towards the cost of the plot, building or apartment are to be made by the allottees and the date on which the possession of the plot, building or apartment is to be handed over and such other particulars with such person” leaving every thing (including specification and quality) to the whims and fancies of AWHO management.

7. Fails to fully meet Obligations of promoter towards allottees (for details refer Clause 12 of the bill)

8. Failure to adhere to approved plans and project specifications by the promoter. (Refer Clause 13 of the Bill)

9. Failure to take all necessary steps to execute a registered conveyance deed in favour of the allottee thereby transferring the title in the immovable property along with the undivided propor-
tionate title in the common areas simultaneously with the handing over of the possession of the immovable property and the other title documents pertaining thereto. (Refer clause 14 of the bill)

10. Return of amount along with prescribed interest (not just 5% as arbitrarily determined) along with penalty if not complied with time or specification of the property. (Refer Clause 15)

11. Obligations of allottees limited to Clause 16 and not decided arbitrarily by AWHO in the “rule book”.

AWHO being a “Welfare Society” should be proactive in protecting the rights of the member allottees rather than wait for the law to catch up with “unfair practices” of the real estate sharks and builder mafia!

In view of the above, the Rule Book may be amended immediately proactively and also rectify the unfair practices practiced by AWHO in the current projects.

Shouldn’t a welfare society engaged in welfare activities for the veteran NOT do acts which are punishable and also should actively engage in acts that promote transparency as defined in the bill?

With sincere regards.

Chandra Nath
Chapter 18

AWHO Lawyer as a Fiduciary

———
Forwarded message
———

From: CPC nath@computer.org
Date: Sat, Aug 24, 2013 at 12:11 PM
Subject: REAL ESTATE (REGULATION & DEVELOPMENT) BILL

To:
md@awhosena.in,
dymd@awhosena.in,
awhosena@gmail.com,
awhosena@awhosena.in,
awho@awhosena.in,
awho@vsnl.com

Dear Mr Managing Director,
I am still awaiting your response to my two mails on the subject.

So far we looked at how the Chairman and Board of Management usurped the Society and ascended to the throne of Chairman and Board of Management of AWHO and also failed in their fiduciary duty to the members of the Society (counting to as many as 40000 veterans) suffered loss of fundamental rights - the right to equal protection of laws not to talk of being victims of Criminal Breach of trust. In this we will examine the criminal liability of the legal counsel of AWHO.

I Introduction

Attorneys face a variety of ethical challenges. While doing the right thing may not always be easy, it should always be clear. Rules of professional conduct demarcate the line between right and wrong in some instances. Other areas, however, are left to common law (and judicial interpretation) to develop. The question is whether (and, if so, under what circumstances) an attorney (and in our case legal counsel of AWHO) may be held liable for aiding and abetting a clients breach of fiduciary duty and hence criminal Breach
II Aiding and Abetting Standard

The common law of torts imposes liability for aiding and abetting another in commission of a wrongful act. The parameters of aiding and abetting liability are laid out in the Restatement (Second) of Torts using a three-prong test: (1) the aided party must commit tortious conduct; (2) the aider must know that the aided party’s conduct constitutes a breach of duty; and (3) the aider must give substantial assistance or encouragement to the aided party. Advice or encouragement to act operates as a moral support to a tortfeasor and if the act encouraged is known to be tortious it has the same effect upon the liability of the adviser as participation or physical assistance. However, assistance can be so slight so as to avoid liability; the factors to consider in determining liability are: (1) the nature of the act encouraged; (2) the amount of assistance given by the defendant; (3) the presence or absence of the defendant at the time of the tort; (4) the defendants relation to the other; and (5) the defendants state of mind.

III Application of Aiding and Abetting Liability Standard to Breaches of Fiduciary Duty

A fiduciary relationship is one in which one person [called a fiduciary] is under a duty to act for the benefit of another [called a beneficiary] on matters within the scope of the relationship. Common examples of fiduciary relationships include guardian-ward, agent-principal, and attorney-client. The fiduciary’s obligation to act for the benefit of another is known as a fiduciary duty, and breach of that duty causes the fiduciary to be liable to the beneficiary. Combining aiding and abetting liability with this breach of fiduciary duty liability creates a straightforward result: one who knowingly provides substantial assistance or encouragement to another in breaching a fiduciary duty is liable for aiding and abetting the breach of fiduciary duty. As explored above, providing advice or encouragement satisfies the substantial assistance prong. Therefore, it follows that an attorney who counsels his or her client to breach a fiduciary duty should be liable for aiding and abetting that breach of fiduciary duty. Aiding in a breach of fiduciary duty may also be aiding in the commission of a crime. For example, an attorney may advise a trustee on how to siphon funds from a beneficiary. In this case, since the breach of fiduciary duty is a Criminal Breach of Trust by a public servant.
(Section 409 in The Indian Penal Code, 1860 and punishable with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine), the act of the lawyer is a clear case of aiding and abetting a crime.

IV Liability for an Attorney

If an attorney advised that agent or that partner as to how to breach their fiduciary duty with greater stealth or success, that attorney would have aided and abetted in a breach of fiduciary duty. This begs the question of whether the attorney, who owes a fiduciary duty to his or her own clients, should be liable to their clients beneficiary. Reynolds sued Schrock and Markely for breach of fiduciary duty for aiding and abetting a breach of fiduciary duty. The lawsuit against Schrock was settled, leaving Markley as the sole defendant. The court held that summary judgment in the attorneys favor was proper, recognizing an exception for attorneys from liability for aiding and abetting a clients breach of fiduciary duty. However, the exception created for attorneys is not unlimited: For a third party to hold an attorney liable for aiding and abetting a client in breach of a fiduciary duty, the burden is on the third party to prove that the lawyer acted outside the scope of the lawyer-client relationship. This exception extends liability to attorney conduct that is unrelated to the representation of a client (even if the person is a client), in the attorneys own self-interest, or within the crime or fraud exception to the attorney-client privilege. While the court in Granewich did accept as true the allegations in the complaint pleading that the attorneys acted outside the scope of their legitimate employment, the court did not state that this fact was determinative to its decision, declaring instead that the defendants status as lawyers is irrelevant.

V Mr Lawyer: First, Do No Harm; Second, Prevent Harm?

This leads us to the question whether attorneys have an affirmative duty to prevent their clients from causing harm in the form of a breach of fiduciary duty. The argument over whether an attorney must, must not, or may disclose to a clients beneficiary that the client is acting inappropriately with regard to the fiduciary relationship presupposes the basic notion that the attorney should not contribute to the clients malfeasance.

Professor Geoffrey Hazard, perhaps the primary figure in legal ethics to day, advocates that where an attorneys client is a fiduciary of a third party, that third party assumes derivative client status and the actual client is the primary client. (THE LAW AND ETHICS OF  

LAWYERING 5th ed. Foundation Press 2010 with Susan P. Koniak, Roger C. Cramton, George M. Cohen & W. Bradley Wendel) Under this model, the attorney effectively has two clients: the primary client (the actual client who hired the attorney) and the derivative client (the beneficiary of the primary clients fiduciary duty). Since the primary client (as a fiduciary) is obligated to work in the interest of the derivative client (as a beneficiary), the attorney is as well. Three consequences of this primary-derivative client model follow: (1) the lawyers obligation to avoid participation in his or her clients fraud is engaged by a more sensitive trigger than usual; (2) the lawyer must ensure that the fiduciary-primary client volunteers complete and truthful information to the third party-derivative client; and (3) the lawyer has a duty to disobey instructions that would wrongfully harm the third party-derivative client (because a client is not permitted to use an attorney to harm the clients beneficiary).

While the appellate court affirmed the trial court’s dismissal, it is apparent that the decision was influenced by the monumental stupidity of the plaintiff’s legal theory!

VI Civil Conspiracy

“Civil conspiracy is a separate cause of action that requires, inter alia, an underlying tort and a ‘meeting of the minds’ among the co-conspirator ‘on the object or course of action’ to be taken. By contrast, a cause of action requires only the knowing participation of a party in a breach of a fiduciary duty and does not require a conspiratorial agreement.” Second, the breach of fiduciary duties or scheme of oppression must involve misrepresentations, failure to disclose, or deceptive conduct so that breach of fiduciary duties constitutes fraudulent conduct. Third, the plaintiff must plead and prove that the attorney had knowledge of the object and purpose of the conspiracy; that there was an understanding or agreement to inflict a wrong against, or injury on, the third party; that there was a meeting of minds on the object or cause of action; and that there was some mutual mental action coupled with an intent to commit the act that resulted in the injury. Finally, the plaintiff must plead and prove that the attorney’s conduct went beyond mere fulfillment of his professional duties to the majority shareholder.

In the present context of the AWHO counsel, all the above are satisfied. Certainly, personal benefit from the proceeds of the fraud would certainly satisfy this burden. Here in the present context, AWHO counsel benefited from the appointment as legal counsel of AWHO over a prolonged period.

VII Fraudulent Scheme

The plaintiff could also plead and prove conduct by the attorney necessary to the accomplishment of the
fraudulent scheme, such as meaningless work designed to convey a false impression. The illegitimate and illegal Rules of AWHO and AWHO’s insistence on compliance of the members of AWHO to these Rules are sufficient to prove this. The “welfare” facade of AWHO that it is engaged in some noble welfare activity for the veteran is another fraudulent scheme.

The attorney will argue that everything done in devising and implementing a scheme to oppress the members of AWHO over a period of 3 decades is merely “the rendering of legal services”; however the plaintiff should counter that these particular services are “foreign to the duties of an attorney.”

Poole v. Houston & T.C. Ry, 58 Tex. 134, 137 (1882).

**VIII Third Party Derivative Client**

Professor Hazard advocates that where an attorney’s client is a fiduciary of a third party, that third party assumes derivative client status and the actual client is the primary client. Under this model, the attorney effectively has two clients: the primary client (the actual client who hired the attorney) and the derivative client (the beneficiary of the primary clients fiduciary duty). Since the primary client (as a fiduciary) is obligated to work in the interest of the derivative client (as a beneficiary), the attorney is as well. Three consequences of this primary-derivative client model follow: (1) the lawyers obligation to avoid participation in his or her clients fraud is engaged by a more sensitive trigger than usual; (2) the lawyer must ensure that the fiduciary-primary client volunteers complete and truthful information to the third party-derivative client; and (3) the lawyer has a duty to disobey instructions that would wrongfully harm the third party-derivative client (because a client is not permitted to use an attorney to harm the clients beneficiary).

Professor Hazard accounts for such problems however, stating that where the client is openly adverse to the beneficiary, the joint client model is not viable. Examples of such clear cases arise: (1) where the lawyer is retained to represent the fiduciary in litigation concerning the performance of the fiduciary duty; (2) where the lawyer is hired to represent the fiduciary in negotiating the terms and conditions of his or her office (the duties and compensation of the fiduciary, for example); and (3) where a lawyer with no prior involvement is hired to negotiate for the termination or reformation of the fiduciary-beneficiary relationship. However, Hazard argues that in the normal legal relationship between fiduciary and beneficiary the fiduciary is fulfilling his or her duties and therefore the joint client model poses no such problems. However, if the properly functioning fiduciary relationship collapses and becomes antagonistic, the lawyer would only be able to represent the interests of his or her true (or primary) client.
IX Lawyers Duty to Client Who is a Trustee

Traditionally, an attorney could only be liable in tort to his or her own client. However, inroads have reconstructed this maxim, and an attorney has certain responsibilities to third parties, particularly when the third party has a relationship with the attorneys client. In the situation where a lawyers client is also a fiduciary, the lawyer may have a duty to prevent the client from breaching his or her own duties to the non-client. While argument exists as to whether an attorney is required to prevent a clients breach of fiduciary duty, a lawyer owes a duty of care to a non-client when and to the extent that: (a) the lawyers client is a trustee, guardian, executor, or fiduciary acting primarily to perform similar functions for the non-client; (b) the lawyer knows that appropriate action by the lawyer is necessary with respect to a matter within the scope of the representation to prevent or rectify the breach of a fiduciary duty owed by the client to the non-client, where (i) the breach is a crime or fraud or (ii) the lawyer has assisted or is assisting the breach; (c) the non-client is not reasonably able to protect its rights; and (d) such a duty would not significantly impair the performance of the lawyers obligations to the client.

As laid out in subsections (a) and (c), this duty does not attach in all circumstances in which the client is a fiduciary only those in which the client exercises substantial power over another (as in the case of a guardian or trustee) and the clients beneficiary is not reasonably able to protect its own rights. (Here AWHO Members qualify on this as they suffered under this for 3 decades) This duty requires attorneys in certain circumstances to clean up their own mess when they have assisted a clients breach of fiduciary duty, or prevent a mess from being made when the clients breach of fiduciary duty would be illegal or fraudulent. Such affirmative duties imply a fundamental duty not to aid in a clients breach of fiduciary duty at the offset. While imposing a duty of disclosure on the attorney could arguably create conflict of interest problems and chill clients willingness to communicate frankly with their attorneys, those same problems do not arise by merely barring the attorney from advising or participating in a clients breach of fiduciary duty. Despite courts conclusions to the contrary, no solid foundation exists to create an exception for attorneys from liability for aiding and abetting a clients breach of fiduciary duty. Whether created explicitly or by strict interpretation of the elements of the tort, such an exception is inappropriate.

X Perpetrating Frauds or Illegal Activity

In protecting attorneys from lawsuits alleging aiding and abetting a breach of fiduciary duty through the imposition of a heightened pleading standard, requiring the plaintiff to lay
out his or her claim in more rigorous detail in the complaint is especially inappropriate. Pleading with such particularity is usually reserved for situations in which even the allegation of the tortious activity could damage a potentially innocent defendant (for example, fraud or mistake). Allegations of aiding and abetting a breach of fiduciary duty do not rise to the same level of damage in accusation. Any charge of tortious activity inevitably causes some harm to the defendant, but this particular cause of action does no more harm to a professional reputation than other torts, such as malpractice, which do not command heightened levels of specificity at the pleading stage. Attorneys who aid or advise clients in perpetrating frauds or engaging in illegal activity may be held liable for their actions, and indeed the attorney client privilege is not available for communications regarding the fraud or crime.

XI AWHO Context

In the present context, the attorney is the legal counsel of the registered AWHO Society and paid from contributions of the contributing members (and NOT the members of the Board of Management) of the Society. He is fully aware that the BoM are usurpers and the rules constructed to administer AWHO are both illegitimate and also illegal to boot. He is aware that that he is NOT employed by a Trustee company providing services of trusteeship and his compensation did not come from the trustee company funds! Hence, the beneficiary members of the Society are the actual clients of the legal counsel because the funds came from the Members of AWHO!

XII Conclusion

The acts of the legal counsel are hence “unconscionable” from this legal theory alone.

The reasoning behind such a rule (that a legal counsel is criminally liable) is that society rightfully wishes to discourage attorneys from making such suggestions to clients. The same rationale applies to advising clients to breach fiduciary duties. Since such advice is to be discouraged, attorneys who proffer it should be held liable to the extent they cause harm.

Legal counsel of AWHO should prepare to be charged with criminal liability on the basis of this legal theory alone. Where all the counsel from A to Z from the “legal counsel” are illegal, is it possible that the counsel was referring to laws unknown or conflicting with the laws of the land? Or, could it be that all the advise of the counsel and the decisions of the defendant monumental stupidity of his legal theory? One such theory seems to be that AWHO can be compelled to be compliant to the rule of law only if its aggrieved members take them to the court, not otherwise with all the exhortations to comply with the law. For us, the essence of adjudication is the opportunity to state our case in our own words to some one who is listen-
ing. Are you listening, the Chairman and Board of Management and the Patron in Chief, the Chief of Army Staff?

“And yet, when faced with difficult problems of action, most people in fact take action. Taking action of course includes the action of remaining in place, often called inaction. Only a few descend into catatonic paralysis.”- GEOFFREY C. HAZARD, JR. Law, Ethics and Mystery (2005)

With sincere regard. Chandra Nath
Chapter 19

AWHO Appreciation Charges

CPC cpcnath@gmail.com Sep 1 (10 days ago)
to nic
Dear Webmaster,
Please pass this on to the following as their email ids are not available and confirm: The Chief of Army Staff, IHQ of MoD (Army) Adjutant General, IHQ of MoD( Army)
Chandra Nath
To
The Chief of Army Staff, IHQ of MoD (Army)
Adjutant General, IHQ of MoD( Army)
AWHO Appreciation Charges
Sir, This has reference to hidden charges made by AWHO on the basis of un-promulgated decisions of the Board of Management of AWHO kept secret from the Members of AWHO not to talk of the secrecy with which the charges are imposed on the unsuspecting Members of the Bangalore Yelahanka Part A project and perhaps many other projects of AWHO too.

AWHO has been extremely reluctant to reveal the break down of charges based on the actual cost (no wonder that they have justifiable grounds to cover up their criminality of Breach of Trust) because they themselves are fully aware that the members will revolt against secret charges that are illegal, illegitimate, against all norms of equity and criminal breach of trust of the Member of AWHO not to talk of the unfair trade practice.

Already National Consumer Disputes Redressal Commission (NC-DRRC) decision dated 26th September 2011 on REVISION PETITION NO. 2775 OF 2007[1] in which it was ordered that the charges are illegal if it was NOT notified to the consumer in advance and the service provider was directed to reverse the charges and pay compensation and cost to

the consumer. The above is least of the problems for AWHO and the decision makers because of the Criminal Breach of Trust attached to the decision because they failed in their fiduciary duty to the beneficiary as explained in the enclosed communication. As the reputation of a welfare society fully controlled by the Army Headquarters and the COAS (as decided by the CIC in their decision recently) it will be in the fitness of things that AWHO is ordered to: Immediately reverse the charges on this count and any other concealed charges of this nature. With a view to increase transparency of AWHO, publicize the detailed break down of costs charged to the Members of the Society lest the dirty linen be washed in public and spoil the good name of the Army or a court order is sought by the Members of Society against AWHO. Whether the serial 2 above is ordered or not, the Members will get this out from AWHO on the strength of RTI and hence it will be in fitness of things that the above is consented gracefully.

It is a sad fact of governance of AWHO that the Board of Management of AWHO is in complete conflict of interest with the Members of the Society and any decision taken with a Conflict of Interest is a failure in fiduciary duty of the AWHO BoM.

I again appeal to you both that the right decision in the fitness of things be taken on your own before AWHO is actually forced to make themselves completely transparent under a court order. Transparency is mandatory to avoid opportunity for corruption and in the words of a great jurist of USA:

US Supreme Court Justice Brandeis made his famous statement that “sunlight is said to be the best of disinfectants” in a 1913 Harper’s Weekly article, entitled “What Publicity Can Do.” But it was an image that had been in his mind for decades. He had been thinking, he wrote, “about the wickedness of people shielding wrongdoers & passing them off (or at least allowing them to pass themselves off) as honest men.” He then proposed a remedy:

If the broad light of day could be let in upon mens actions, it would purify them as the sun disinfects.

Chandra Nath

Publicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most efficient policeman. Other People’s Money and How Bankers Use It (1914).-Louis D Brandeis (November 13, 1856 October 5, 1941) was an important American litigator, Supreme Court Justice, advocate of privacy, and developer of the Brandeis Brief.

Forwarded message

From: CPC cpc-nath@gmail.com

Date: Fri, Aug 30, 2013 at 3:36 PM

Subject: Fwd: Appreciation Charges

To: md@awhosena.in
Cc: dymd@awhosena.in

Dear Mr Managing Director,

The matter needs the attention of the Chairman and Board of Management as this may be of extreme importance. Hence pass this IMMEDIATELY on to: The Chairman, AWHO Members of the Board of Management. A charge of money as percentage of the land appreciation is a “tax” on unrealized appreciation on the cost of the land. This can not be imposed by any one as it involves taxing unearned appreciation. The executive powers of the Government can not impose such a tax without a passing of a statute by the Parliament of India. Not even the Parliament of India can impose such a tax as it has never imposed a tax on unearned appreciation as the appreciation is earned only when the property is sold and capital appreciation kicks in as per the statutes.

When even the Parliament of India can not impose such a “tax” on the public, can it be imposed by a Board of Management with out the consent of the Members of the Society?

Even as early as 1689 the Bill of Rights (ratified on December 16, 1689) laid out certain basic rights for (at the time) for all Englishmen. The Act set out that there should be no taxation by Royal Prerogative. The agreement of the parliament became necessary for the implementation of any new taxes. If the King of England could not impose a tax with out Parliamentary approval as early as 1689 ( the Registration Of Societies Act was much later dated 1860 ) and Indian Parliament could not make a law taxing appreciation in land prices with out actual realization by sale and thus kicking in Capital Appreciation tax, how could a Board of Management of the AWHO Society (not with standing that it is not even elected by the AWHO members and that they have usurped the office as ex-official privilege of their respective offices as public servants) could impose such a tax, beats all the wildest imaginations of the Members of the Society!

In view of all the above, a secret charge based on secret non-promulgated order ( as a tax on the unearned appreciation on land held by the AWHO as trustee for its beneficiaries) is totally illegal, illegitimate apart from the fact that it violated the mandatory provisions imposed on the trustee termed as fiduciary toward its beneficiary viz.

1. Duty of care

2. Duty of undivided loyalty towards the Principal

3. Duty to have absolutely NO Conflict of Interest with the beneficiaries

In a fiduciary relationship, one person, in a position of vulnerability, justifiably vests confidence, good faith, reliance and trust in another whose aid, advice or protection is sought in some matter. In such a relation good conscience requires the fiduciary to act at all times for the sole benefit and interest of the one
who trusts. A fiduciary is someone who has undertaken to act for and on behalf of another in a particular matter in circumstances which give rise to a relationship of trust and confidence. Lord Millett, Bristol and West Building Society v Mothew [1998] Ch 1 is a leading English trust law and professional negligence case, concerning a fiduciary’s duty of care and skill, and the nature of fiduciary duties.

A fiduciary duty is the highest standard of care at either equity or law. A fiduciary (abbreviation fid) is expected to be extremely loyal to the person to whom he owes the duty (the “principal”): he must not put his personal interests before the duty, and must not profit from his position as a fiduciary, unless the principal consents.

When a fiduciary duty is imposed, equity requires a different, arguably stricter, standard of behavior than the comparable tortious duty of care at common law. It has been said that fiduciaries must conduct themselves “at a level higher than that trodden by the crowd” and that “[t]he distinguishing or overriding duty of a fiduciary is the obligation of undivided loyalty.”

A fiduciary will be liable to account if proven to have acquired a profit, benefit or gain either to himself or to the trustee from the relationship by one of three means:

- In circumstances of conflict of duty and interest
- In circumstances of conflict of duty to one person and duty to another person
- By taking advantage of the fiduciary position.

Therefore, it is said the fiduciary has a duty not to be in a situation where personal interests and fiduciary duty conflict, a duty not to be in a situation where his fiduciary duty conflicts with another fiduciary duty, and not to profit from his fiduciary position without express knowledge and consent of the beneficiary. A fiduciary cannot have a conflict of interest.

If the fiduciary makes a profit, by virtue of his role as fiduciary for the principal, then the fiduciary must report the profit to the principal.

A secret imposition of a “tax” on the trust money/property of the beneficiary imposed “secretly” and without the remotest knowledge of the beneficiary (not to talk of his express or not even tacit approval!) and with total stone walling of all information about such tax/charge by the trustee and his officers and staff and directing the proceeds of such a tax to the private funds of AWHO, does qualify as “Criminal Breach of Trust”!

Hence, this issue cries for resolution at the highest level in view of criminal proceedings attached to such Criminal Breach of Trust. If you ignore this, it further established the element of crime: Mens rea refers to the crime’s mental elements of the defendant’s intent. This is a

necessary element that is, the criminal act must be voluntary or purposeful. Mens rea is the mental intention (mental fault), or the defendant’s state of mind at the time of the offense, sometimes called the guilty mind. It stems from the ancient maxim of obscure origin, “actus reus non facit reum nisi mens sit reas” that is translated as “the act is not guilty unless the mind is guilty.” ... It has reduced the mental states to four. In general, guilt can be attributed to an individual who acts “purposely,” “knowingly,” “recklessly,” or “negligently.” Together or in combination, these four attributes seem basically effective in dealing with most of the common mens rea issues.

The fact that the charges have already been made established the actus reus. All crimes require actus reus. That is, a criminal act or an unlawful omission of an act, must have occurred. Failure to act on this petition establishes all the four elements (“purposely,” “knowingly,” “recklessly,” or “negligently.”) of Mens rea! Is this what the Board of Management want?

Chandra Nath
Chapter 20

An Inquiry into Plot Size & Pricing by AWHO

What we desire to accomplish is, the protection of rights: What we have to inquire is: The means by which protection may be afforded....That men are susceptible of happiness, only in proportion as rights are protected, is a proposition, which, taken generally, it is unnecessary to prove. The importance of the inquiry, therefore, is evident.

I INTRODUCTION

The plot size and pricing of the same by AWHO reveals some bizarre facts which require some inquiring into to discover the total lack of logic and reason by AWHO in its decision making. AWHO needs to provide the logic and reason they have used to support some of the decision they have taken over the period. Critical thinking appears to be the long awaited voice of sanity crying in a wilderness of irrationality of AWHO. What, other than the development of critical rationality, could be a more fitting goal for the management of a “welfare Society” like AWHO (as opposed to totally irrational decision making of AWHO based on hunches devoid of all reason more like apes or parrots) in a democratic society?

I survive by finding the sweet spot between reason and unreason, between the rational and irrational.

Whenever a man does a thoroughly stupid thing, it is al-

---

1 Jurisprudence, Supplement to Encyclopaedia Brittanica http://files.libertyfund.org/files/1760/0886_Bk.pdf
2 Dean Koontz, Forever Odd
3 Oscar Wilde, The Picture of Dorian Gray
II SIZE OF PLOT

I had opted for plot of size 400 square yards. It works out to 3600 Square feet. A plot size of 300 Square yards works out to 2700 square feet by simple arithmetic of multiplying by 9. But AWHO believes in rounding off 3600 to 3572 sq ft and 2700 to 2652 sq ft. We may dismiss this as irrationality of AWHO and laugh it off but then if AWHO defines that our share of the plot is 3572 and 2652 only where as we had paid for the size we had actually demanded, then there is a definite problem. And the reason they advance why 3572 instead of 3600 is that they want to accommodate more number of people in the colony! If you want to accommodate more people in the colony it is your problem to get more land and not take away from land for which I had paid full cost (including development cost) back in 2004.

Notwithstanding that they want to accommodate more people, actually most of the plot sizes turned out to be more than 3572 sq ft and some as big as 6000 sq ft! (So the reason that was given in justification was not only irrational but devious in nature and display lack of truth, loyalty and faith towards the beneficiaries.) There was one or two of size 3572 sq ft. Instead of compensating these people for size less than promised 400 sq ft they decided to make the nominal size 3572 sq ft. Is there any rationality for such a decision? Only AWHO can provide the reason.

III ILLEGALITY IN CHARGING FOR EXCESS SIZE PLOT

When the actual size is more than 3600 sq ft you are required to pay for the additional land in your plot. If the plot size is 4000 sq ft. it stands to reason that you have to pay for 400 sq ft. But NO, AWHO decides we have to pay for any thing more than 3572 sq ft. Thus we are charged in 2013 illegally for 3600-3572 = 28 sq ft. A 300 sq yrd allottee is asked to pay illegally for 48 sq ft. (i.e 2700-2652).

IV ADDITIONAL LAND FROM UDS

From where does this additional land come from? Not from the ancestral property of AWHO but from the UDS (UnDivided Share) of all allottees of the project for which the allottees have already paid when the cost of land and development was charged to the allottees in 2004 as per the rates existing in 2004.
V Cost of additional size of plot in 2013

How much should the allottees be charged in 2013 for additional land to be paid with 2013 Rupee? Rationality suggest that it should be the market rates existing in the area in 2013 because we are required to pay with 2013 Rupee. When people were given option to choose the additional size plot in 2013 many decided NOT to ask for additional land but request them what they already paid for (i.e 400 and 300 sq yrd) because they could not afford to pay the cost of additional land. AWHO in their own home grown rationality came up with a cost of the additional land which has no relationship to cost of land in 2004 when the land was bought and developed or the cost of land in the vicinity in 2013. How they arrived at this cost and what rational reason they used to arrive at this price has not been revealed so far as if this is some national secret. Additional land allotted to my DU (P2-78) is 421 sq ft, claims AWHO and the cost of which is Rs 2,65,230/- @630/- per sq ft.

A Sinister motivation to benefit friends of AWHO

There is some sinister motivation behind the AWHO desire to charge less than market rates in 2013. AWHO had allocated the largest size plot to Lt Gen Girish, a friend of the Chairman, AWHO outside of the lottery (because in lottery there is always an element of chance and AWHO wanted to benefit Lt Gen Girish with out taking any chance of lottery) and AWHO had motivation to charge him the least. So, AWHO for some bizarre reason charged some paltry amount for the additional land and this rate was far less than the market rates existing in 2013 though the cost is to be paid in 2013 Rupee. It may be relevant to point out that the current going rates in the vicinity is around Rs 3000 per square feet in 2013. See going rates for the adjacent Telecom Authority Lay out.

VI Analysis

The quantum of additional land is wrong by 28 sq ft (3600-3572=28 sq ft.) because I have already paid for 400sq yrd plot and development charges and 3572 sq ft has NO rational basis. Further, the rate for additional land is NOT equitable to other

---

*John Rawls is willing to tolerate inequalities in society but only if they are arranged so that any inequality actually assists the least advantaged members of society and that the inequalities are connected to positions, offices, or jobs that each member has an equal opportunity to attain. In the United States, this scheme is oftentimes called equal opportunity. The inequalities Rawls discussed include: inequalities in the distribution of income and wealth as well as inequalities imposed by institutions that use differences in authority and responsibility or chains of command. Rawls, J. (1971). A theory of justice. Cambridge, MA: Harvard University Press.*
members of the project because

1. the additional land came from the UDS (undivided share of Land) of all allottees.

2. the cost thus realized was to go to reduce the cost of the houses of all as it has already risen by 380% a rise nearly by 280% over and above the industry standard inflation for the period.

In law, the doctrine of unjust enrichment is where one person is unjustly or by chance enriched at the expense of another, and an obligation to make restitution arises, regardless of liability for wrongdoing. The law of restitution is the law of gains-based recovery. It is to be contrasted with the law of compensation, which is the law of loss-based recovery. Obligations to make restitution and obligations to pay compensation are each a type of legal response to events in the real world. When a court orders restitution it orders the defendant to give up his/her gains to the claimant. When a court orders compensation it orders the defendant to pay the claimant for his or her loss. The orthodox view suggests that there is only one principle on which the law of restitution is dependent, namely the principle of unjust enrichment. However, the view that restitution, like other legal responses, can be triggered by any one of a variety of causative events is increasingly prevalent. These are events in the real world which trigger a legal response. It is beyond doubt that unjust enrichment and wrongs can trigger an obligation to make restitution. Certain commentators propose that there is a third basis for restitution, namely the vindication of property rights with which the defendant has interfered. It is arguable that other types of causative event can also trigger an obligation to make restitution. Based on equity, the unjust enrichment caused by AWHO to some members could be ordered by a court to be credited to a constructive trust and traced and credited back to the party affected.

Whether or not a claimant can seek restitution for a wrong depends to a large extent on the particular wrong in question. For example, in English law, restitution for breach of fiduciary duty is widely available but restitution for breach of contract is fairly exceptional. The wrong could be of any one of the following types:

1. A statutory tort
2. A common law tort
3. An equitable wrong
4. A breach of contract
5. Criminal offences

Notice that (1)-(5) are all causative events. The law responds to each of them by imposing an obligation to pay compensatory damages. Restitution for wrongs is the subject which deals with the issue of when exactly the law also responds by imposing an obligation to make

VII Remedial Action by AWHO

VII REMEDIAL ACTION BY AWHO

AWHO is requested the following remedial action:

1. Provide rational reason for adopting irrational rounding off the size of the entitlement for land (400 and 300 sq yrd) as paid by the members as far back as 2004.

2. Provide rational reason for adopting irrationally of not charging those allocated additional land at rates applicable in 2013 as they are paying with 2013 Rupee as the sellers are ALL allottees and NOT AWHO. To be generous at the expense of some one else is an old economic principle which devious people use.

3. Failing to provide rational reason for the above two, make amends for both the above irrationality:
   (a) Recalculate the additional amounts to be charged on the basis of correct size and correct price at the time (2013).
   (b) Credit the project by additional amount so that the over all cost of the project comes down to all allottees and especially for those who did not opt for additional land because they could not afford the additional cost.

You be the judge.

---

[8] In so far as Rawls states the difference principle, it appears that inequalities are permissible but only if they better the lot of the least advantaged members of society. Rawls, J. (1971). A theory of justice. Cambridge, MA: Harvard University Press.
Chapter 21

Statement of Account:
Bangalore, Yelahanka Part 'A'

from: CPC cpcnath@gmail.com
to: awhosena@awhosena.in,
md@awhosena.in,
dymd@awhosena.in,
awhosena@gmail.com
date: Mon, May 13, 2013 at 12:03 PM
subject: Re: FW: Instructions for Handing/Taking over of DU and Statement of Account: Bangalore, Yelahanka Part 'A'
mailed-by: gmail.com

Sir,

I will appreciate you providing answer to the following questions:

1. What is the legal status of the relation between AWHO and me:
   (a) Master - Servant
   (b) Business entity- Customer
   (c) Developer- Client
   (d) Builder- Home Owner
   (e) Registered Society- Society Member
   (f) Any other

2. Does the Undertaking required to be signed create any new legal liability over and above the legal relationship associated with the relation at serial 1 above because of the undertaking alone and if so the authority for creation of the legal liability/right/usurpation of right.

3. Have all receipts/expected proceeds accounted into the project have been credited in favor of the project (and thus go to reduce the cost to the members)?
   (a) Amounts charged for the extra land allocated to the members in 2013
   (b) Proceeds from corner plots
(c) Proceeds from park facing plots

4. Have you charged any extra amount over and above already charged and collected from us in 2004-2005 for land and development cost? In other words, have we benefited by investment in land and development as far back as 2004-2005 or have you charged enhanced land price in the current bundled price of property?

5. Can you provide itemized costs (Land and development, construction and management costs) as breakdown of the sticker price you are charging. (Sticker price is alright if we are in the market for property and not in case where we have been investing for individual costs on a No profit No Loss basis for you.)

6. If the cost worked out is based on actual cost incurred (with NO Profit NO Loss to you), the logic and reason for charging a standard over the board 5% escalation cost along with the last payment.

7. How much additional land has been provided to me in the house allotted to me and the rate at which I have been charged for this?

8. Full and final statement of exact specifications of the property which can be used to verify whether what I have been charged for has been received by me while taking over the property.

I believe that I have a right to know the above information and if you believe that I do NOT have any such right, the logic and reason to support such belief and consequent denial of information.

Please provide the information asked for ASAP as I would like to take that into account before deciding as a rational being to provide all the documents asked for and the final payment before the due date.

Silence or failure to respond and provide information asked for will be taken as assumption on your part that I have NO right to information asked for but just obey the directions given by you with out assessing the financial and legal consequences for my decisions one way or another purely under coercion.

Chandra Nath
+91 11 414 01 679
C 679 Sarita Vihar, ND
Part III

Relevant Statutes
Chapter 22

The Societies Registration Act, 1860

The Societies Registration Act, 1860

[21st May, 1860]

An Act for the Registration of Literary, Scientific and Charitable Societies

Preamble -

Where it is expedient the provision should be made for improving the legal condition of societies established for the promotion of literature, science, or the fine arts, or for the diffusion of useful knowledge, [the diffusion of political education], or for charitable purposes; it is enacted as follows

1. Societies formed by memorandum of association and registration

Any seven or more persons associated for any literary, scientific, or charitable purpose, or for any such purpose as is described in section 20 of this Act, may, by subscribing their names to a memorandum of association, and filing the same with Registrar of Joint-stock Companies [***] from themselves into a society under this Act.

2. Memorandum of Association

The memorandum of association shall contain the following things, that is to say The name of the society; The object of the society; The names, addresses, and occupations of the governors, council, directors, committee, or other governing body to whom, by the rules of the society, the management of its affairs is entrusted. A copy of the rules and regulations of the society, certified to be a correct copy by not less than three of the members of the governing body, shall be filed with the memorandum of association.

3. Registration and fees

Upon such memorandum and certified copy being filed, the Registrar shall certify under his hand that the society is registered under this Act. There shall be paid to the Registrar for every such registration a fee of fifty rupees, or such smaller fees as

4[the State Government] may, from
time to time, direct; and all fees so paid shall be accounted for to [the state Government].

4. Annual list of managing body to be filed

Once in every year, on or before the fourteenth day succeeding the day on which, according to the rules of the society, the annual general meeting of the society is held, or, if the rules do not provide for an annual general meeting, in the month of January, a list shall be filed with the Registrar of Joint-stock Companies, of the names, addresses and occupations of the Governors, council, directors, committee, or other governing body then entrusted with the management of the affairs of the society.

1. The original title of this Act was a long one, the Indian Short Titles Act, 1897 (14 of 1897) has given this short title 2. Ins. by Act 22 of 1927 3. Words and figures under Act No.19 of 1857 omitted by Act 16 of 1874. 4. Subs by the A.O., 1950 for Provincial Government

5. Property of society how vested

The property, movable and immovable, belonging to a society registered under this Act, if not vested in trustees, shall be deemed to be vested, for the time being, in the governing body of such society, and in all proceedings civil and criminal, may be described as the property of the governing body of such society for their proper title.

6. Suits by and against societies

Every society registered under this Act may sue or be sued in the name of President, Chairman, or Principal Secretary, or trustees, as shall be determined by the rules and regulations of society and, in default of such determination, in the name of such person as shall be appointed by the governing body for the occasion. Provided that it shall be competent for any person having a claim, or demand against the society, to sue the President or Chairman, or Principal Secretary or the trustees thereof, if on application to the governing body some other officer or person be not nominated to be the defendant.

7. Suits not to abate

No suit or proceeding in any Civil Court shall abate or discontinue by reason of the person, by or against whom such suit or proceedings shall have been brought or continued, dying or ceasing to fill the character in the name whereof he shall have sued or been sued, but the same suit proceeding shall be continued in the name of or against the successor of such person.

8. Enforcement of judgment against society

If a judgment shall be recovered against the person or officer named on behalf of the society, such judgment shall not be put in force against the properly, movable or immovable, or against the body of such person or officer, but against the property of the society.

The application for execution shall set forth the judgment, the fact of the party against whom it shall have been recovered having sued or
having been sued, as the case may be, on behalf of the society only, and shall require to have the judgment enforced against the property of the society.

9. Recovery of penalty accruing under bye-law

Whenever by any bye-law duly made in accordance with the rules and regulations of the society, or, if the rules do not provide for the making of bye-laws, by any bye-law made at a general meeting of the members of the society convened for the purpose (for the making of which the concurrent votes of three-fifths of the members present at such meeting shall be necessary), any pecuniary penalty is imposed for the breach of any rule or bye-law of the society, such penalty, when accrued, may be recovered in any court having jurisdiction where the defendant shall reside, or the society shall be situate, as the governing body thereof shall deem expedient.

10. Members liable to be sued as strangers

Any member who may be in arrear of a subscription which according to the rules of the society he is bound to pay, or who shall possess himself of or detain any property of the society in a manner or for a time contrary to such rules, or shall injure or destroy and property of the society, may be sued for such arrear or for the damage accruing from such detention, injury, or destruction of the property in the manner hereinbefore provided.

Recovery by successful defendant of costs adjudged

But if the defendant shall be successful in any suit or other proceedings brought against him at the instance of the society, and shall be adjudged to recover his costs, he may elect to proceed to recover the same from the officer in whose name the suit shall be brought, or from the society, and in the latter case shall have process against the property of the said society in the manner above described.

11. Members guilty of offences punishable as strangers

Any member of the society who shall steal, purloin, or embezzle any money or other property, or willfully and maliciously destroy or injure any property of such society, or shall forge any deed, bond, security for money, receipt, or other instrument, whereby the funds of the society may be exposed to loss, shall be subject to the same prosecution, and, if convicted shall be liable to be punished in like manner, as any person not a member would be subject and liable to in respect of the like offence.

12. Societies enabled to alter, extend or abridge their purposes

Whenever it shall appear to the governing body of any society registered under this Act, which has been established for any particular purposes or purposes, that it is advisable to alter, extend, or abridge such purpose to or for other purposes within the meaning of this Act, or to amalgamate such society either wholly or partially with any other society, such governing body may submit the
proposition to the members of the society in a written or printed report, and may convene a special meeting for the consideration thereof according to the regulations of the society but no such proposition shall be carried into effect unless such report shall have been delivered or sent by post to every member of the society ten days previous to the special meeting convened by the governing body for the consideration thereof. Assent required Provided that no society shall be dissolved unless three-fifths of the members shall have expressed a wish for dissolution by their votes delivered in person, or by proxy, at a general meeting convened for the purpose.

Government consent Provided that [whenever any Government] is a member of, or a contributor to, or otherwise interested in any society registered under this Act, such society shall not be dissolved [without the consent of the Government of the [State] of registration].

14. Upon a dissolution no member to receive profit

If upon the dissolution of any society registered under this Act there shall remain, after the satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to or distributed among the members of the said society or any of them, but shall be given to some other society, to be determined by the votes of not less than three-fifths of the members present personally or by proxy at the time of the dissolution, or in default thereof, by such court as aforesaid. Clause not to apply to Joint-stock Companies Provided, however, that this clause shall not apply to any society which has been founded or established by the contributions of share-holders in the nature of Joint-stock Company.

15. Member defined

For the purposes of this Act a member of a society shall be a person who, having been admitted therein
according to the rules and regulations, thereof, shall have paid a subscription, or shall have signed the roll or list of members thereof, and shall not have resigned in accordance with such rules and regulations. Disqualified members But in all proceedings under this Act no person shall be entitled to vote or be counted as a member whose subscription at the time shall have been arrears for a period exceeding three months.

16. Governing body defined

The governing body of the society shall be the governors, council, directors, committee, trustees or other body to whom by the rules and regulations of the society the management of its affairs is entrusted.

17. Registration of societies formed before Act

Any company or society established for a literary, scientific or charitable purpose, and registered under Act, 43 of 1850, or any such society established and constituted previously to the passing of this Act but not registered under the said Act 43 of 1850*, may at any time hereafter be registered as a society under this Act. Assent required

Subject to the proviso that no such company or society shall be registered under this Act unless an assent to its being so registered has been given by three-fifths of the members present personally, or by proxy, at some general meeting convened for that purpose by the governing body.

In case of a company or society registered under this Act 43 of 1850*, the directors shall be deemed to be such governing body.

In the case of a society not so registered, if no such body shall have been constituted on the establishment of the society, it shall be competent for the members thereof, upon due notice, to create for itself a governing body to act for the society thenceforth.

1. Subs. by A.O., 1937, for whenever the Government. 2. Subs. by A.O. 1937, for without the consent of the Government of state of Registration. 3. Subs. by A.O., 1950, for Province. *Act 43 of 1850 i.e., the Joint Stock Companies Act, 1850 stands repealed by section 219 of the Indian Companies Act, 1866 (10 of 1866), the Indian Companies Act, 1866 also stands repealed by Companies Act, 1956 (1 of 1956).

18. Such societies to file memorandum etc. with Registrar of Joint-stock Companies

In order to any such society as is mentioned in the last proceeding section obtaining registry under this Act, it shall be sufficient that the governing body file with the Registrar of Joint-stock Companies [***] a memorandum showing the name of the society, the objects of the society, and the names, addresses and occupations of the governing body, together with a copy of the rules and regulations of the society certified as provided in section 2, and a copy of the report of the proceedings of the general meeting at which the registration was resolved on.

19. Inspection of documents
Any person may inspect all documents filed with the Registrar under this Act on payment of a fee of one rupee for each inspection; and any person may require a copy or extract of any document or any part of any document, to be certified by the registrar, on payment of two annas for every hundred words of such copy or extract; and such certified copy shall be prima facie evidence of the matters therein contained in all legal proceedings whatever.

20. To what societies Act applies
The following societies may be registered under this Act
Charitable societies, the military orphan funds or societies established at the several presidencies of India, societies established for the promotion of science, literature, or the fine arts for instruction, the diffusion of useful knowledge, [the diffusion of political education], the foundation or maintenance of libraries or reading-rooms for general use among the members or open to the public or public museums and galleries of paintings and other works of art, collections of natural history, mechanical and philosophical inventions, instruments, or designs.

Chapter 23

THE KARNATAKA
OWNERSHIP FLATS
(REGULATION OF THE
PROMOTION OF
CONSTRUCTION, SALE,
MANAGEMENT AND
TRANSFER) ACT, 1972

STATEMENT OF
OBJECTS AND
REASONS

Act 16 of 1973.- Separate law is being made to declare that flats or apartments in multistoreyed buildings may, for all purposes, be heritable and transferable immovable property. Owners of such flats or apartments enjoy exclusive ownership of their flats or apartments while retaining an undivided interest in the common areas and facilities which are to be used and owned by all such owners jointly. An enterprising individual or group of individuals may either construct out of his or their own funds multistoreyed buildings consisting of a number of self contained flats or apartments and sell them to individuals on ownership basis, or construct such buildings after collecting contributions from intending purchasers of such flats or apartments. In the interest of the intending purchasers who advance funds it is necessary to regulate the construction, sale, management and transfer of flats or apartments by individuals or group of individuals who construct such multistoreyed buildings. Hence the Bill. (Published in the
THE KARNATAKA OWNERSHIP FLATS (REGULATION OF
THE PROMOTION OF CONSTRUCTION, SALE,
MANAGEMENT AND TRANSFER) ACT, 1972

Karnataka Gazette (Extraordinary) Part IV-2A dated 2-12-1972 as No. 580.)

II [KARNATAKA]1 ACT NO. 16 OF 1973

1 (First published in the Karnataka Gazette Extraordinary on the Twenty-third day of July, 1973)

III THE 1[KARNATAKA]1 OWNERSHIP FLATS


(Received the assent of the President on the Twenty-ninth day of June, 1973) An Act to regulate in the [State of Karnataka] the promotion of the construction of, the sale and management and the transfer of flats on ownership basis. WHEREAS it is expedient to make provision for the regulation of the promotion of the construction, sale and management and transfer of flats taken on ownership basis in the [State of Karnataka]; BE it enacted by the Karnataka State Legislature in the Twenty-third Year of the Republic of India as follows:-

1. Adapted by the Karnataka Adaptations of Laws Order, 1973 w.e.f. 01.11.1973

1. Short title, extent and commencement.- (1) This Act may be called the [Karnataka] Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1972.

1. Adapted by the Karnataka Adaptations of Laws Order, 1973 w.e.f. 01.11.1973

(2) It extends to the whole of the State of Karnataka.

(3) It shall come into force on such [date] as the State Government may, by notification in the official Gazette, appoint. 1. Act came into force on 01.04.1975 by notification. Text of the notification is at the end of the Act

2. Definitions.- In this Act, unless the context otherwise requires,- (a) flat means a separate and self-contained set of premises used or intended to be used for residence or office or show-room or shop or godown (and includes a garage), the premises forming part of a building; Explanation.- Notwithstanding that provision is made for sanitary, washing, bathing or other conveniences as common to two or more sets of premises, the premises shall be deemed to be separate and self-contained; (b) prescribed means prescribed by rules made under this Act; (c) promote means a person who constructs or causes to be constructed a block or building of flats or apartments for the purpose of selling some or all of them to other persons or to a company, co-operative society or other association of persons and includes his assignees; and where the person who builds and the per-
son who sells are different persons, the term includes both; (d) Registrar means the Registrar as defined in the Karnataka Co-operative Societies Act, 1959 or, as the case may be, in the Companies Act, 1956; (e) to construct a block or building of flats includes to convert a building or part thereof into flats.

3.

IV General liabilities of promoter.-

(1) Notwithstanding anything contained in any other law, a promoter who intends to construct or constructs a block or building of flats, all or some of which are to be taken or are taken on ownership basis, shall in all transactions with persons intending to take or taking one or more of such flats, be liable to give or produce or cause to be given or produced the information and the documents hereinafter in this section mentioned.

(2) A promoter, who constructs or intends to construct such block or building of flats, shall,-

(a) make full and true disclosure of the nature of his title to the land on which the flats are constructed, or are to be constructed; such title to the land as aforesaid having been duly certified by an Advocate of not less than seven years standing; (b) make full and true disclosure of all encumbrances on such land, including any right, title, interest or claim of any party in or over such land; (c) allow inspection on reasonable notice of the plans and specifications of the building built or to be built on the land; such plans and specifications having been approved by the local authority which he is required so to do under any law for the time being in force; (d) disclose the nature of fixtures, fittings and amenities (including the provision for one or more lifts) provided or to be provided; (e) disclose on reasonable notice or demand if the promoter is himself the builder, the prescribed particulars as respects the design and the materials to be used in the construction of the building and if the promoter is not himself the builder disclose, on such notice or demand, all agreements (and where there is no written agreement, the details of all agreements) entered into by him with the architects and contractors regarding the design, materials and construction of the building; (f) specify in writing the date by which possession of the flat is to be handed over; (g) prepare and maintain a list of flats with their numbers already taken or agreed to be taken and the names and addresses of the parties and the price charged or agreed to be charged therefor, and the terms and conditions if any on which the flats are taken or agreed to be taken; (h) state in writing, the precise nature of the organisation of persons to be constituted and to which title is to be passed, and the terms and conditions governing such organisation of persons who have taken or are to take the flats; (i) not allow persons to enter into possession until a completion certificate where such certificate is required to be given under any law, is duly given to the lo-
cal authority; (j) make a full and true disclosure of all outgoings (including ground rent if any, municipal or other local taxes, taxes on income, water charges and electricity charges, revenue assessment, interest on any mortgage or other encumbrances, if any); (k) make a full and true disclosure of such other information and documents in such manner as may be prescribed and give or demand true copies of such of the documents referred to in any of the clauses of this sub-section as may be prescribed at a reasonable charge therefor.

4. **Promoter before accepting advance payment or deposit to enter into agreement and agreement to be registered.** - Notwithstanding anything contained in any other law a promoter who intends to construct or constructs a block or building of flats, all or some of which are to be taken or are taken on ownership basis, shall, before he accepts any sum of money as advance payment or deposit, which shall not be more than twenty per cent of the sale price, enter into a written agreement for sale with each of such persons who are to take or have taken such flats, and the agreement shall be registered under the Registration Act, 1908 and such agreement shall contain the prescribed particulars; and to such agreement there shall be attached such documents or copies thereof, in respect of such matters, as may be prescribed.

5. **Promoter to maintain separate account of sums taken** as advance or deposit and to be trustee therefor and disburse them for purposes for which given. - The promoter shall maintain a separate account in any bank of sums taken by him, from persons intending to take or who have taken flats, as advance or deposit, including any sums so taken towards the share capital for the formation of a co-operative society or a company, or towards the outgoings (including ground rent, if any, municipal or other local taxes, taxes on income, water charges, electricity charges, revenue assessment, interest on any mortgage or other encumbrances, if any); and he shall hold the said moneys for the purposes for which they were given and shall disburse the moneys for those purposes, and shall on demand in writing by an officer appointed by a general or special order by the State Government for the purpose, make full and true disclosure of all transactions in respect of that account.

6. **Responsibility for payment of outgoings till property is transferred.** - A promoter shall, while he is in possession and where he collects from persons who have taken over flats or are to take over flats sums for the payment of outgoings even thereafter, pay all outgoings (including ground rent, municipal or other local taxes, taxes on income, water charges, electricity charges, revenue assessment, interest on any mortgage or other encum-
IV General liabilities of promoter.

7. After plans and specifications are disclosed no alterations or additions without consent of persons who have agreed to take the flats; and defects noticed within a year to be rectified. (1) After the plans and specifications of the building, as approved by the local authority as aforesaid, are disclosed or furnished to the person who agrees to take one or more flats, the promoter shall not make, (i) any alterations in the structures described therein in respect of the flat or flats which are agreed to be taken, without the previous consent of that person; or (ii) any other alterations in the structure of the building, or construct any additional structures, without the previous consent of all the persons who have agreed to take the flats. (2) Subject to the provisions of sub-section (1), the building shall be constructed and completed in accordance with the plans and specifications aforesaid. (3) If any defect in the building or material used, or if any unauthorised change in the construction is brought to the notice of the promoter within a period of one year from the date of handing over possession, it shall wherever possible, be rectified by the promoter without further charge to the persons who have agreed to take the flats, and in other cases such persons shall be entitled to receive reasonable compensation for such defect or change. (4) Where there is a dispute as regards any defect in the building or material used, or any unauthorised change in the construction or as to whether it is reasonably possible for the promoter to rectify any such defect or change or as regards the amount of reasonable compensation payable in respect of any such defect or change which cannot be, or is not, rectified by the promoter the matter shall, on payment of such fee as may be prescribed, be referred for decision to such officer not lower in rank than a Superintending Engineer as the State Government may by general or special order specify in this behalf, within a period of two years from the date of handing over possession. Such officer shall after such enquiry as he deems necessary, record his decision, which shall be final.

8. Refund of amount paid with interest for failure to give possession within specified time or further time allowed. (a) the promoter fails to give possession in accordance with the terms of his agreement of a flat duly completed by the date specified, or any further date or dates agreed to by the parties; or (b) the promoter for reasons beyond his control and of his agents, is unable to give possession of the flat by the date specified, or the further agreed date and a period of three months thereafter, or a further period of three months if those reasons still exist, then, in any such case, the promoter shall be liable on demand (but with-
out prejudice to any other remedies to which he may be liable) to refund the amounts already received by him in respect of the flat (with simple interest at nine per cent per annum from the date he received the sums till the date the amounts and interest thereon is refunded), and the amounts and the interest shall be a charge on the land and the construction, if any, thereon in which the flat is or was to be constructed to the extent of the amount due, but subject to any prior encumbrances.

9.

**No mortgage etc., to be created without consent of parties after execution of agreement for sale.** - No promoter shall, after he executes an agreement to sell any flat, mortgage or create a charge on the flat or the land, without the previous consent in writing of the persons who take or agree to take the flats, and if any such mortgage or charge is made or created without such previous consent after the agreement referred to in section 4 is registered, it shall not affect the right and interest of such persons.

10.

**Promoter to take steps for formation of co-operative society or company.** - (1) As soon as a minimum number of persons required to form a co-operative society or a company have taken flats, the promoter shall within the prescribed period submit an application to the Registrar for registration of the organisation of persons who take the flats as a co-operative society, or as the case may be, as a company; and the promoter shall join, in respect of the flats which have not been taken, in such application for membership of a co-operative society or as the case may be, of a company. (2) Nothing in sub-section (1) shall affect the right of the promoter to dispose of the remaining flats in accordance with the provisions of this Act.

11.

**Promoter to convey title, etc., and execute documents, according to agreement.** - A promoter shall take all necessary steps to complete his title and convey to the organisation of persons, who take flats, which is registered either as a co-operative society or as a company as aforesaid, or to an association of flat-takers his right, title and interest in the land and building and execute all relevant documents therefor in accordance with the agreement executed under section 4 and if no period for the execution of the conveyance is agreed upon, he shall execute the conveyance within the prescribed period and also deliver all documents of title relating to the property which may be in his possession or power.

12.

**General liabilities of a person who takes a flat.** - (1) Every person who has executed an agreement to take a flat shall pay at the proper time and place, the price, the municipal taxes, water and electricity
IV General liabilities of promoter.- 159

charges, ground rent (if any), and other public charges payable in respect of the flat taken by him and where a co-operative society or a company of persons taking the flats is to be constituted co-operate in the formation of such society or company as the case may be. (2) Any person who has executed an agreement to take a flat and who, without reasonable excuse fails to comply with or contravenes sub-section (1) shall, on conviction, be punished with fine which may extend to one thousand rupees.

13. Manager not to cut off , withhold, curtail or reduce essential supply or service.- (1) No person, who is a promoter, or who is in charge of management or connected with the management of a block or building of flats whether as member of a managing committee, Director, Secretary or otherwise, or is responsible for the maintenance thereof (hereinafter in this section referred to as the manager), shall, without just and sufficient cause, either by himself or through any person, cut off, withhold or in any manner curtail or reduce, any essential supply or service enjoyed by the person who has taken a flat (or by any person in occupation thereof through or under him) in respect of the flat taken, or agreed to be taken by him. (2) The person who has taken or agreed to take the flat or the occupier may, if the manager has contravened the provisions of sub-section (1), make an application to the Court for a direction to restore such supply or service. (3) If the Court on enquiry finds that the applicant or the person through or under whom he is in occupation has been in enjoyment of the essential supply or service and that it was cut off or withheld or curtailed or reduced by the manager without just and sufficient cause, the Court shall make an order directing the manager to restore such supply or service before a date to be specified in the order. (4) The Manager who fails to restore the supply or service before the date so specified, shall for each day during which the default continues thereafter be liable upon a further direction by the Court to that effect, to fine which may extend to one hundred rupees. (5) Notwithstanding anything contained in any law for the time being in force,- (a) in any area for which a Court of Small Causes is established under the Karnataka Small Causes Courts Act 1964, that Court; and (b) elsewhere, the Court of the Civil Judge, shall have jurisdiction to decide any application made under sub-section (2) of and no other court shall have jurisdiction to entertain such application. No appeal shall lie from any order made on such application. (6) The District Court, may, for the purpose of satisfying itself that the order made on an application made under sub-section (2) was according to law, call for the case in which such order was made and pass such order with respect thereto as it thinks fit. (7) Any manager who contravenes the provisions of sub-section (1) shall, on conviction, be punished with imprisonment for a term which may ex-
tend to three months or with fine or with both. (8) An offence under sub-section (7) shall be a cognizable offence. Explanation I.- In this section, essential supply or service includes the supply of water, electricity lights in passages and on stair cases, lifts and conservancy or sanitary service. Explanation II.-For the purposes of this section, withholding any essential supply or service shall include acts or omissions attributable to the manager on account of which the essential supply or service is cut off by the local authority or any other competent authority.


- Any promoter who, without reasonable excuse, fails to comply with or contravenes any provisions of this Act or of any rule made thereunder shall (where no other penalty is expressly provided for) on conviction, be punished with imprisonment for a term which may extend to one year or with fine which may extend to two thousand rupees, or with both; and a promoter who commits criminal breach of trust of any amount advanced or deposited with him for the purposes mentioned in section 5 shall, on conviction be punished with imprisonment for a term which may extend to four years, or with fine, or with both.

15. VI Offences by Companies.-

(1) If the person committing an offence under this Act is a company, every person who at the time the offence was committed was in charge of, and was responsible to the company for the conduct of business by the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that, nothing contained in this sub-section shall render any such person liable to such punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1) where an offence under this Act, has been committed with the consent or connivance of, or is attributable to any negligence 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 that offence and shall be liable to be proceeded against and punished accordingly. Explanation.- For the purpose of this section,- (a) company means a body corporate and includes a firm or other association of individuals; and (b) director in relation to a firm means a partner in the firm.

16.
VII Power to make rules.-

(1) The State Government may, subject to the condition of previous publication, by notification in the official Gazette, make rules to carry out the purposes of this Act. (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 particulars as respects the design and the materials to be used in the construction of the building and the other information and documents to be disclosed, the manner in which disclosure to be made and the documents of which true copies shall be given by the promoter; (b) the particulars to be contained in the agreement for sale and the documents or copies thereof to be attached to such agreement; (c) the period within which the promoter shall submit an application for registration of a cooperative society or a company; (d) the period within which the promoter shall execute the conveyance; (e) any other matter which has to be, or may be, prescribed under this Act. (3) Every rule made under this Act shall be laid as soon as may be after it is made before each House of the State Legislature while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall from the date on which the modification or annulment is notified by the State Government in the official Gazette 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.

17. Act to be in addition to Transfer of Property Act and to over-ride contract to the contrary. -The provisions of this Act, except where otherwise provided, shall be in addition to the provisions of the Transfer of Property Act, 1882, and shall take effect notwithstanding anything to the contrary contained in any contract.

18. Act not to apply to the State Government, Housing Board, etc.-Nothing contained in this act shall apply to the State Government or to the Karnataka Housing Board constituted under the Karnataka Housing Board Act, 1962 (Karnataka Act 10 of 1963) or to the Board of Trustees for the Improvement of the City of Mysore constituted under the City of Mysore Improvement Act, 1903 (Mysore Act 3 of 1903) or to the Board of Trustees for the Improvement of the City of Bangalore constituted under the City of Bangalore Improvement Act, 1945 (Mysore Act 5 of 1945).
VIII NOTIFICATION

Bangalore, dated 6th March 1975
[No. FD 27 KHB 75] S.O. 753.- In exercise of the powers conferred under sub-section (3) of section 1 of the Karnataka Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1972 (Karnataka Act No. 16 of 1973), the Government of Karnataka hereby appoints the first day of April 1975 as the date on which the said Act shall come into force. By Order and in the name of the Governor of Karnataka, K.S.RASHEED, Under Secretary to Government, Finance Department (Housing). (Published in the Karnataka Gazette (Extraordinary) Part IV-2c (ii) dated 10-3-1975 as No. 806.) ****
Chapter 24

THE KARNATAKA APARTMENT OWNERSHIP ACT, 1972.

I STATEMENT OF OBJECTS AND REASONS

Act 17 of 1973.- Consequent upon the shortage of lands in urban areas, the majority of the citizens of urban areas of the State cannot think in terms of owning houses on individual basis. Though there is a tendency to construct multi-storeyed flats, apartments and the like on ownership basis, intending persons cannot purchase flats, tenements, or apartments in multi-storied building as they will not have a marketable title thereto and cannot obtain any loan by mortgaging such flats, tenements, etc. Consequently tenements constructed by the Housing Board for example cannot be sold to the tenants who cannot raise any loan on the security of such tenements with the result that an enormous amount of capital will be locked up, which can be utilised for new constructions to meet the increasing demands for housing. It is, therefore, considered expedient that each apartment should for all purposes constitute a heritable and transferable immovable property, and that suitable legislation should provide for all matters connected therewith. It is felt that such a measure will not only enable many a person to own his apartment but it will at the same time enable institutions like Housing Boards to utilise their locked up capital in the construction of new buildings. The following notes on causes explain the important provisions in the Bill.

Clause 2- By this clause, the provisions of the Act are made applicable only to property, the sole owner or all of the owners of which submit the same to the provisions of the Act by duly executing a Declaration as provided in the Act.

Clause 4- Under this clause, each
apartment together with its undivided interest in the common areas and facilities appurtenant to such apartment is constituted for all purposes a heritable and transferable immovable property.

Clause 5- By this clause, the owner of each apartment is given exclusive ownership and possession of his apartment and he is required to execute a Declaration that he submits his apartment to the provisions of the Act and a Deed of Apartment in relation to his apartment;

Clause 6- This clause specifies the common areas and facilities to which each apartment owner shall be entitled, and prohibits an apartment owner from bringing any action for partition or division of any part of such common areas, unless the property has been removed from the provisions of the Act. The clause further provides for carrying out the work of maintenance, repair and replacement of the common areas and facilities as provided in the bye-laws.

Clause 7- This clause puts an obligation on each apartment owner to comply strictly with the bye-laws and with the administrative rules and regulations adopted pursuant thereto and with the covenants, conditions and restrictions set forth in the Declaration or in the Deed to his apartment:

Clause 8- This clause prohibits the apartment owner from doing any work which would jeopardize the soundness or safety or the property or reduce the values thereof, or from adding any material structure or ex-
cavating any additional basement or cellar without the unanimous consent of all the other apartment owners being first obtained.

Clause 9- This clause indicates to what extent encumbrances against apartments property can arise or be created. and

Clause 10- This clause provides for the sharing of the common expenses by the apartment owners.

Clause 11- This clause mentions the particulars to be included in a Declaration.

Clause 12- This clause mentions the particulars to be included in a Deed of Apartment.

Clause 13- This clause provides for the registration of Declarations, Deeds of Apartments and copies of floor plans.

Clause 14- This clause provides for the removal of property from the provisions of the Act.

Clause 15- This clause provides that removal is no bar to subsequent resubmission of property to Act.

Clause 16- This clause provides for bye-laws and their contents.

Clause 17- This clause prohibits waiver of the use of enjoyment of any common areas and facilities by apartment owners to avoid liability to contribute towards the common expenses.

Clause 18- This clause provides for separate assessment of each apartment.

Clause 19- This clause constitutes all sums assessed by the Association of Apartment Owners in respect of
any apartment but unpaid, a charge on such apartment.

Clause 20- This clause provides for insuring the property against loss or damage by fire and such other hazards in certain circumstances.

Clause 22- This clause provides for disposition of property in certain circumstances.

Clause 24- Under this clause, the Act is made binding on apartment owners, tenants of such owners, employees of owners and tenants or any other person who may in any manner use property or any part thereof submitted to the provisions of the Act.

Clause 25- This clause confers rule making power on the State Government.

Clause 26- This clause provides that the Transfer of Property Act shall apply to every apartment as they apply to any immovable property and contracts to the contrary are over-ridden. (Published in the Karnataka Gazette Part IV - 2A (Extraordinary) No. 579 dated 2-12-1972

1 [KARNATAKA]1 ACT NO. 17 OF 1973 (First published in the 1[Karnataka Gazette]1, Extraordinary on the Twenty-third day of July, 1973). THE 1[KARNATAKA]1 APARTMENT OWNERSHIP ACT, 1972. (Received the assent of the President on the Fourteenth day of July, 1973) An Act to provide for the ownership of an individual apartment in a building and to make such apartment heritable and transferable property and for matters connected therewith. WHEREAS it is expedient to provide for the ownership of an individual apartment in a building and to make such apartment heritable and transferable property and to provide for matters connected therewith; BE it enacted by the 1[Karnataka]1 State Legislature in the Twenty-third Year of the Republic of India as follows:- 1. Adapted by the Karnataka Adaptations of Laws Order, 1973 w.e.f. 01.11.1973.

1. Short title, extent and commencement. - (1) This Act may be called the [Karnataka]1 Apartment Ownership Act, 1972. (2) It extends to the whole of the 1[State of Karnataka]1. (3) It shall come into force on such 2[date]2 as the State Government may, by notification in the official gazette appoint.

Adapted by the Karnataka Adaptations of Laws Order, 1973 w.e.f. 01.11.1973. Act came into force w.e.f. 1.4.1975 by notification No. FD 28 KHB 75, dated 6.3.1975.

2. Application of the Act. - This Act applies only to property the sole owner or all of the owners of which submit the same to the provisions of this Act by duly executing and registering a Declaration as hereinafter provided: Provided that, no property shall be submitted to the provisions of this Act, unless it is mainly used, or proposed to be used for residential purposes.

3.
Definitions. - In this Act, unless the context otherwise requires, (a) apartment means a part of the property intended for any type of independent use, including one or more rooms or enclosed spaces located on one or more floors (or part or parts thereof) in a building, intended to be used for residential purposes and with a direct exit to a public street, road or highway or to a common area leading to such street, road, or highway; (b) apartment owner means the person or persons owning an apartment and an undivided interest in the common areas and facilities in the percentage specified and established in the Declaration; (c) apartment number means the number, letter, or combination thereof designating the apartment in the Declaration; (d) “association of apartment owners” means all of the apartment owners acting as a group in accordance with the bye-laws and Declaration; (e) building means a building containing four or more apartments, or two or more buildings, each containing two or more apartments, with a total of four or more apartments for all such buildings, and comprising a part of the property; (f) common areas and facilities unless otherwise provided in the Declaration or lawful amendments thereto, means, (1) the land on which the building is located; (2) the foundations, columns, girders, beams, supports, main walls, roofs, halls, corridors, lobbies, stairs, stairways, fire-escapes, entrances and exits of the building; (3) the basements, cellars, yards, gardens, parking areas and storage spaces; (4) the premises for the lodging of janitors or persons employed for the management of the property; (5) installations of central services, such as power, light, gas, hot and cold water, heating, refrigeration, air-conditioning and incinerating; (6) the elevators, tanks, pumps, motors, fans, compressors, ducts and in general all apparatus and installations existing for common use; (7) such community and commercial facilities as may be provided for in the Declaration; and (8) all other parts of the property necessary or convenient to its existence, maintenance and safety, or normally in common use; (g) common expenses means, (1) all sums lawfully assessed against the apartment owners by the Association of Apartment Owners, (2) expenses of administration, maintenance, repair or replacement of the common areas and facilities; (3) expenses agreed upon as common expenses by the bye-laws; (4) expenses declared as common expenses by the provisions of this Act or by the Declaration or the bye-laws: (h) common profits means the balance of all income, rents, profits and revenues from the common areas and facilities remaining after the deduction of the common expenses; (i) competent authority means in relation to building constructed or to be constructed by the Housing Board, the Secretary of the Housing Board and in any other case, the Registrar of Co-operative Societies as defined in the Karnataka Co-operative Societies Act, 1959; (j) Declaration means the instrument by which the property is submitted to the provisions of this Act, as here-
in the Declaration as form time to time may be lawfully amended; (k) Housing Board means the Housing Board constituted under the Karnataka Housing Board Act, 1962 (Karnataka Act 10 of 1963); (l) joint family means an undivided Hindu family and in the case of other persons, a group or unit, the members of which are by custom joint in possession or residence; (m) limited common areas and facilities means those common areas and facilities designated in the Declaration as reserved for use of certain apartment or apartments to the exclusion of the other apartments;

(n) majority or majority of apartment owners means the apartment owners with fifty-one per cent or more of the votes in accordance with the percentages assigned in the Declaration to the apartments for voting purposes; (o) person includes a joint family; (p) “prescribed” means prescribed by rules made under this Act; (q) property means the land, the building, all improvements and structures thereon, all owned in freehold or held on lease or as occupant under any law relating to land revenue and all easements, rights and appurtenances belonging thereto, and all articles of personal property intended for use in connection therewith, which have been, or are intended to be submitted to the provisions of this Act.

4.

Status of apartments. - Each apartment, together with its undivided interest in the common areas and facilities appurtenant to such apartment, shall for all purposes constitute heritable and transferable immovable property within the meaning of any law for the time being in force in the State: and accordingly, an apartment owner may transfer his apartment and the percentage of undivided interest in the common areas and facilities appurtenant to such apartment by way of sale, mortgage, lease, gift, exchange or in any other manner whatsoever in the same manner to the same extent and subject to the same rights, privileges, obligations, liabilities, legal proceedings and remedies as any other immovable property, or make a bequest of the same under the laws applicable to the transfer and succession of immovable property. 5.

Ownership of apartments. - (1) Each apartment owner shall be entitled to the exclusive ownership and possession of his apartment. (2) Each apartment owner shall execute a Declaration that he submits his apartment to the provisions of this Act and a Deed of Apartment in relation to his apartment in the manner prescribed for the purpose.

6.

Common areas and facilities. - (1) Each apartment owner shall be entitled to an undivided interest in the common areas and facilities in the percentage expressed in the Declaration. Such percentage shall be computed by taking as a basis the value of the apartment in relation to the value of the property and such
percentage shall reflect limited common areas and facilities. (2) The percentage of the undivided interest of each apartment owner in the common areas and facilities as expressed in the Declaration shall have permanent character, and shall not be altered without the consent of all of the apartment owners expressed in an amended Declaration duly executed and registered as provided in this Act. The percentage of the undivided interest in the common areas and facilities shall not be separated from the apartment to which it appertains, and shall be deemed to be conveyed or encumbered with the apartment even though such interest is not expressly mentioned in the conveyance or other instrument. (3) The common areas and facilities shall remain undivided and no apartment owner or any other person shall bring any action for partition or division of any part thereof, unless the property has been removed from the provisions of this Act as provided in sections 14 and 22. Any covenant to the contrary shall be null and void. (4) Each apartment owner may use the common areas and facilities in accordance with the purpose for which they are intended without hindering or encroaching upon the lawful rights of the other apartment owners. (5) The necessary work of maintenance, repair and replacement of the common areas and facilities and the making of any additions or improvements thereto shall be carried out only as provided herein and in the bye-laws. (6) The Association of Apartment Owners shall have the irrevocable right, to be exercised by the Manager or Board of Managers, to have access to each apartment form time to time during reasonable hours as may be necessary for the maintenance, repair and replacement of any of the common areas and facilities therein or accessible therefrom, or for making emergency repairs therein necessary to prevent damage to the common area and facilities or to another apartment or apartments.

7. Compliance with covenants, bye-laws and administrative provisions. - Each apartment owner shall comply strictly with the bye-laws and with the administrative rules and regulations adopted pursuant thereto, as either of the same may be lawfully amended from time to time, and with the covenants, conditions and restrictions set forth in the Declaration or in the Deed to his Apartment. Failure to comply with any of the same shall be a ground for an action to recover sums due for damages or injunctive relief or both maintainable by the Manager or Board of Managers on behalf of the Association of Apartment Owners or, in a proper case by an aggrieved apartment owner.

8. Certain work prohibited - No apartment owner shall do any work which would jeopardize the soundness or safety of the property, reduce the value thereof or impair any easement or hereditament nor may any apartment owner add any material
structure or excavate any additional basement or cellar without in every such case the unanimous consent of all the other apartment owners being first obtained.

9. **Encumbrances against apartments; removal from, encumbrances, effect of part payment.**

(1) Subsequent to recording the Declaration as provided in this Act, and while the property remains subject to this Act, no encumbrance of any nature shall thereafter arise or be effective against the property. During such period encumbrances may arise or be created only against each apartment and the percentage of undivided interest in the common areas and facilities appurtenant to such apartment, in the same manner and under the same conditions in every respect as encumbrances may arise or be created upon or against any other separate parcel of property subject to individual ownership: Provided that if during the period any encumbrance has arisen or been created against such apartment and the percentage of undivided interest in the common areas and facilities appurtenant to such apartment, no apartment and such percentage of undivided interest shall be partitioned or subdivided in interest: Provided further that, no labour performed or materials furnished with the consent or at the request of an apartment owner or his agent or his contractor or sub-contractor shall be the basis for a charge or any encumbrance under the provisions of the Transfer of Property Act, 1882, against the apartment or any other property of any other apartment owner not expressly consenting to or requesting the same, except that such express consent shall be deemed to be given by the owner of any apartment in the case of emergency repairs thereto. Labour performed and material furnished for the common areas and facilities if duly authorised by the Association of Apartment Owners, the Manager or Board of Managers in accordance with this Act, the Declaration or bye-laws, shall be deemed to be performed or furnished with the express consent of each apartment owner and shall be the basis for a charge or encumbrance under the Act aforesaid against each of the apartments and shall be subject to the provisions of subsection (2).

(2) In the event of a charge or any encumbrance against two or more apartments becoming effective, the apartment owners of the separate apartments may remove their apartments and the percentage of undivided interest in the common areas and facilities appurtenant to such apartments from the charge or encumbrance by payment of the fractional or proportional amounts attributable to each of the apartments affected. Such individual payment shall be computed by reference to the percentages appearing in the Declaration. Subsequent to any such payment, discharge or other satisfaction, the apartment and the percentage of undivided interest in the common areas and facilities appurtenant thereto shall thereafter be free and clear of the charge or encumbrance so paid,
satisfied or discharged. Such partial payments, satisfaction or discharge shall not prevent the person having a charge or any other encumbrance from proceeding to enforce his rights against any apartment and the percentage of undivided interest in the common areas and facilities appurtenant thereto not so paid, satisfied or discharged.

10.

Common profits and expenses.

The common profits of the property shall be distributed among and the common expenses shall be charged to, the apartment owners according to the percentage of the undivided interest in the common areas and facilities.

11.

Contents of Declaration.

(1) The Declaration shall contain the following particulars, namely:-(a) description of the land on which the building and improvements are or are to be located; and whether the land is freehold or leasehold; (b) description of the building stating the number of storeys and basements, the number of apartments and the principal materials of which it is or is to be constructed; (c) the apartment number of each apartment, and a statement of its location, approximate area, number of rooms, and immediate common area to which it has access, and any other data necessary for its proper identification; (d) description of the common areas and facilities; (e) description of the limited common areas and facilities, if any, stating to which apartments their use is reserved; (f) value of the property and of each apartment, and the percentage of undivided interest in the common areas and facilities appurtenant to each apartment and its owner for all purposes, including voting; and a statement that the apartment and such percentage of undivided interest are not encumbered in any manner whatsoever on the date of the Declaration; (g) statement of the purposes for which the building and each of the apartments are intended and restricted as to use; (h) the name of a person to receive service of process in the cases hereinafter provided, together with the residence or place of business of such person which shall be within the city, town or village in which the building is located; (i) provision as to the percentage of votes by the apartment owners which shall be determinative of whether to rebuild, repair, restore, or sell the property in the event of damage or destruction of all or part of the property; (j) any other details in connection with the property which the person executing the Declaration may seem desirable to set forth consistent with this Act; and (k) the method by which the Declaration may be amended, consistent with the provisions of this Act. (2) A true copy each of the Declaration and bye-laws and all amendments to the Declaration or the bye-laws shall be filed in the office of the competent authority.

12.
Contents of Deeds of Apartments

- (1) Deeds of Apartments shall include the following particulars, namely:-(a) description of the land as provided in section 11 of this Act or the post office address of the property, including in either case the book, page and date of executing the Declaration the date and serial number of its registration under the Registration Act, 1908 and the date and other reference if any, of its filing with the competent authority; (b) the apartment number of the apartment in the Declaration and any other data necessary for its proper identification; (c) statement of the use for which the apartment is intended and restrictions on its use, if any; (d) the percentage of undivided interest appurtenant to the apartment in the common areas and facilities; and (e) any further details which the parties to the Deed may deem desirable to set forth consistent with the Declaration and this Act. (2) A true copy of every deed of Apartment shall be filed in the office of the competent authority.

13.

Declarations, deeds of apartments and copies of floor plans to be registered

- (1) The Declaration and all amendments thereto and the Deed of Apartment in respect of each apartment and the floor plans of the buildings referred to in sub-section (2) shall be registered under the Registration Act, 1908. (2) Simultaneously with the registration of the Declaration there shall be filed along with it a set of the floor plans of the building showing the layout, location, apartment numbers and dimensions of the apartments, stating the name of the building or that it has no name, and bearing the verified statement of an architect certifying that it is an accurate copy of portions of the plans of the buildings as filed with and approved by the local authority within whose jurisdiction the building is located. If such plans do not include a verified statement by such architect that such plans fully and accurately depict the layout location, apartment number and dimensions of the apartments as built, there shall be recorded prior to the first conveyance of any apartment, an amendment to the Declaration to which shall be attached a verified statement of an architect certifying that the plans theretofore filed, or being filed simultaneously with such amendment, fully and accurately depict the layout, location, apartment number and dimensions of the apartment as built. (3) In all registration offices a book called Register of Declarations and Deeds of Apartments under the Karnataka Apartment Ownership Act, 1972 and Index relating thereto shall be kept. The book and the Index shall be kept in such form and shall contain such particulars as may be prescribed. (4) It shall be the duty of every Manager or Board of Managers to send to the Sub-Registrar of the sub-district in which the property containing the apartment is situate, or if there is no Sub-Registrar for the area, to the Registrar of the district in which such property is situate, a certified copy of the Declaration
and Deed of Apartment made in respect of every apartment contained in the building forming part of the property together with a memorandum containing such particulars as may be prescribed. 

(5) The Sub-Registrar, or as the case may be, the Registrar shall register the Declaration along with floor plans of the building and the Deed of Apartment in the Register of Declaration and Deeds of Apartments under the Karnataka Apartment Ownership Act, 1972 and shall also enter particulars in the Index kept under sub-section (3). Any person acquiring any apartment or any apartment owner shall be deemed to have notice of the Declaration and of the Deed of Apartment as from the date of its registration under this section. 

(6) Except as provided in this section, the provisions of the Registration Act, 1908, shall mutatis mutandis apply to the registration of such Declarations and Deeds of Apartments, and the words and expression used in the section but not defined in this Act shall have the meaning assigned to them in the Registration Act, 1908.

14. Removal from provisions of this Act. - (1) All the apartment owners may remove a property form the provisions of this Act by an instrument to that effect duly executed: Provided that, the holders of all charges and other encumbrances affecting any of the apartments consent thereto or agree, in either case by instruments duly executed, that their charges or encumbrances be transferred to the percentage of the undivided interest of the apartment owner in the property as hereinafter provided. 

(2) Upon the removal of the property from the provisions of this Act the property shall be deemed to be owned in common by the apartment owners. The undivided interest in the property owned in common which shall apportion to each apartment owner shall be the percentage of undivided interest previously owned by such owner in the common areas and facilities.

15. Removal no bar to subsequent resubmission of property to this Act. - The removal provided for in the preceding section shall in no way bar the subsequent re-submission of the property to the provisions of this Act.

16. Bye-laws and their contents. - (1) The administration of every property shall be governed by bye-laws, a true copy of which shall be annexed to the Declaration. No modification of or amendment to the bye-law shall be valid, unless set forth in an amendment to the Declaration and such amendment is duly recorded and a copy thereof is duly filed with the competent authority. 

(2) The bye-laws shall provide for the following matters, namely:- (a) The election from among the apartment owners, of a Board of Managers, the number of persons constituting the same, and that the terms of at least one-third of the members of such Board shall expire annually: the powers and duties of the Board; }
tion, if any, of the members of the Board; the method of removal from office of members of the Board; and whether or not the Board may engage the services of a Secretary, a Manager or Managing Agent, and specifying which of the powers and duties granted to the Board by this Act or otherwise may be delegated by the Board to either or both of them; (b) method of calling meetings of the apartment owners; what percentage, if other than a majority of Apartment Owners, shall constitute a quorum; (c) election of a President from among members of the Board of managers who shall preside over the meetings of such Board and of the Association of Apartment Owners; (d) election of a Secretary who shall keep a minute book wherein resolutions shall be recorded; (e) election of a Treasurer who shall keep the financial records and books of accounts; (f) maintenance, repairs and replacement of the common areas and facilities and payments therefor; (g) manner of collecting from the apartment owners their share of the common expenses; (h) designation and removal of persons employed for the maintenance, repair and replacement of the common areas and facilities; (i) the method of adopting and of amending administrative rules and regulations governing the details of the operation and use of the common areas and facilities; (j) such restrictions on the requirements respecting the use and maintenance of the apartments and the use of the common areas and facilities not set forth in the Declaration, as are designed to prevent unreasonable interference with the use of their respective apartments and of the common areas and facilities by the several apartment owners; and (k) the percentage of the votes required to amend the bye-laws. (3) The bye-laws may also provide for the following matters namely:-(a) subject to the provisions of this Act, provision for regulating transfer or partition of any apartment and percentage of undivided interest in the common areas and facilities appurtenant to such apartment, subject to such terms and conditions as may be specified in the bye-laws: (b) provisions enabling the Board of Managers to retain certain areas of the building and lease to non-residents for commercial purposes and for distribution of resulting proceeds to the apartment owners as income or application thereof in reduction of their common charges for maintaining the building; and (c) any other provisions, not inconsistent with the provisions of this Act, relating to the audit and accounts and administration of the property and annual and special general meetings, annual report and the like.

17.

Waiver of use of common areas and facilities; Abandonment of apartment. No apartment owner may exempt himself from liability for his contribution towards the common expenses by waiver of the use or enjoyment of any of the common areas and facilities, or by abandonment of his apartment.

18.
Separate assessment - Notwithstanding anything to the contrary contained in any law relating to local authorities, each apartment and its percentage of undivided interest in the common areas and facilities appurtenant to such apartment (being an apartment submitted to the provisions of this Act) shall be deemed to be separate property for the purpose of assessment to tax on lands and buildings leviable under such law and shall be assessed and taxed, accordingly; and for this purpose, a local authority shall make all suitable rules to carry out the provisions of this section. Neither the building, the property nor any of the common areas and facilities shall be deemed to be separate property for the purposes of the levy of such tax.

19.

Charge on property for common expenses - All sums assessed by the Association of Apartment owners but unpaid for the share of common expenses chargeable to any apartment shall constitute a charge on such apartment prior to all other charges, except only (i) charge if any on the apartment for payment of Government and Municipal taxes and (ii) all sums unpaid on a first mortgage of the apartment.

20.

Joint and several liability of vendor, etc, for unpaid common expenses - (1) Upon the sale of an apartment, the purchaser of the apartment shall be jointly and severally liable with the vendor for all unpaid assessments against the latter for his share of the common expenses up to the time of the sale without prejudice to the purchasers or grantees right to recover from the vendor the amount paid by the purchaser or grantee therefor. (2) A purchaser referred to in sub-section (1) shall be entitled to a statement from the Secretary or Board of Managers, setting forth the amount of the unpaid assessment against the vendor and such purchaser or grantee shall not be liable for, nor shall the apartment sold be subject to a charge for any unpaid share of common expenses against such apartment accrued prior to such sale or bequest in excess of the amount therein set forth.

21.

Insurance - (1) The Manager or Board of Managers, if required by the Declaration or the bye-laws or by a majority of the apartment owners, or at the request of a mortgagee having a first mortgage covering an apartment, shall have the authority to, and shall obtain insurance for the property against loss or damage by fire and such other hazards under such terms and for such amounts as shall be required, or requested. (2) Insurance referred to in sub-section (1) shall be written in the name of the Manager or of the Board of Managers of the Association of the Apartment Owners as trustee for each of the apartment owners in the percentages established in the Declaration. (3) Premiums in respect of insurance
referred to in sub-section (1) shall be common expenses and such insurance shall be without prejudice to the right of each apartment owner to insure his own apartment for his benefit.

22.

Disposition of property; destruction or damage. - If within sixty days of the date of damage or destruction to all or part of the property, it is not determined by the Association of Apartment Owners to repair, reconstruct or rebuild, then and in that event, (a) the property shall be deemed to be owned in common by the apartment owners; (b) the undivided interest in the property owned in common which shall appertain to each apartment owner shall be the percentage of the undivided interest previously owned by such owner in the common areas and facilities; (c) any encumbrances affecting any of the apartments shall be deemed to be transferred in accordance with the existing priority to the percentage of the undivided interest of the apartment owner in the property as provided herein; (d) the property shall be subject to an action for partition at the suit of any apartment owner, in which event the net proceeds of sale together with the net proceeds of the insurance on the property, if any, shall be considered as one fund and shall be divided among all the apartment owners in percentage equal to the percentage of undivided interest owned by each owner in the property after first paying out all the respective shares of the

apartment owners to the extent sufficient for the purpose and all charges on the undivided interest in the property owned by each apartment owner.

23.

Action. - Without limiting the rights of any apartment owner, actions may be brought by the Manager or Board of Managers, in either case in the discretion of the Board of Managers, on behalf of two or more of the apartment owners as their respective interest may appear with respect to any cause of action relating to the common areas and facilities or more than one apartment. Service of process on two or more apartment owners in any action relating to the common areas and facilities or more than one apartment may be made on the person designated in the Declaration to receive service of process.

24.

Act to be binding on apartment owners, tenants etc. - (1) All apartment owners, tenants of such owners, employees of owners and tenants, or any other person that may in any manner use property or any part thereof submitted to the provisions of this Act shall be subject to this Act and to the Declaration and the bye-laws of the Association of Apartment Owners adopted pursuant to the provisions of this Act. (2) All agreements, decisions and determinations lawfully made by the Association of Apartment Owners in accordance with the voting percentages established under this Act, Dec-
laration or bye-laws, shall be deemed
to be binding on all apartment own-
ers. 25. Power to make rules- (1) The
State Government may, subject to
the condition of previous publication,
by notification in the official Gazette,
make rules for carrying into effect the
provisions of this Act. (2) Every rule
made under this Act shall be laid as
soon as may be after it is made be-
fore each House of the State Legisla-
ture 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 , be-
fore the expiry of the session imme-
diately following the sessions afore-
said both Houses agree in making
any modification in the rule or both
Houses agree that the rule should not
be made, the rule shall from the date
on which the modification or annul-
ment is notified by the State Gov-
ernment in the official Gazette have
effect only in such modified form or
be of no effect, as the case may be; so
however, that any such modifica-
tion or annulment shall be without
prejudice to the validity of anything
previously done under that rule.

26.

Removal of doubt .- For the re-
moval of doubt, it is hereby declared
that the provisions of the Transfer of
Property Act, 1882, shall in so far
as they are not inconsistent with the
provisions of this Act, apply to ev-
ery apartment together with its un-
divided interest in the common ar-
eas and facilities appurtenant to such
apartment as those provisions apply
in relation to any immovable prop-
erty, and the provisions of this Act
shall take effect, notwithstanding
anything to the contrary contained
in any contract. 27. Severability.-
If any provision of this Act or any
section, sentence, clause, phrase, or
word, or application thereof in any
circumstances is held invalid, the va-
atility of the remainder of this Act
and of the application of any such
provision, section, sentence, clause,
phrase, or word, in any other circum-
stances shall not be affected thereby.

II NOTIFICATION

Bangalore, dated 6th March 1975
[No. FD 28 KHB 75] S.O.752.-
In exercise of the powers conferred
by sub-section (3) of section 1 of
the Karnataka Apartment Owners-
ship Act, 1972 (Karnataka Act No.
17 of 1973), the Government of Kar-
nataka hereby appoints the first day
of April, 1975 as the date on which
the said Act shall come into force. By
Order and in the name of the Gover-
nor of Karnataka, K.S. RASHEED,
Under Secretary to Government, Fi-
nance Department (Housing). (Pub-
lished in the Karnataka Gazette (Ex-
traordinary) Part IV 2-C (ii) dated
10-3-1975 605.)
Chapter 25

REGISTRATION ACT, 1908

I  PART I : PRELIMINARY

1. Short title, extent and commencement (1) This Act may be called the Registration Act, 1908.

(2) It extends to the whole of India except the State of Jammu and Kashmir:

   PROVIDED that the State Government may exclude any district or tracts of country from its operation.]

(3) It shall come into force on the first day of January, 1909.

2. Definitions In this Act, unless there is anything repugnant in the subject or context-

(1) “addition” means the place of residence, and the profession, trade, rank and title, (if any) of a person described, and, in the case of an Indian, his father’s name, or where he is usually described as the son of his mother, then his mother’s name;

(2) “book” includes a portion of a book and also any number of sheets connected together with a view of forming a book or portion of a book;

(3) “district” and “sub-district” respectively means a district and sub-district formed under this Act;

(4) “District Court” includes the High Court in its ordinary original civil jurisdiction;

(5) “endorsement” and “endorsed” include and apply to an entry in writing by a registering officer on a rider or covering slip to any document tendered for registration under this Act;

(6) “immovable property” includes land, buildings, hereditary allowances, rights to ways, lights, ferries, fisheries or any other benefit to arise out of land, and things attached to the earth or permanently fastened to anything which is attached to the earth, but not standing timber, growing crops nor grass;

(6A) “India” means the territory of India excluding the State of Jammu and Kashmir;

(7) “lease” includes a counter-part, kabuliyat, an undertaking to cultivate or occupy, and an agree-
ment to lease;

(8) “minor” means a person who, according to the personal law to which he is subject, has not attained majority;

(9) “movable property” includes standing timber, growing crops and grass, fruit upon and juice in trees, and property of every other description, except immovable property; and

(10) “representative” includes the guardian of a minor and the committee or other legal curator of a lunatic or idiot.

II PART II : OF THE REGISTRATION-ESTABLISHMENT

3. Inspector-General of Registration

(1) The State Government shall appoint an officer to be the Inspector-General of Registration for the territories subject to such government:

PROVIDED that the State Government may, instead of making such appointment, direct that all or any of the powers and duties hereinafter conferred and imposed upon the Inspector-General shall be exercised and performed by such officer or officers, and within such local limits, as the State Government appoints in this behalf.

(2) Any Inspector-General may hold simultaneously any other office under the Government.

4. 6[Branch Inspector-General of Sindh] 5. Districts and sub-districts

(1) For the purposes of this Act, the State Government shall form districts and sub-districts, and shall prescribe, and may alter, the limits of such district and sub-districts.

(2) The districts and sub-districts formed under this section, together with the limits thereof, and every alteration of such limits, shall be notified in the Official Gazette.

(3) Every such alteration shall take effect on such day after the date of the notification as is therein mentioned.

6. Registrars and Sub-Registrars

The State Government may appoint such persons, whether public officers or not, as it thinks proper, to be Registrars of the several districts, and to be Sub-Registrar of the several sub-districts, formed as aforesaid, respectively.

7. Offices of Registrar and Sub-Registrar

(1) The State Government shall establish in every district and office to be styled the office of the Registrar and in every sub-district an office or offices to be styled the office of the Sub-Registrar or the offices of the Joint Sub-Registrars.

(2) The State Government may amalgamate with any office of a Registrar any office of a Sub-Registrar subordinate to such Registrar, and may authorise any Sub-Registrar whose office has been so amalgamated to exercise and perform, in addition to his own powers and duties, all or any of the powers and duties of the Registrar to whom he is subordinate:

PROVIDED that no such autho-
risation shall enable a Sub-Registrar to hear an appeal against an order passed by himself under this Act.

8. Inspectors of Registration offices (1) The State Government may also appoint officers, to be called Inspectors of Registration offices, and may prescribe the duties of such officers.

(2) Every such Inspector shall be subordinate to the Inspector-General.

9. Military cantonments may be declared sub-districts or districts

10. Absence of Registrar or vacancy in his office (1) When any Registrar, other than the Registrar of a district including a Presidency-town, is absent otherwise than on duty in his district, or when his office is temporarily vacant, any person whom the Inspector-General appoints in this behalf shall be the Registrar during such absence, or until the State Government fills up the vacancy.

(2) When the Registrar of a district including a Presidency-town is absent otherwise than on duty in his district, or when his office is temporarily vacant, any person whom the Inspector-General appoints in this behalf shall be the Registrar during such absence, or until the State Government fills up the vacancy.

11. Absence of Registrar on duty in his district When any Registrar is absent from his office on duty in his district, he may appoint any Sub-Registrar or other person in his district to perform, during such absence, all the duties of a Registrar except those mentioned in sections 68 and 72.

12. Absence of Sub-Registrar or vacancy in his office. When any Sub-Registrar is absent, or when his office is temporarily vacant, any person whom the Registrar of the district appoints in this behalf shall be Sub-Registrar during such absence, or until the vacancy is filled up.

13. Report to State Government of appointments under sections 10, 11 and 12 (1) All appointments made under section 10, section 11 or section 12 shall be reported to the State Government by the Inspector-General.

(2) Such report shall be either special or general, as the State Government directs.

14. Establishments of registering officers

(2) The State Government may allow proper establishments for the several offices under this Act.

15. Seal of registering officers The several Registrars and Sub-Registrars shall use a seal bearing the following inscription in English and in such other language as the State Government directs:

“The seal of the Registrar (or of the Sub-Registrar) of”.

16. Register-books and fire-proof boxes (1) The State Government shall provide for the office of every
registering officer the books necessary for the purposes of this Act.

(2) The books so provided shall contain the forms from time to time prescribed by the Inspector-General, with the sanction of the State Government, and the pages of such books shall be consecutively numbered in print, and the number of pages in each book shall be certified on the title-page by the officer by whom such books are issued.

(3) The State Government shall supply the office of every Registrar with a fire-proof box, and shall in each district make suitable provision for the safe custody of the records connected with the registration of documents in such district.

III PART III : OF REGISTRABLE DOCUMENTS

17. Documents of which registration is compulsory (1) The following documents shall be registered, if the property to which they relate is situated in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877 or this Act came or comes into force, namely:-

(a) instruments of gift of immovable property;

(b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees, and upwards, to or in immovable property;

(c) non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest; and

(d) leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent;

(e) non-testamentary instruments transferring or assigning any decree or order of a court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property:

Provided that the State Government may, by order published in the Official Gazette, exempt from the operation of this sub-section any leases executed in any district, or part of a district, the terms granted by which do not exceed five years and the annual rent reserved by which do not exceed fifty rupees.

(2) Nothing in clauses (b) and (c) of sub-section (1) applies to-

(i) any composition-deed; or

(ii) any instrument relating to shares in a joint Stock Company, notwithstanding that the assets of
such company consist in whole or in part of immovable property; or

(iii) any debenture issued by any such company and not creating, declaring, assigning, limiting or extinguishing any right, title or interest, to or in immovable property except in so far as it entitles the holder to the security afforded by a registered instrument whereby the company has mortgaged, conveyed or otherwise transferred the whole or part of its immovable property or any interest therein to trustees upon trust for the benefit of the holders of such debentures; or

(iv) any endorsement upon or transfer of any debenture issued by any such company; or

(v) any document not itself creating, declaring, assigning, limiting or extinguishing any such right, title or interest of the value of one hundred rupees and upwards to or in immovable property, but merely creating a right to obtain another document which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest; or

(vi) any decree or order of a court except a decree or order expressed to be made on a compromise and comprising immovable property other than that which is the subject-matter of the suit or proceeding; or

(vii) any grant of immovable property by government; or

(viii) any instrument of partition made by a revenue-officer; or

(ix) any order granting a loan or instrument of collateral security granted under the Land Improvement Act, 1871, or the Land Improvement Loans Act, 1883; or

(x) any order granting a loan under the Agriculturists Loans Act, 1884, or instrument for securing the repayment of a loan made under that Act; or

14[(xa) any order made under the Charitable Endowments Act, 1890, (6 of 1890) vesting any property in a Treasurer of Charitable Endowments or divesting any such treasurer of any property; or]

(xi) any endorsement on a mortgage-deed acknowledging the payment of the whole or any part of the mortgage-money, and any other receipt for payment of money due under a mortgage when the receipt does not purport to extinguish the mortgage; or

(xii) any certificate of sale granted to the purchaser of any property sold by public auction by a civil or revenue-officer.

15[Explanation: A document purporting or operating to effect a contract for the sale of immovable property shall not be deemed to require or ever to have required registration by reason only of the fact that such document contains a recital of the payment of any earnest money or of the whole or any part of the purchase money.]

(3) Authorities to adopt a son, executed after the 1st day of January, 1872, and not conferred by a will, shall also be registered.

18. Documents of which registration is optional Any of the following documents may be registered under
182 REGISTRATION ACT, 1908

this Act, namely:-

(a) instruments (other than instruments of gift and wills) which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of a value less than one hundred rupees, to or in immovable property;

(b) instruments acknowledging the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest;

(c) leases of immovable property for any term not exceeding one year, and leases exempted under section 17;

16[(cc) instruments transferring or assigning any decree or order of a court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of a value less than one hundred rupees, to or in immovable property;]

(d) instruments (other than wills) which purport or operate to create, declare, assign, limit or extinguish any right, title or interest to or in movable property;

(e) wills; and

(f) all other documents not required by section 17 to be registered.

19. Documents in language not understood by registering officer If any document duly presented for registration be in a language which the registering officer does not understand, and which is not commonly used in the district, he shall refuse to register the document, unless it be accompanied by a true translation into a language commonly used in the district and also by a true copy.

20. Documents containing interlineations, blanks, erasures or alterations (1) The registering officer may in his discretion refuses to accept for registration any document in which any interlineation, blank, erasure or alteration appears, unless the persons executing the document attest with their signatures or initials such interlineation, blank, erasure or alteration.

21. Description of property and maps or plans (1) No non-testamentary document relating to immovable property shall be accepted for registration unless it contains a description of such property sufficient to identify the same.

(2) Houses in towns shall be described as situate on the north or other side of the street or road (which should be specified) to which they front, and by their existing and former occupancies, and by their numbers if the houses in such street or road are numbered.

(3) Other houses and land shall be described by their name, if any, and as being the territorial division
in which they are situate, and by their superficial contents, the roads and other properties on which they abut, and their existing occupancies, and also, whenever it is practicable, by reference to a government map or survey.

(4) No non-testamentary document containing a map or plan of any property comprised therein shall be accepted for registration unless it is accompanied by a true copy of the map or plan, or, in case such property is situate in several districts, by such number of true copies of the map or plans as are equal to the number of such districts.

22. Description of houses and land by reference to government maps of surveys

(1) Where it is, in the opinion of the State Government, practicable to describe houses, not being houses in towns, and lands by reference to a government map or survey, the State Government may, by rule made under this Act, require that such houses and lands as aforesaid shall, for the purposes of section 21, be so described.

(2) Save as otherwise provided by any rule made under sub-section (1), failure to comply with the provisions of section 21, sub-section (2) or sub-section (3), shall not disentitle a document to be registered if the description of the property to which it relates is sufficient to identify that property.

23. Time for presenting documents

Subject to the provisions contained in sections 24, 25 and 26, no document other than a will shall be accepted for registration unless presented for that purpose to the proper officer within four months from the date of its execution:

PROVIDED that a copy of a decree or order may be presented within four months from the date on which the decree or order was made or, where it is appealable, within four months from the day on which it becomes final.

17[23A. Re-registration of certain documents

Notwithstanding anything to the contrary contained in this Act, if in any case a document requiring registration has been accepted for registration by a Registrar or Sub-Registrar from a person not duly empowered to present the same, and has been registered, any person claiming under such document may, within four months from his first becoming aware that the registration of such document is invalid, present such document or cause the same to be presented, in accordance with the provisions of Part VI for re-registration in the office of the Registrar of the district in which the document was originally registered; and upon the Registrar being satisfied that the document was so accepted for registration from a person not duly empowered to present
the same, he shall proceed to the re-
registration of the document as if it
has not been previously registered,
and as if such presentation for re-
registration was a presentation for
registration made within the time al-
lowed therefor under Part IV, and
all the provisions of this Act, as to
registration of documents, shall ap-
ply to such re-registration; and such
document, if duly re-registered in ac-
cordance with the provisions of this
section, shall be deemed to have been
duly registered for all purposes from
the date of its original registration:

PROVIDED that, within three
months from the twelfth day of
September, 1917, any person claim-
ing under a document to which this
section applies may present the same
or cause the same to be presented
for re-registration in accordance with
this section, whatever may have been
the time when he first became aware
that the registration of the document
was invalid.

24. Documents executed by sev-
eral persons at different times Where
there are several persons executing
a document at different times, such
document may be presented for reg-
istration and re-registration within
four months from the date of each
execution.

25. Provision where delay in pre-
sentation is unavoidable (1) If, owing
to urgent necessity or unavoidable
accident, any document executed, or
copy of a decree or order made, in
18[India] is not presented for regis-
tration till after the expiration of the
time hereinbefore prescribed in that
behalf, the Registrar, in cases where
the delay in presentation does not ex-
ceed four months, may direct that,
on payment of a fine not exceeding
ten times the amount of the proper
registration-fee, such document shall
be accepted for registration.

(2) Any application for such di-
rection may be lodged with Sub-
Registrar, who shall forthwith for-
ward it to the Registrar to whom he
is subordinate.

26. Documents executed out of
India When a document purporting
to have been executed by all or any of
the parties out of 18[India] is not pre-
sented for registration till after the
expiration of the time hereinbefore
prescribed in that behalf, the regis-
tering officer, if satisfied—
(a) that the instrument was so ex-
ecuted, and
(b) that it has been presented for
registration within four months after
its arrival in 18[India]
may, on payment of the proper
registration-fee, accept such docu-
ment for registration.

27. Wills may be presented or de-
posited at any time A will may at any
time be presented for registration or
deposited in manner hereinafter pro-
vided.

V PART V : OF THE
PLACE OF REGIS-
TRATION

28. Place for registering documents
relating to land Save as in this Part
otherwise provided, every document
mentioned in section 17, sub-section (1), clauses (a), (b), (c), (d) and (e), section 17, sub-section (2), insofar as such document affects immovable property, and section 18, clauses (a), (b), (c) and (cc), shall be presented for registration in the office of a Sub-Registrar within whose sub-district the whole or some portion of the property to which such document relates is situate.

29. Place for registering other documents (1) Every document not being a document referred to in section 28 or a copy of a decree or order, may be presented for registration either in the office of the Sub-Registrar in whose sub-district the document was executed, or in the office of any other Sub-Registrar under the State Government at which all the persons executing and claiming under the document desire the same to be registered.

(2) A copy of a decree or order may be presented for registration in the office of the Sub-Registrar in whose sub-district the original decree or order was made or, where the decree or order does not affect immovable property, in the office of any other Sub-Registrar under the State Government at which all the persons executing and claiming under the decree or order desire the same to be registered.

30. Registration by Registrars in certain cases (1) Any Registrar may in his discretion receive and register any document which might be registered by any Sub-Registrar subordinate to him.

(2) The Registrar of a district in which a Presidency-Town is included and the Registrar of the Delhi district may receive and register any document referred to in section 28 without regard to the situation in any part of India of the property to which the document relates.

31. Registration or acceptance for deposit at private residence In ordinary cases the registration or deposit of documents under this Act shall be made only at the office of the officer authorised to accept the same for registration or deposit:

PROVIDED that such officer may on special cause being shown attend at the residence of any person desiring to present a document for registration or to deposit a will, and accept for registration or deposit such document or will.

VI PART VI : OF PRESENTING DOCUMENTS FOR REGISTRATION

32. Persons to present documents for registration Except in the cases mentioned in sections 31, 88 and 89, every document to be registered under this Act, whether such registration be compulsory or optional, shall be presented at the proper registration office-

(a) by some person executing or claiming under the same, or, in the case of a copy of a decree or order, claiming under the decree or order,
or

(b) by the representative or assignee of such a person, or

(c) by the agent of such a person, representative or assign, duly authorised by power-of-attorney executed and authenticated in manner hereinafter mentioned.

33. Power-of-attorney recognisable for purposes of section 32 (1) For the purposes of section 32, the following powers-of-attorney shall alone be recognised, namely:

(a) if the principal at the time of executing the power-of-attorney resides in any part of India in which this Act is for the time being in force, a power-of-attorney executed before and authenticated by the Registrar or Sub-Registrar within whose district or sub-district the principal resides;

(b) if the principal at the time aforesaid resides in any part of India in which this Act is not in force, a power-of-attorney executed before and authenticated by any Magistrate;

(c) if the principal at the time aforesaid does not reside in India, a power-of-attorney executed before and authenticated by Notary Public, or any court, Judge, Magistrate, Consul or vice-consul, or representative of the Central Government:

Provided that the following persons shall not be required to attend at any registration-office or court for the purpose of executing any such power-of-attorney as is mentioned in clauses (a) and (b) of this section, namely:

(i) persons who by reason of bodily infirmity are unable without risk or serious inconvenience so to attend;

(ii) persons who are in jail under civil or criminal process; and

(iii) persons exempt by law from personal appearance in court.

5[Explanation: In this subsection “India” means India, as defined in clause (28) of section 3 of the General Clauses Act, 1897.]

(2) In the case of every such person the Registrar or Sub-Registrar or Magistrate, as the case may be, if satisfied that the power-of-attorney has been voluntarily executed by the person purporting to be the principal, may attest the same without requiring his personal attendance at the office or court aforesaid.

(3) To obtain evidence as to the voluntary nature of the execution, the Registrar or Sub-Registrar or Magistrate may either himself go to the house of the person purporting to be the principal, or to the jail in which he is confined, and examine him, or issue a commission for his examination.

(4) Any power-of-attorney mentioned in this section may be proved by the production of it without further proof when it purports on the face of it to have been executed before and authenticated by the person or court hereinbefore mentioned in that behalf.

34. Enquiry before registration by registering officer (1) Subject to the provisions contained in this Part
and in sections 41, 43, 45, 69, 75, 77, 88 and 89, no document shall
be registered under this Act, un-
less the person executing such doc-
ument, or their representatives, as-
signs or agents authorised as afore-
said, appear before the registering of-

cifer within the time allowed for pre-

section under sections 23, 24, 25
and 26:

PROVIDED that, if owing to ur-

to urgent necessity or unavoidable acci-
dent all such persons do not so ap-
pear, the Registrar, in cases where the delay in appearing does not ex-
ceed four months, may direct that on
payment of a fine not exceeding ten
times the amount of the proper reg-

istration fee, in addition to the fine, if any, payable under section 25, the
document may be registered.

(2) Appearances under sub-

section (1) may be simultaneous or at different times.

(3) The registering officer shall thereupon-

(a) enquire whether or not such
document was executed by the per-
son by whom it purports to have
been executed;

(b) satisfy himself as to the iden-
tity of the persons appearing before
him and alleging that they have exe-
cuted the document; and

(c) in the case of any person ap-
pearing as a representative, assignee
or agent, satisfy himself of the right
of such person so to appear.

(4) Any application for a di-
rection under the proviso to sub-
section (1) may be lodged with a
Sub-Registrar, who shall forthwith
forward it to the Registrar to whom
he is subordinate.

(5) Nothing in this section applies
to copies of decrees or orders.

35. Procedure on admission
and denial of execution respectively
(1)(a) If all the persons executing the
document appear personally before
the registering officer and are person-
ally known to him, or if he be other-
wise satisfied that they are the per-
sons they represent themselves to be,
and if they all admit the execution of the
document, or

(b) If in the case of any person
appearing by a representative, as-
signee or agent, such representative,
assignee or agent admits the execu-
tion, or

(c) If the person executing the
document is dead, and his represen-
tative or assignee appears before the
registering officer and admits the ex-
ecution,

the registering officer shall regis-
ter the document as directed in sec-
tions 58 to 61, inclusive.

(2) The registering officer may, in
order to satisfy himself that the per-
sons appearing before him are the
persons they represent themselves to be, or for any other purpose contem-
plated by this Act, examine any one
present in his office.

(3)(a) If any person by whom the
document purports to be executed
denies its execution, or

(b) if any such person appears to
the registering officer to be a minor,
an idiot or a lunatic, or

(c) if any person by whom the
document purports to be executed is dead, and his representative or assignee denies its execution,

the registering officer shall refuse to register the document as to the person so denying, appearing or dead:

PROVIDED that, where such officer is a Registrar, he shall follow the procedure prescribed in Part XII:

28[PROVIDED FURTHER that the State Government may, by notification in the Official Gazette, declare that any Sub-Registrar named in the notification shall, in respect of documents the execution of which is denied, be deemed to be a Registrar for the purposes of this sub-section and of Part XII.]

VII PART VII: OF ENFORCING THE APPEARANCE OF EXECUTANTS AND WITNESSES

36. Procedure where appearance of executant or witness is desired If any person presenting any document for registration or claiming under any document, which is capable of being so presented, desires the appearance of any person whose presence or testimony is necessary for the registration of such document, the registering officer may, in his discretion, call upon such officer or court as the State Government directs in this behalf to issue a summons requiring him to appear at the registration-office, either in person or by duly authorised agent, as in the summons may be mentioned, and at a time named therein.

37. Officer or court to issue and cause service of summons The officer or court, upon receipt of the peon’s fee payable in such cases, shall issue the summons accordingly, and cause it to be served upon the person whose appearance is so required.

38. Persons exempt from appearance at registration office (1) (a) A person who by reason of bodily infirmity is unable without risk or serious inconvenience to appear at the registration-office, or

(b) a person in jail under civil or criminal process, or

(c) persons exempt by law from personal appearance in court, and who would but for the provisions next hereinafter contained be required to appear in person at the registration-office, shall not be required so to appear.

(2) In the case of every such person the registration-officer shall either himself go to the house of such person, or to the hall in which he is confined, and examine him or issue a commission for his examination.

39. Law as to summonses, commissions and witnesses The law in force for the time being as to summonses, commissions and compelling the attendance of witnesses and for their remuneration in suits before civil courts, shall, save as aforesaid and mutatis mutandis, apply to any summons or commission issued and
any person summoned to appear under the provisions of this Act.

VIII PART VIII : OF PRESENTING WILLS AND AUTHORITIES TO ADOPT

40. Persons entitled to present Wills and authorities to adopt (1) The testator, or after his death any person claiming as executor or otherwise under a will, may present it to any Registrar or Sub-Registrar for registration.

(2) The donor, or after his death the donee, of any authority to adopt, or the adoptive son, may present it to any Registrar or Sub-Registrar for registration.

41. Registration of Wills and authorities to adopt (1) A will or an authority to adopt presented for registration by the testator or donor, may be registered in the same manner as any other document.

(2) A will or authority to adopt presented for registration by any other person entitled to present it shall be registered if the registering officer is satisfied-

(a) that the will or authority was executed by the testator or donor, as the case may be;

(b) that the testator or donor is dead; and

(c) that the person presenting the will or authority is, under section 40, entitled to present the same.

IX PART IX : OF THE DEPOSIT OF WILLS

42. Deposit of Wills Any testator may, either personally or by duly authorised agent, deposit with any Registrar his will in a sealed cover superscribed with the name of the testator and that of his agent (if any) and with a statement of the nature of the document.

43. Procedure on deposit of Wills (1) On receiving such cover, the Registrar, if satisfied that the person presenting the same for deposit is the testator or his agent, shall transcribe in his Register-book No.5 the superscription aforesaid, and shall not in the same book and on the said cover the year, month, day and hour of such presentation and receipt, and the names of any persons who may testify to the identity of the testator or his agent, and any legible inscription which may be on the seal of the cover.

(2) The Registrar shall then place and retain the sealed cover in his fireproof box.

44. Withdrawal of sealed cover deposited under section 42 If the testator who has deposited such cover wishes to withdraw it, he may apply, either personally or by duly authorised agent, to the Registrar who holds it in deposit, and such Registrar, if satisfied that the applicant is actually the testator or his agent, shall deliver the cover accordingly.

45. Proceedings on death of depositor (1) If, on the death of a
testator who has deposited a sealed cover under section 42, application be made to the Registrar who holds it in deposit to open the same, and if the Registrar is satisfied that the testator is dead, he shall, in the applicant’s presence, open the cover, and, at the applicant’s expense, cause the contents thereof to be copied into his Book No.3.

(2) When such copy has been made, the Registrar shall re-deposit the original will.

46. Saving of certain enactments and powers of courts (1) Nothing hereinbefore contained shall affect the provisions of section 259 of the Indian Succession Act, 1865, or of section 81 of the Probate and Administration Act, 1881, or the power of any court by order to compel the production of any will.

(2) When any such order is made the Registrar shall, unless the will has been already copied under section 45, open the cover and cause the will to be copied into his Book No.3 and make a notice on such copy that the original has been removed in to court in pursuance of the order aforesaid.

X PART X : OF THE EFFECTS OF REGISTRATION AND NON-REGISTRATION

47. Time from which registered document operates A registered document shall operate from the time from which it would have commenced to operate if no registration thereof had been required or made, and not from the time of its registration.

48. Registered documents relating to property when to take effect against oral agreements All non-testamentary documents duly registered under this Act, and relating to any property, whether movable or immovable, shall take effect against any oral agreement or declaration relating to such property, unless where the agreement or declaration has been accompanied or followed by delivery of possession and the same constitutes a valid transfer under any law for the time being in force:

PROVIDED that a mortgage by deposit of title-deeds as defined in section 58 of the Transfer of Property Act, 1882, shall take effect against any mortgage-deed subsequently executed and registered which relates to the same property.

49. Effect of non-registration of documents required to be registered No document required by section 17 or by any provision of the Transfer of Property Act, 1882, to be registered shall-

(a) affect any immovable property comprised therein, or

(b) confer any power to adopt, or

(c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered:

PROVIDED that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882,
to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877, or as evidence of part performance of a contract for the purposes of section 53A of the Transfer of Property Act, 1882, or as evidence of any collateral transaction not required to be effected by registered instrument.]

50. Certain registered documents relating to land to take effect against unregistered documents

(1) Every document of the kinds mentioned in clauses (a), (b), (c) and (d) of section 17, sub-section (1), and clauses (a) and (b) of section 18, shall, if duly registered, take effect as regards the property comprised therein, against every unregistered document relating to the same property, and not being a decree or order, whether such unregistered document be of the same nature as the registered document or not.

(2) Nothing in sub-section (1) applies to leases exempted under the proviso to sub-section (1) of section 17 or to any document mentioned in sub-section (2) of the same section, or to any registered document which had not priority under the law in force at the commencement of this Act.

Explanation: In cases where Act No. XVI of 1864 or the Indian Registration Act, 1866, was in force in the place and at the time in and at which such unregistered document was executed, “unregistered” means not registered according to such Act, and, where the document is executed after the first day of July, 1871, not registered under the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act.

XI PART XI: OF THE DUTIES AND POWERS OF REGISTERING OFFICERS

(A) As to the register-books and indexes

51. Register books to be kept in the several offices

(1) The following books shall be kept in the several offices hereinafter named, namely:

(A) In all registration offices—
   Book 1, “Register of non-testamentary documents relating to immovable property”;
   Book 2, “Record of reasons for refusal to register”;
   Book 3, “Register of wills and authorities to adopt”; and
   Book 4, “Miscellaneous Register”;

(B) In the offices of Registrars—
   Book 5, “Register of deposits of wills”.

(2) In Book 1 shall be entered or filed all documents or memoranda registered under sections 17, 18 and 89 which relate to immovable property, and are not wills.

(3) In Book 4 shall be entered all documents registered under clauses (d) and (f) of section 18 which do not relate to immovable property.
(4) Nothing in this section shall be deemed to require more than one set of books where the office of the Registrar has been amalgamated with the office of a Sub-Registrar.

52. Duties of registering officers when document presented (1)(a) The day, hour and place of presentation, and the signature of every person presenting a document for registration, shall be endorsed on every such document at the time of presenting it;

(b) a receipt for such document shall be given by the registering officer to the person presenting the same; and

(c) subject to the provisions contained in section 62, every document admitted to registration shall without unnecessary delay be copied in the book appropriated therefor according to the order of its admission.

(2) All such books shall be authenticated at such intervals and in such manner as is from time to time prescribed by the Inspector-General.

53. Entries to be numbered consecutively All entries in each book shall be numbered in a consecutive series, which shall commence and terminate with the year, a fresh series being commenced at the beginning of each year.

54. Current indexes and entries therein In every office in which any of the books hereinbefore mentioned are kept, there shall be prepared current indexes of the contents of such books, and every entry in such indexes shall be made, so far as practicable, immediately after the registering officer has copied, or filed a memorandum of, the document to which it relates.

55. Indexes to be made by registering officers, and their contents (1) Four such indexes shall be made in all registration offices, and shall be named, respectively, Index No.I, Index No.II, Index NO.III and Index No. IV.

(2) Index No.I shall contain the names and additions of all persons executing and of all persons claiming under every document entered or memorandum filed in Book No.1.

(3) Index No. II shall contain such particulars mentioned in section 21 relating to every such document and memorandum as the Inspector-General from time to time directs in that behalf.

(4) Index No. III shall contain the names and additions of all persons executing every will and authority entered in Book No. 3, and of the executors and persons respectively appointed thereunder, and after the death of the testator or the donor (but not before) the names and additions of all persons claiming under the same.

(5) Index No. IV shall contain the names and additions of all persons executing and of all persons claiming under every document entered in Book No. 4.

(6) Each Index shall contain such other particulars, and shall be prepared in such form, as the Inspector-General from time to time directs.

56. Copy of entries in Indexes Nos.I, II and III to be sent by Sub-
Registrar to Registrar and filed [Repealed by the Indian Registration (Amendment) Act, 1929]

57. Registering officers to allow inspection of certain books and indexes, and to give certified copies of entries (1) Subject to the previous payment of the fees payable in that behalf, the Book Nos. 1 and 2 and the Indexes relating to Book No. 1 shall be at all times open to inspection by any person applying to inspect the same; and, subject to the provisions of section 62, copies of entries in such books shall be given to all persons applying for such copies.

(2) Subject to the same provisions, copies of entries in Book No. 3 and in the Index relating thereto shall be given to the persons executing the documents to which such entries relate, or to their agents, and after the death of the executants (but not before) to any person applying for such copies.

(3) Subject to the same provisions, copies of entries in Book No. 4 and in the Index relating thereto shall be given to any person executing or claiming under the documents to which such entries respectively refer, or to his agent or representative.

(4) The requisite search under the section for entries in Book Nos. 3 and 4 shall be made only by the registering officer.

(5) All copies given under this section shall be signed and sealed by the registering officer, and shall be admissible for the purpose of proving the contents of the original documents.

(B) As to the procedure on admitting to registration

58. Particulars to be endorsed on documents admitted to registration (1) On every document admitted to registration, other than a copy of a decree or order, or a copy sent to a registering officer under section 89, there shall be endorsed from time to time the following particulars, namely,-

(a) the signature and addition of every person admitting the execution of the document, and, if such execution has been admitted by the representative, assignee or agent of any person, the signature and addition of such representative, assignee or agent;

(b) the signature and addition of every person examined in reference to such document under any of the provisions of this Act; and

(c) any payment of money or delivery of goods made in the presence of the registering officer in reference to the execution of the document, and any admission of receipt of consideration, in whole or in part, made in his presence in reference to such execution.

(2) If any person admitting the execution of a document refuses to endorse the same, the registering officer shall nevertheless register it, but shall at the same time endorse a note of such refusal.

59. Endorsements to be dated and signed by registering officer The registering officer shall affix the date and his signature to all endorsements made under sections 52 and 58, relat-
60. Certificate of registration (1) After such of the provisions of sections 34, 35, 58 and 59 as apply to any document presented for registration have been complied with, the registering officer shall endorse thereon a certificate containing the word “registered”, together with the number and page of the book in which the document has been copied.

(2) Such certificate shall be signed, sealed and dated by the registering officer, and shall then be admissible for the purpose of proving that the document has been duly registered in manner provided by this Act, and that the facts mentioned in the endorsements referred to in section 59 have occurred as therein mentioned.

61. Endorsements and certificate to be copied and document returned (1) The endorsements and certificate referred to and mentioned in sections 59 and 60 shall thereupon be copied into the margin of the Register-book, and the copy of the map or plan (if any) mentioned in section 21 shall be filed in Book No.1.

(2) The registration of the document shall thereupon be deemed complete, and the document shall then be returned to the person who presented the same for registration, or to such other person (if any) as he has nominated in writing in that behalf on the receipt mentioned in section 52.

62. Procedure on presenting document in language unknown to registering officer (1) When a document is presented for registration under section 19, the translation shall be transcribed in the register of documents of the nature of the original, and, together with the copy referred to in section 19, shall be filed in the registration office.

(2) The endorsements and certificate respectively mentioned in sections 59 and 60 shall be made on the original, and, for the purpose of making the copies and memoranda required by sections 57, 64, 65 and 66, the translation shall be treated as if it were the original.

63. Power to administer oaths and record of substances of statements (1) Every registering officer may at his discretion administer an oath to any person examined by him under the provisions of this Act.

(2) Every such officer may also at his discretion record a notice of the substance of the statement made by each such person, and such statement shall be read over, or (if made in a language with which such person is not acquainted) interpreted to him in a language with which he is acquainted, and, if he admits the correctness of such notice, it shall be signed by the registering officer.

(3) Every such note so signed shall be admissible for the purpose of proving that the statements therein recorded were made by the persons and under the circumstances therein stated.

(C) Special duties of Sub-Registrar

64. Procedure where docu-
ment relates to land in several Sub-Districts Every Sub-Registrar on registering a non-testamentary document relating to immovable property not wholly situate in his own sub-district shall make a memorandum thereof and of the endorsement and certificate (if any) thereon, and send the same to every other Sub-Registrar subordinate to the same Registrar as himself in whose sub-district any part of such property is situate, and such Sub-Registrar shall file the memorandum in his Book No.1.

65. Procedure where document relates to land in several Districts

(1) Every Sub-Registrar on registering a non-testamentary document relating to immovable property situate in more districts than one shall also forward a copy thereof and of the endorsement and certificate (if any) thereon, together with a copy of the map or plan (if any) mentioned in section 21, to the Registrar of every district in which any part of such property is situate, and such Sub-Registrar shall file the memorandum in his Book No.1.

(2) The Registrar on receiving any such copy shall file it in his Book No.1, and shall also send a memorandum of the copy to each of the Sub-Registrars subordinate to him within whose sub-district any part of the property is situate.

(3) Such Registrar on receiving any such copy shall file it in his Book No.1, and shall also send a memorandum of the copy to each of the Sub-Registrars subordinate to him within whose sub-district any part of the property is situate.

(4) Every Sub-Registrar receiving any memorandum under this section shall file it in this Book No.1.
intend and control Sub-Registrars (1)
Every Sub-Registrar shall perform
the duties of his office under the
superintendence and control of the
Registrar in whose district the office
of such Sub-Registrar is situate.

(2) Every Registrar shall have au-
thority to issue (whether on com-
plaint or otherwise) any order consis-
tent with this Act which he consid-
ers necessary in respect of any act or
omission of any Sub-Registrar subor-
dinate to him or in respect of the rec-
tification of any error regarding the
book or the office in which any doc-
ument has been registered.

69. Power of Inspector-General
to superintend registration offices
and make rules (1) The Inspector-
General shall exercise a gen-
eral superintendence over all the
registration-offices in the territories
under the State Government, and
shall have power from time to time
to make rules consistent with this
Act-

(a) providing for the safe cus-
tody of books, papers and documents
29[***];

(b) declaring what languages
shall be deemed to be commonly
used in each district;

(c) declaring what territorial di-
visions shall be recognised under sec-
tion 21;

(d) regulating the amount of fines
imposed under sections 25 and 34, re-
spectively;

(e) regulating the exercise of the
discretion reposed in the registering
officer by section 63;

(f) regulating the form in which
registering officers are to make mem-
oranda of documents,

(g) regulating the authentication
by Registrars and Sub-Registrars of
the books kept in their respective of-
fices under sections 51;

14[(gg) regulating the manner in
which the instruments referred to in
sub-section (2) of section 88 may be
presented for registration;]

(h) declaring the particulars to be
contained in Index Nos. I, II, III and
IV, respectively;

(i) declaring the holidays that
shall be observed in the registration
offices; and

(j) generally, regulating the pro-
ceedings of the Registrars and Sub-
Registrars.

(2) The rules so made shall be
submitted to the State Government
for approval, and, after they have
been approved, they shall be pun-
ished in the Official Gazette, and on
publication shall have effect as if en-
acted in this Act.

70. Power of Inspector-General
to remit fines The Inspector-General
may also, in the exercise of his dis-
cretion, remit wholly or in part the
difference between any fine levied un-
der section 25 or section 34, and the
amount of the proper registration fee.
71. Reasons for refusal to register to be recorded (1) Every Sub-Registrar refusing to register a document, except on the ground that the property to which it relates is not situate within his sub-district, shall make an order of refusal and record his reasons for such order in his Book No. 2, and endorse the words “registration refused” on the document; and, on application made by any person executing or claiming under the document, shall, without payment and unnecessary delay, give him a copy of the reasons so recorded.

(2) No registering officer shall accept for registration a document so endorsed unless and until, under the provisions hereinafter contained, the document is directed to be registered.

72. Appeal to Registrar from orders of Sub-Registrar refusing registration on grounds other than denial of execution (l.) Except where the refusal is made on the ground of denial of execution, an appeal shall lie against an order of a Sub-Registrar refusing to admit a document to registration (whether the registration of such document is compulsory or optional) to the Registrar to whom such Sub-Registrar is subordinate, if presented to such Registrar within thirty days from the date of the order; and the Registrar may reverse or alter such order.

(2) If the order of the Registrar directs the document to be registered and the document is duly presented for registration within thirty days after the making of such order, the Sub-Registrar shall obey the same, and thereupon shall, so far as may be practicable, follow the procedure prescribed in sections 58, 59 and 60; and such registration shall take effect as if the document had been registered when it was first duly presented for registration.

73. Application to Registrar where Sub-Registrar refuses to register on ground of denial of execution (1) When a Sub-Registrar has refused to register a document on the ground that any person by whom it purports to be executed, or his representative or assign, denies its execution, any person claiming under such document, or his representative, assignee or agent authorised as aforesaid, may, within thirty days after the making of the order of refusal, apply to the Registrar to whom such Sub-Registrar is subordinate in order to establish his right to have the document registered.

(2) Such application shall be in writing and shall be accompanied by a copy of the reasons recorded under section 71, and the statements in the application shall be verified by the applicant in manner required by law for the verification of plaints.

74. Procedure of Registrar on such application In such case, and also where such denial as aforesaid is made before a Registrar in respect of a document presented for registration to him, the Registrar shall, as soon as conveniently may be,
enquire-
  (a) whether the document has been executed;
  (b) whether the requirements of the law for the time being in force have been complied with on the part of the applicant or person presenting the document for registration, as the case may be, so as to entitle the document to registration.

75. Order by Registrar to register and procedure thereon

(1) If the Registrar finds that the document has been executed and that the said requirements have been complied with, he shall order the document to be registered.

(2) If the document is duly presented for registering within thirty days after the making of such order, the registering officer shall obey the same and thereupon shall, so far as may be practicable, follow the procedure prescribed in sections 58, 59 and 60.

(3) Such registration shall take effect as if the document had been registered when it was first duly presented for registration.

(4) The Registrar may, for the purpose of any enquiry under section 74, summon and enforce the attendance of witness, and compel them to give evidence, as if he were a civil court, and he may also direct by whom the whole or any part of the costs of any such enquiry shall be paid, and such costs shall be recoverable as if they had been awarded in a suit under the Code of Civil Procedure, 1908.

76. Order of refusal by Registrar

(1) Every Registrar refusing-
  (a) to register a document except on the ground that the property to which it relates does not situate within his district or that the document ought to be registered in the office of a Sub-Registrar, or
  (b) to direct the registration of a document under section 72 or section 75, shall make an order of refusal and record the reasons for such order in his Book No. 2 and, on application made by any person executing or claiming under the document, shall, without unnecessary delay, give him a copy of the reasons so recorded.

(2) No appeal lies from any order by a Registrar under this section or section 72.

77. Suit in case of order of refusal by Registrar

(1) Where the Registrar refuses to order the document to be registered, under section 72 or section 76, any person claiming under such document, or his representative, assignee or agent, may, within thirty days after the making of the order of refusal, institute in the civil court, within the local limits of whose original jurisdiction is situate the office in which the document is sought to be registered, a suit for a decree directing the document to be registered in such office if it be duly presented for registration within thirty days after the passing of such decree.

(2) The provisions contained in sub-sections (2) and (3) of section 75 shall, mutatis mutandis, apply to all documents presented for registration in accordance with any such decree, and, notwithstanding anything con-
tained in this Act, the documents shall be receivable in evidence in such suit.

XIII PART XIII : OF THE FEES FOR REGISTRATION, SEARCHES AND COPIES

78. Fees to be fixed by State Government 30[***] The State Government shall prepare a table of fees payable—
    (a) for the registration of documents;
    (b) for searching the registers;
    (c) for making or granting copies of reasons, entries or documents, before, on or after registration;
    and of extra or additional fees payable—
    (d) for every registration under section 30;
    (e) for the issue of commissions;
    (f) for filing translations;
    (g) for attending at private residences;
    (h) for the safe custody and return of documents; and
    (i) for such other matters as appear to the State Government necessary to effect the purposes of this Act.

79. Publication of fees A table of the fees so payable shall be published in the Official Gazette, and a copy thereof in English and the vernacular language of the district shall be exposed to public view in every registration office.

80. Fees payable on presentation All fees for the registration of documents under this Act shall be payable on the presentation of such documents.

XIV PART XIV : OF PENALTIES

81. Penalty for incorrectly endorsing, copying, translating or registering documents with intent to injure Every registering officer appointed under this Act and every person employed in his office for the purposes of this Act, who, being charged with the endorsing, copying, translating or registering of any document presented or deposited under its provisions, endorses, copies, translates or registers such document in a manner which he knows or believes to be incorrect, intending thereby to cause or knowing it to be likely that he may thereby cause injury, as defined in the Indian Penal Code, to any person, shall be punishable with imprisonment for a term which may extend to seven years, or with fine, or with both.

82. Penalty for making false statements, delivering false copies or translations, false personation, and abetment Whoever—
    (a) intentionally makes any false statement, whether on oath or not, and whether it has been recorded or not, before any officer acting in execution of this Act, in any proceeding or enquiry under this Act; or
(b) intentionally delivers to a registering officer, in any proceeding under section 19 or section 21, a false copy or translation of a document, or a false copy of a map or plan; or

(c) falsely personates another, and in such assumed character presents any document, or makes any admission or statement, or causes any summons or commission to be issued, or does any other act in any proceeding or enquiry under this Act; or

(d) abets anything made punishable by this Act; shall be punishable with imprisonment for a term which may extend to seven years, or with fine, or with both.

83. Registering officer may commence prosecutions (1) A prosecution for any offence under this Act coming to the knowledge of a registering officer in his official capacity may be commenced by or with the permissions of the Inspector-General, the Registrar or the Sub-Registrar, in whose territories, district or sub-district, as the case may be, the offence has been committed.

(2) Offences punishable under this Act shall be triable by any court or officer exercising powers not less than those of a Magistrate of the second class.

84. Registering officers to be deemed public servants (1) Every registering officer appointed under this Act shall be deemed to be a public servant within the meaning of the Indian Penal Code.

(2) Every person shall be legally bound to furnish information to such registering officer when required by him to do so.

(3) In section 228 of the Indian Penal Code, the words “judicial proceeding” shall be deemed to include any proceeding under this Act.

XV PART XV: MISCELLANEOUS

85. Destruction of unclaimed documents Documents (other than wills) remaining unclaimed in any registration-office for a period exceeding two years may be destroyed.

86. Registering officer not liable for things bona fide done or refused in his official capacity No registering officer shall be liable to any suit, claim or demand by reason of anything in good faith done or refused in his official capacity.

87. Nothing so done invalidated by defect in appointment or procedure Nothing done in good faith pursuant to this Act or any Act hereby repealed, by any registering officer, shall be deemed invalid merely by reason of any defect in his appointment or procedure.

88. Registration of documents executed by government officers or certain public functionaries (1) Notwithstanding anything contained in this Act, it shall not be necessary for -

(a) any officer of government, or

(b) any Administrator General, Official Trustee or Official Assignee, or
(c) the Sheriff, Receiver or Registrar of a High Court, or

(d) the holder for the time being of such other public office as may be specified in a notification in the Official Gazette issued in that behalf by the State Government, to appear in person or by agent at any registration-office in any proceeding connected with the registration of any instrument executed by him or in his favour, in his official capacity, or to sign as provided in section 58.

(2) Any instrument executed by or in favour of an officer of government or any other person referred to in sub-section (1) may be presented for registration in such manner as may be prescribed by rules made under section 69.

(3) The registering officer to whom any instrument is presented for registration under this section may, if he thinks fit, refer to any Secretary to Government or to such officer of government or other person referred to in sub-section (1) for information respecting the same and, on being satisfied of the execution thereof, shall register the instrument.

89. Copies of certain orders, certificates and instruments to be sent to registering officers and filed (1) Every officer granting a loan under the Land Improvement Loans Act, 1883, shall send a copy of his order to the registering officer within the local limits of whose jurisdiction the whole or any part of the land to be improved or of the land to be granted as collateral security, is situate, and such registering officer shall file the copy in his Book No.1.

(2) Every court granting a certificate of sale of immovable property under the Code of Civil Procedure, 1908, shall send a copy of such certificate to the registering officer within the local limits of whose jurisdiction the whole or any part of the immovable property comprised in such certificate is situate, and such officer shall file the copy in his Book No.1.

(3) Every officer granting a loan under the Agriculturists’ Loans Act, 1884, shall send a copy of any instrument whereby immovable property is mortgaged for the purpose of securing the repayment of the loan, and, if any such property is mortgaged for the same purpose in the order granting the loan, a copy also of that order, to the registering officer within the local limits of whose jurisdiction the whole or any part of the property so mortgaged is situate, and such registering officer shall file the copy or copies, as the case may be, in his Book No.1.

(4) Every revenue-officer granting a certificate of sale to the purchaser of immovable property sold by public auction shall send a copy of the certificate to the registering officer within the local limits of whose jurisdiction the whole or any part of the immovable property comprised in the certificate is situate, and such officer shall file the copy in his Book No.1.

EXEMPTION FROM ACT 90. Exemption of certain documents executed by or in favour of government

(1) Nothing contained in this Act or
in the Indian Registration Act, 1877,
or in the Indian Registration Act,
1871, or in any Act thereby repealed,
shall be deemed to require, or to have
any time required, the registration
of any of the following documents or
maps, namely:—

(a) documents issued, received
or attested by any officer engaged
in making a settlement or revision
or settlement of land-revenue, and
which form part of the records of
such settlement; or

(b) documents and maps issued,
received or authenticated by any offi-
cer engaged on behalf of government
in making or revising the survey of
any land, and which form part of the
record of such survey; or

(c) documents which, under any
law for the time being in force,
are filed periodically in any revenue-
office by patwaris or other officers
charged with the preparation of vil-
lage records; or

(d) sanads, inam, title-deeds and
other documents purporting to be or
to evidence grants or assignments by
government of land or of any interest
in land; or

(e) notice given under section 74
or section 76 of the Bombay Land-
Revenue Code, 1879, or relinquish-
ment of occupancy by occupants, or
of alienated land by holders of such
land.

(2) All such documents and maps
shall, for the purposes of sections 48
and 49, be deemed to have been and
to be registered in accordance with
the provisions of this Act.

91. Inspection and copies of such
documents 33[(1) Subject to such
rules and the previous payment of
such fees as the 34[State Govern-
ment, by notification in the Official
Gazette, prescribes in this behalf,]
all documents and maps mentioned
in section 90, clauses (a), (b), (c)
and (e), and all registers of the docu-
ments mentioned in clause (d), shall
be open to the inspection of any per-
son applying to inspect the same,
and, subject as aforesaid, copies of
such documents shall be given to all
persons applying for such copies.

35[(2) Every rule prescribed un-
der this section or made under sec-
tion 69 shall be laid, as soon as it is
made, before the State Legislature.]
8 Substituted for the words “the Local Government fills up the vacancy” by Act No. 4 of 1914.

9 The words and figure “All appointments made by the Inspector-General under section 6 and”, inserted by Act No. 4 of 1914 and later omitted by the Act of 1937.

10 Sub-section (3) omitted by the Act of 1937.

11 Sub-section (1) omitted by the Act of 1937.

12 Added by Act No. 21 of 1929.

13 Substituted by Act No. 21 of 1929 for the words “and any award”.

14 Inserted by Act No. 39 of 1948.

15 Inserted by Act No. 2 of 1927.

16 Inserted by Act No. 33 of 1940.

17 Inserted by Act No. 15 of 1917.

18 Substituted by Act No. 3 of 1951, for the words “the States”.

19 Substituted by Act No. 33 of 1940.

20 Substituted by Act No. 33 of 1940, for word and figure “and (e)”.

21 Substituted by Act No. 32 of 1940 for the words and figure “other than a document referred to in section 28 and a copy of a decree or order”.

22 Substituted by Act No. 45 of 1969, for words “The Registrar of a district including a Presidency-town”.

23 The words “and the Registrar of the Lahore District” omitted by the AO 1948.

24 Substituted by Act No. 39 of 1948 for words and figures “s. 31 and s. 89”.

25 Substituted by Act No. 3 of 1951, for the words “resides in any other part of the State”.

26 Substituted by the AO 1950, for the word “British”.

27 The words “of His Majesty or” omitted by AO 1950, for word “British”.

28 Added by Act No. 13 of 1926.

29 The Words “and also for the destruction of such books, papers and documents as need no longer be kept” repealed by Act No. 5 of 1917.

30 The words “Subject to the control of the GG in C” omitted by Act No. 38 of 1920.

31 The words “the Branch Inspector-General of Sindh”, omitted by AO 1937.

32 Substituted by Act No. 39 of 1948.


34 Substituted for the words “State Government prescribes in this behalf”, ibid.

Chapter 26

TRANSFER OF PROPERTY ACT, 1882

I. CHAPTER I PRELIMINARY

1. Short title This Act may be called the Transfer of Property Act, 1882.

Commencement: It shall come into force on the first day of July, 1882.

Extent: It extends in the first instance to the whole of India except the territories which, immediately before the 1st November, 1956, were comprised in Part B States or in the States of Bombay, Punjab and Delhi.

But this Act or any part thereof may by notification in the Official Gazette be extended to the whole or any part of the said territories by the State Government concerned.

And any State Government may from time to time, by notification in the Official Gazette, exempt, either retrospectively or prospectively, any part of the territories administered by such State Government from all or any of the following provisions, namely,-

Section 54, paragraph 2 and sections 3, 59, 107 and 123.

Notwithstanding anything in the foregoing part of this section, section 54, paragraphs 2 and 3, and sections 59, 107 and 123 shall not extend or be extended to any district or tract of country for the time being excluded from the operation of the Indian Registration Act, 1908 (XVI of 1908), under the power conferred by the first section of that Act or otherwise.

2. Repeal of Acts-Saving of certain enactments, incidents, rights, liabilities, etc. In the territories to which this Act extends for the time being the enactments specified in the Schedule hereto annexed shall be repealed to the extent therein mentioned. But nothing herein contained shall be deemed to affect-

(a) the provisions of any enactment not hereby expressly repealed;
(b) any terms or incidents of any contract or constitution of property which are consistent with the provisions of this Act, and are allowed by the law for the time being in force;

(c) any right or liability arising out of a legal relation constituted before this Act comes into force, or any relief in respect of any such right or liability; or

(d) save as provided by section 57 and Chapter IV of this Act, any transfer by operation of law or by, or in execution of, a decree or order of a court of competent jurisdiction, and nothing in the second Chapter of this Act shall be deemed to affect any rule of Mohammedan law.

3. Interpretation clause In this Act, unless there is something repugnant in the subject or context,

“immovable property” does not include standing timber, growing crops or grass;

“instrument” means a non-testamentary instrument;

“attested”, in relation to an instrument, means and shall be deemed always to have meant attested by two or more witnesses each of whom has seen the executant sign or affix his mark to the instrument, or has seen some other person sign the instrument in the presence and by the direction of the executant, or has received from the executant a personal acknowledgement of his signature or mark, or of the signature of such other person, and each of whom has signed the instrument in the presence of the executant; but it shall not be necessary that more than one of such witnesses shall have been present at the same time, and no particular form of attestation shall be necessary;

“registered” means registered in any part of the territories to which this Act extends under the law for the time being in force regulating the registration of documents;

“attached to the earth” means-

(a) rooted in the earth, as in the case of trees and shrubs;

(b) imbedded in the earth, as in the case of walls or buildings; or

(c) attached to what is so em-bedded for the permanent beneficial enjoyment of that to which it is at-ached;

“actionable claim” means a claim to any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of movable property, or to any beneficial interest in movable property not in the possession, either actual or constructive, of the claimant, which the civil courts recognise as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent;

“a person is said to have notice” of a fact when he actually knows that fact, or when, but for wilful abstention from an enquiry or search which he ought to have made, or gross negligence, he would have known it.

Explanation I: Where any trans-action relating to immovable prop-erty is required by law to be and has been effected by a registered in-
instrument, any person acquiring such property or any part of, or share or interest in, such property shall be deemed to have notice of such instrument as from the date of registration or, where the property is not all situated in one sub-district, or where the registered instrument has been registered under sub-section (2) of section 30 of the Indian Registration Act, 1908 (16 of 1908), from the earliest date on which any memorandum of such registered instrument has been filed by any Sub-Registrar within whose sub-district any part of the property which is being acquired, or of the property wherein a share or interest is being acquired, is situated:

PROVIDED that-

(1) the instrument has been registered and its registration completed in the manner prescribed by the Indian Registration Act, 1908 (16 of 1908), and the rules made thereunder,

(2) the instrument of memorandum has been duly entered or filed, as the case may be, in books kept under section 51 of that Act, and

(3) the particulars regarding the transaction to which the instrument relates have been correctly entered in the indexes kept under section 55 of that Act.

Explanation II: Any person acquiring any immovable property or any share or interest in any such property shall be deemed to have notice of the title, if any, of any person who is for the time being in actual possession thereof.

Explanation III: A person shall be deemed to have had notice of any fact if his agent acquires notice thereof whilst acting on his behalf in the course of business to which that fact is material:

PROVIDED that, if the agent fraudulently conceals the fact, the principal shall not be charged with notice thereof as against any person who was a party to or otherwise cognizant of the fraud.

4. Enactments relating to contracts to be taken as part of Contract Act and supplemental to the Registration Act

The Chapters and sections of this Act which relate to contracts shall be taken as part of the Indian Contract Act, 1872 (9 of 1872).

1[And section 54, paragraphs 2 and 3, sections 59, 107 and 123 shall be read as supplemental to the Indian Registration Act, 2[1908 (16 of 1908)].]

OF TRANSFERS OF PROPERTY BY ACT OF PARTIES

CHAPTER II

OF TRANSFERS OF PROPERTY BY ACT OF PARTIES

(A) Transfer of property, whether movable or immovable

5. Transfer of property defined

In the following sections “transfer of property” means an act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself and one or more other living persons; and “to transfer property” is to perform such act.

In this section “living person i-
cludes a company or association or body of individuals, whether incorporated or not, but nothing herein contained shall affect any law for the time being in force relating to transfer of property to or by companies, associations or bodies of individuals.

6. What may be transferred
Property of any kind may be transferred, except as otherwise provided by this Act or by any other law for the time being in force.

(a) The chance of an heir-apparent succeeding to an estate, the chance of a relation obtaining a legacy on the death of a kinsman, or any other mere possibility of a like nature, cannot be transferred.

(b) A mere right of re-entry for breach of a condition subsequent cannot be transferred to anyone except the owner of the property affected thereby.

(c) An easement cannot be transferred apart from the dominant heritage.

(d) An interest in property restricted in its enjoyment to the owner personally cannot be transferred by him.

(dd) A right to future maintenance, in whatsoever manner arising, secured or determined, cannot be transferred.

(e) A mere right to sue cannot be transferred.

(f) A public office cannot be transferred, nor can the salary of a public officer, whether before or after it has become payable.

(g) Stipends allowed to military, naval, air-force and civil pensioners of the government and political pensions cannot be transferred.

(h) No transfer can be made (1) insofar as it is opposed to the nature of the interest affected thereby, or (2) for an unlawful object or consideration within the meaning of section 23 of the Indian Contract Act, 1872 (9 of 1872), or (3) to a person legally disqualified to be transferee.

(i) Nothing in this section shall be deemed to authorise a tenant having an untransferable right of occupancy, the farmer of an estate in respect of which default has been made in paying revenue, or the lessee of an estate, under the management of a Court of Wards, to assign his interest as such tenant, farmer or lessee.

7. Persons competent to transfer
Every person competent to contract and entitled to transferable property, or authorised to dispose of transferable property not his own, is competent to transfer such property either wholly or in part, and either absolutely or conditionally, in the circumstances, to the extent and in the manner, allowed and prescribed by any law for the time being in force.

8. Operation of transfer
Unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property and in the legal incidents thereof.

Such incidents include, when the property is land, the easements annexed thereto, the rents and profits
thereof accruing after the transfer, and all things attached to the earth;

and, where the property is machinery attached to the earth, the movable parts thereof; and, where the property is a house, the easements annexed thereto, the rent thereof accruing after the transfer, and the locks, keys, bars, doors, windows, and all other things provided for permanent use therewith;

and, where the property is a debtor other actionable claim, the securities therefor (except where they are also for other debts or claims not transferred to the transferee), but not arrears of interest accrued before the transfer;

and, where the property is money or other property yielding income, the interest or income thereof accruing after the transfer takes effect.

9. Oral transfer A transfer of property may be made without writing in every case in which a writing is not expressly required by law.

10. Condition restraining alienation Where property is transferred subject to a condition or limitation absolutely restraining the transferee or any person claiming under him from parting with or disposing of his interest in the property, the condition or limitation is void, except in the case of a lease where the condition is for the benefit of the lessor or those claiming under him:

PROVIDED that property may be transferred to or for the benefit of a woman (not being a Hindu, Muhammadan or Buddhist), so that she shall not have power during her marriage to transfer or charge the same or her beneficial interest therein.

11. Restriction repugnant to interest created Where, on a transfer of property, an interest therein is created absolutely in favour of any person, but the terms of the transfer direct that such interest shall be applied or enjoyed by him in a particular manner, he shall be entitled to receive and dispose of such interest as if there were no such direction.

Where any such direction has been made in respect of one piece of immovable property for the purpose of securing the beneficial enjoyment of another piece of such property, nothing in this section shall be deemed to affect any right which the transferor may have to enforce such direction or any remedy which he may have in respect of a breach thereof.

12. Condition making interest determinable on insolvency or attempted alienation Where property is transferred subject to a condition or limitation making any interest therein, reserved or given to or for the benefit of any person, to cease on his becoming insolvent or endeavouring to transfer or dispose of the same, such condition or limitation is void.

Nothing in this section applies to a condition in a lease for the benefit of the lessor or those claiming under him.

13. Transfer for benefit of unborn person Where, on a transfer of property, an interest therein is created for the benefit of a person not in exis-
tence at the date of the transfer, subject to a prior interest created by the same transfer, the interest created for the benefit of such person shall not take effect, unless it extends to the whole of the remaining interest of the transferor in the property.

Illustration

A transfer property of which he is the owner to B in trust for A and his intended wife successively for their lives, and, after the death of the survivor, for the eldest son of the intended marriage for life, and after his death for A’s second son. The interest so created for the benefit of the eldest son does not take effect, because it does not extend to the whole of A’s remaining interest in the property.

14. Rule against perpetuity

No transfer of property can operate to create an interest which is to take effect after the life time of one or more persons living at the date of such transfer, and the minority of some person who shall be in existence at the expiration of that period, and to whom, if he attains full age, the interest created is to belong.

15. Transfer to a class, some of whom come under sections 13 and 14

If, on a transfer of property, an interest therein is created for the benefit of a class of persons with regard to some of whom such interest fails by reason of any of the rules contained in sections 13 and 14, such interest fails in regard to those persons only and not in regard to the whole class.

16. Transfer to take effect on failure of prior interest

Where, by reason of any of the rules contained in sections 13 and 14, an interest created for the benefit of a person or of a class of persons fails in regard to such person or the whole of such class, any interest created in the same transaction and intended to take effect after or upon failure of such prior interest also fails.

17. Direction for accumulation

(1) Where the terms of a transfer of property direct that the income arising from the property shall be accumulated either wholly or in part during a period longer than-

(a) the life of the transferor, or

(b) a period of eighteen years from the date of transfer,

such direction shall, save as hereinafter provided, be void to the extent to which the period during which the accumulation is directed exceeds the longer of the aforesaid periods, and at the end of such last-mentioned period the property and the income thereof shall be disposed of as if the period during which the accumulation has been directed to be made had elapsed.

(2) This section shall not affect any direction for accumulation for the purpose of-

(i) the payment of the debts of the transferor or any other person taking any interest under the transferor; or

(ii) the provision of portions for children or remoter issue of the transferor or of any other person taking any interest under the transfer; or

(iii) the preservation or maintenance of the property transferred,
and such direction may be made accordingly.

18. Transfer in perpetuity for benefit of public The restrictions in sections 14, 16 and 17 shall not apply in the case of a transfer of property for the benefit of the public in the advancement of religion, knowledge, commerce, health, safety or any other object beneficial to mankind.

19. Vested interest Where, on a transfer of property, an interest therein is created in favour of a person without specifying the time when it is to take effect, or in terms specifying that it is to take effect forthwith or on the happening of an event which must happen, such interest is vested, unless a contrary intention appears from the terms of the transfer.

A vested interest is not defeated by the death of the transferee before he obtains possession.

Explanation : An intention that an interest shall not be vested is not to be inferred merely from a provision whereby the enjoyment thereof is postponed, or whereby a prior interest in the same property is given or reserved to some other person, or whereby income arising from the property is directed to be accumulated until the time of enjoyment arrives, or from a provision that if a particular event shall happen the interest shall pass to another person.

20. When unborn person acquires vested interest on transfer for his benefit Where, on a transfer of property, an interest therein is created for the benefit of a person not then living, he acquires upon his birth, unless a contrary intention appears from the terms of the transfer, a vested interest, although he may not be entitled to the enjoyment thereof immediately on his birth.

21. Contingent interest Where, on a transfer of property, an interest therein is created in favour of a person to take effect only on the happening of a specified uncertain event, or if a specified uncertain event shall not happen, such person thereby acquires a contingent interest in the property. Such interest becomes a vested interest, in the former case, on the happening of the event, in the latter, when the happening of the event becomes impossible.

Exception : Where, under a transfer of property, a person becomes entitled to an interest therein upon attaining a particular age, and the transferor also gives to him absolutely the income to arise from such interest before he reaches that age, or directs the income or so much thereof as may be necessary to be applied for his benefit, such interest is not contingent.

22. Transfer to members of a class who attain a particular age Where, on a transfer of property, an interest therein is created in favour of such members only of a class as shall attain a particular age, such interest does not vest in any member of the class who has not attained that age.

23. Transfer contingent on happening of specified uncertain event Where, on a transfer of property, an
interest therein is to accrue to a specified person if a specified uncertain event shall happen, and no time is mentioned for the occurrence of that event, the interest fails unless such event happens before, or at the same time as, the intermediate or precedent interest ceases to exist.

24. Transfer to such of certain persons as survive at some period not specified Where, on a transfer of property, an interest therein is to accrue to such of certain persons as shall be surviving at some period, but the exact period is not specified, the interest shall go to such of them as shall be alive when the intermediate or precedent interest ceases to exist, unless a contrary intention appears from the terms of the transfer.

Illustration

A transfers property to B for life, and after his death to C and D, equally to be divided between them, or to the survivor of them. C dies during the lifetime of B. D survives B. At B’s death the property passes to D.

25. Conditional transfer An interest created on a transfer of property and dependent upon a condition fails if the fulfilment of the condition is impossible, or is forbidden by law, or is of such a nature that, if permitted, it would defeat the provisions of any law, or is fraudulent, or involves or implies injury to the person or property of another, or the court regards it as immoral or opposed to public policy.

Illustrations

(a) A lets a farm to B on condition that he shall walk a hundred miles in an hour. The lease is void.

(b) A gives Rs. 500 to B on condition that he shall marry A’s daughter C. At the date of the transfer C was dead. The transfer is void.

(c) A transfers Rs. 500 to B on condition that she shall murder C. The transfer is void.

(d) A transfers Rs. 500 to his niece C, if she will desert her husband. The transfer is void.

26. Fulfilment of condition precedent Where the terms of a transfer of property impose a condition to be fulfilled before a person can take an interest in the property, the condition shall be deemed to have been fulfilled if it has been substantially complied with.

Illustrations

(a) A transfers Rs. 5000 to B on condition that he shall marry with the consent of C, D and E. E dies. B marries with the consent of C and D. B is deemed to have fulfilled the condition.

(b) A transfers Rs. 5000 to B on condition that he shall marry with the consent of C, D and E. B marries without the consent of C, D and E, but obtains their consent after the marriage. B has not fulfilled the condition.

27. Conditional transfer to one person coupled with transfer to another on failure of prior disposition Where, on a transfer of property, an interest therein is created in favour of one person, and by the same transaction an ulterior disposition of the
same interest is made in favour of another, if the prior disposition under the transfer shall fail, the ulterior disposition shall take effect upon the failure of the prior disposition, although the failure may not have occurred in the manner contemplated by the transferor.

But, where the intention of the parties to the transaction is that the ulterior disposition shall take effect only in the event of the prior disposition failing in a particular manner, the ulterior disposition shall not take effect unless the prior disposition fails in that manner.

Illustrations
(a) A transfers Rs. 500 to B on condition that he shall execute a certain lease within three months after A’s death, and, if he should neglect to do so, to C. B dies in A’s life-time. The disposition in favour of C takes effect.

(b) A transfers property to his wife; but, in case she should die in his life-time, transfer to B that which he had transferred to her. A and his wife perish together, under circumstances which make it impossible to prove that she died before him. The disposition in favour of B does not take effect.

28. Ulterior transfer conditional on happening or not happening of specified event On a transfer of property an interest therein may be created to accrue to any person with the condition superadded that in case a specified uncertain event shall happen such interest shall pass to another person, or that in case a specified uncertain event shall not happen such interest shall pass to another person. In each case the dispositions are subject to the rules contained in sections 10, 12, 21, 22, 23, 24, 25 and 27.

29. Fulfilment of condition subsequent An ulterior disposition of the kind contemplated by the last preceding section cannot take effect unless the condition is strictly fulfilled.

Illustration
A transfers Rs. 500 to B, to be paid to him on his attaining his majority or marrying, with a proviso that, if B dies as minor or marries without C’s consent, Rs. 500 shall go to D. B marries when only 17 years of age, without C’s consent. The transfer to D takes effect.

30. Prior disposition not affected by invalidity of ulterior disposition If the ulterior disposition is not valid, the prior disposition is not affected by it.

Illustration
A transfers a farm to B for her life, and, if she does not desert her husband to C. B is entitled to the farm during her life as if no condition had been inserted.

31. Condition that transfer shall cease to have effect in case specified uncertain event happens or does not happen Subject to the provisions of section 12, on a transfer of property an interest therein may be created with the condition superadded that it shall cease to exist in case a specified uncertain event shall happen, or in case a specified uncertain event shall not happen.
Illustrations

(a) A transfers a farm to B for his life, with a proviso that, in case B cuts down a certain wood, the transfer shall cease to have any effect. B cuts down the wood. He loses his life-interest in the farm.

(b) A transfers a farm to B, provided that, if B shall not go to England within three years after the date of the transfer, his interest in the farm shall cease. B does not go to England within the term prescribed. His interest in the farm ceases.

32. Such condition must not be invalid In order that a condition that an interest shall cease to exist may be valid, it is necessary that the event to which it relates be one which could legally constitute the condition of the creation of an interest.

33. Transfer conditional on performance of act, no time being specified for performance Where, on a transfer of property, an interest therein is created subject to a condition that the person taking it shall perform a certain act, but no time is specified for the performance of the act, the condition is broken when he renders impossible, permanently or for an indefinite period, the performance of the act.

34. Transfer conditional on performance of act, time being specified Where an act is to be performed by a person either as a condition to be fulfilled before an interest created on a transfer of property is enjoyed by him, or as a condition on the non-fulfilment of which the interest is to pass from him to another person, and a time is specified for the performance of the act, if such performance within the specified time is prevented by the fraud of a person who would be directly benefited by non-fulfilment of the condition, such further time shall as against him be allowed for performing the act as shall be requisite to make up for the delay caused by such fraud. But if no time is specified for the performance of the act, then, if its performance is by the fraud of a person interested in the non-fulfilment of the condition rendered impossible or indefinitely postponed, the condition shall as against him be deemed to have been fulfilled.

II CHAPTER II OF TRANSFERS OF PROPERTY BY ACT OF PARTIES ELECTION

35. Election when necessary Where a person professes to transfer property which he has no right to transfer, and as part of the same transaction confers any benefit on the owner of the property, such owner must elect either to confirm such transfer or to dissent from it; and in the latter case he shall relinquish the benefit so conferred, and the benefit so relinquished shall revert to the transferor or his representative as if it had not been disposed of, subject nevertheless, where the transfer is gratuitous, and the transferor has, before the
of Parties Election

II CHAPTER II OF TRANSFERS OF PROPERTY BY ACT

of consideration,

to the charge of making good to the disappointed transferee the amount or value of the property attempted to be transferred to him.

Illustrations

The farm of Sultanpur is the property of C and worth Rs. 800. A by an instrument of gift professes to transfer it to B, giving by the same instrument Rs. 1,000 to C. C elects to retain the farm. He forfeits the gift of Rs. 1,000. In the same case, A dies before the election. His representative must out of the Rs. 1,000 pay Rs. 800 to B.

The rule in the first paragraph of this section applies whether the transferor does or does not believe that which he professes to transfer to be his own.

A person taking no benefit directly under a transaction, but deriving a benefit under it indirectly, need not elect.

A person who in his own capacity takes a benefit under the transaction may in another dissent thereof.

Exception to the last preceding four rules: Where a particular benefit is expressed to be conferred on the owner of the property which the transferor professes to transfer, and such benefit is expressed to be in lieu of that property, if such owner claims the property, he must relinquish the particular benefit, but he is not bound to relinquish any other benefit conferred upon him by the same transaction.

Acceptance of the benefit by the person on whom it is conferred constitutes an election by him to confirm the transfer, if he is aware of his duty to elect and of those circumstances which would influence the judgement of a reasonable man in making an election, or if he waives enquiry into the circumstances.

Such knowledge or waiver shall, in the absence of evidence to the contrary, be presumed, if the person on whom the benefit has been conferred has enjoyed it for two years without doing any act to express dissent.

Such knowledge or waiver may be inferred from any act of his which renders it impossible to place the persons interested in the property professed to be transferred in the same condition as if such act had not been done.

Illustration

A transfers to B an estate to which C is entitled, and as part of the same transaction gives C a coal-mine. C takes possession of the mine and exhausts it. He has thereby confirmed the transfer of the estate to B.

If he does not within one year after the date of the transfer signify to the transferor or his representatives his intention to confirm or to dissent from the transfer, the transferor or his representative may, upon the expiration of that period, require him to make his election; and, if he does not comply with such requisition within a reasonable time after he
has received it, he shall be deemed to have elected to confirm the transfer.

In case of disability, the election shall be postponed until the disability ceases, or until the election is made by some competent authority.

APPORTIONMENT

36. Apportionment of periodical payments on determination of interest of person entitled.

In the absence of a contract or local usage to the contrary, all rents, annuities, pensions, dividends and other periodical payments in the nature of income shall, upon the transfer of the interest of the person entitled to receive such payments, be deemed, as between the transferor and the transferee, to accrue due from day to day, and to be apportionable accordingly, but to be payable on the days appointed for the payment thereof.

37. Apportionment of benefit of obligation on severance.

When, in consequence of a transfer, property is divided and held in several shares, and thereupon the benefit of any obligation relating to the property as a whole passes from one to several owners of the property, the corresponding duty shall, in the absence of a contract, to the contrary amongst the owners, be performed in favour of each of such owners in proportion to the value of his share in the property, provided that the duty can be severed and that the severance does not substantially increase the burden of the obligation; but if the duty cannot be severed, or if the severance would substantially increase the burden of the obligation the duty shall be performed for the benefit of such one of the several owners as they shall jointly designate for that purpose:

PROVIDED that no person on whom the burden of the obligation lies shall be answerable for failure to discharge it in the manner provided by this section, unless and until he has had reasonable notice of the severance.

Nothing in this section applies to leases for agricultural purposes unless and until the State Government by notification in the Official Gazette so directs.

Illustrations

(a) A sells to B, C and D a house situated in a village and leased to E at an annual rent of Rs. 30 and delivery of one fat sheep, B having provided half the purchase-money and C and D one quarter each. E, having notice of this, must pay Rs. 15 to B, Rs. 7.50 to C, and Rs. 7.50 to D and must deliver the sheep according to the joint direction of B, C and D.

(b) In the same case, each house in the village being bound to provide ten days’ labour each year on a dyke to prevent inundation. E had agreed as a term of his lease to perform this work for A, B, C and D severally require E to perform the ten days’ work due on account of the house of each. E is not bound to do more than ten days’ work in all, according to such directions as B, C and D may join in giving.

(B) Transfer of immovable property

38. Transfer by person authorised only under certain cir-
cumstances to transfer Where any person, authorised only under circumstances in their nature variable to dispose of immovable property, transfers such property for consideration, alleging the existence of such circumstances, they shall, as between the transferee on the one part and the transferor and other persons (if any) affected by the transfer on the other part, be deemed to have existed, if the transferee, after using reasonable care to ascertain the existence of such circumstances, has acted in good faith.

Illustration

A, a Hindu widow, whose husband has left collateral heirs, alleging that the property held by her as such is insufficient for her maintenance, agrees, for purposes neither religious nor charitable to sell a field, part of such property, to B. B satisfies himself by reasonable enquiry that the income of the property is insufficient for A’s maintenance, and that the sale of the field is necessary, and acting in good faith, buys the field from A. As between B on the one part and A and the collateral heirs on the other part, a necessity for the sale shall be deemed to have existed.

39. Transfer where third person is entitled to maintenance Where a third person has a right to receive maintenance, or a provision for advancement or marriage, from the profits of immovable property, and such property is transferred, the right may be enforced against the transferee, if he has notice thereof or if the transfer is gratuitous; but not against a transferee for consideration and without notice of the right, nor against such property in his hands.

40. Burden of obligation imposing restriction on use of land Where, for the more beneficial enjoyment of his own immovable property, a third person has, independently of any interest in the immovable property of another or of any easement thereon, a right to restrain the enjoyment in a particular manner of the latter property, or

Or of obligation annexed to ownership but not amounting to interest or easement: Where a third person is entitled to the benefit of an obligation arising out of contract and annexed to the ownership of immovable property, but not amounting to an interest therein or easement thereon,

such right or obligation may be enforced against a transferee with notice thereof or a gratuitous transferee of the property affected thereby, but not against a transferee for consideration and without notice of the right or obligation, nor against such property in his hands.

Illustration

A contracts to sell Sultanpur to B. While the contract is still in force he sells Sultanpur to C, who has notice of the contract. B may enforce the contract against C to the same extent as against A.

41. Transfer by ostensible owner Where, with the consent, express or implied, of the persons interested in immovable property, a person is the ostensible owner of such property and transfers the same for consider-
ation, the transfer shall not be voidable on the ground that the transferor was not authorised to make it:

PROVIDED that the transferee, after taking reasonable care to ascertain that the transferor had power to make the transfer, has acted in good faith.

42. Transfer by person having authority to revoke former transfer
Where a person transfers any immovable property, reserving power to revoke the transfer, and subsequently transfers the property for consideration to another transferee, such transfer operates in favour of such transferee (subject to any condition attached to the exercise of the power) as a revocation of the former transfer to the extent of the power.

Illustration
A lets a house to B, and reserves power to revoke the lease if, in the opinion of a specified surveyor, B should make a use of it detrimental to its value. Afterwards A, thinking that such a use has been made, lets the house to C. This operates as a revocation of B's lease subject to the opinion of the surveyor as to B's use of the house having been detrimental to its value.

43. Transfer by unauthorised person who subsequently acquires interest in property transferred
Where a person fraudulently or erroneously represents that he is authorised to transfer certain immovable property and professes to transfer such property for consideration, such transfer shall, at the option of the transferee, operate on any interest which the transferor may acquire in such property at any time during which the contract of transfer subsists.

Nothing in this section shall impair the right of transferees in good faith for consideration without notice of the existence of the said option.

Illustration
A, a Hindu who has separated from his father B, sells to C three fields, X, Y and Z, representing that A is authorised to transfer the same. Of these fields Z does not belong to A, it having been retained by B on the partition; but on B's dying A as heir obtains Z. C, not having rescinded the contract of sale, may require A to deliver Z to him.

44. Transfer by one co-owner
Where one of two or more co-owners of immovable property legally competent in that behalf transfers his share of such property or any interest therein, the transferee acquires, as to such share or interest, and so far as is necessary to give, effect to the transfer, the transferor's right to joint possession or other common or part enjoyment of the property, and to enforce a partition of the same but subject to the conditions and liabilities affecting at the date of the transfer, the share or interest so transferred.

Where the transferee of a share of a dwelling-house belonging to an undivided family is not a member of the family, nothing in this section shall be deemed to entitle him to joint possession or other common or part enjoyment of the house.

45. Joint transfer for consideration
Where immovable property is
transferred for consideration to two or more persons and such consideration is paid out of a fund belonging to them in common, they are, in the absence of a contract to the contrary, respectively entitled to interests in such property identical, as nearly as may be, with the interests to which they were respectively entitled in the fund; and, where such consideration is paid out of separate funds belonging to them respectively, they are, in the absence of a contract to the contrary, respectively entitled to interests in such property in proportion to the shares of the consideration which they respectively advanced.

In the absence of evidence as to the interests in the fund to which they were respectively entitled, or as to the shares which they respectively advanced, such persons shall be presumed to be equally interested in the property.

46. Transfer for consideration by persons having distinct interests Where immovable property is transferred for consideration by persons having distinct interests therein, the transferors are, in the absence of a contract to the contrary, entitled to share in the consideration equally, where their interests in the property were of equal value, and, where such interests were of unequal value, proportionately to the value of their respective interests.

Illustrations
(a) A, owning a moiety, and B and C, each a quarter share, of mauza Sultanpur, exchange an eighth share of that mauza for a quarter share of mauza Lalpura. There being no agreement to the contrary, A is entitled to an eighth share in Lalpura, and B and C each to a sixteenth share in the mauza.

(b) A, being entitled to a life-interest in mauza Atrali and B and C to the reversion, sell the mauza for Rs. 1,000. A’s life-interest is ascertained to be worth Rs. 600, the reversion Rs. 400. A is entitled to receive Rs. 600 out of the purchase-money, B and C to receive Rs. 400.

47. Transfer by co-owners of share in common property Where several co-owners of immovable property transfer a share therein without specifying that the transfer is to take effect on any particular share or shares of the transferors, the transfer, as among such transferors, takes effect on such shares equally where the shares were equal, and, where they were unequal, proportionately to the extent of such shares.

Illustration
A, the owner of an eight-anna share, and B and C, each the owner of a four-anna share, in mauza Sultanpur, transfer a two-anna share in the mauza to D, without specifying from which of their several shares the transfer is made. To give effect to the transfer one-anna share is taken from the share of A, and half-an-anna share from each of the shares of B and C.

48. Priority of rights created by transfer Where a person purports to create by transfer at different times rights in or over the same immovable property, and such rights can-
not all exist or be exercised to their full extent together, each later created right shall, in the absence of a special contract or reservation binding the earlier transferees, be subject to the rights previously created.

49. Transferee’s right under policy Where immovable property is transferred for consideration, and such property or any part thereof is at the date of the transfer insured against loss or damage by fire, the transferee, in case of such loss or damage, may, in the absence of a contract to the contrary, require any money which the transferor actually receives under the policy, or so much thereof as may be necessary, to be applied in reinstating the property.

50. Rent bona fide paid to holder under defective title No person shall be chargeable with any rents or profits of any immovable property, which he has in good faith paid or delivered to any person of whom he in good faith held such property, notwithstanding it may afterwards appear that the person to whom such payment or delivery was made had no right to receive such rents or profits.

Illustration

A lets a field to B at a rent of Rs. 50, and then transfers the field to C. B, having no notice of the transfer, in good faith pays the rent to A. B is not chargeable with the rent so paid.

51. Improvements made by bona fide holders under defective titles When the transferee of immovable property makes any improvement on the property, believing in good faith that he is absolutely entitled thereto, and he is subsequently evicted from by any person having a better title, the transferee has a right to require the person causing the eviction either to have the value of the improvement estimated and paid or secured to the transferee, or to sell interest in the property to the transferee at the then market value thereof, irrespective of the value of such improvement.

The amount to be paid or secured in respect of such improvement shall be the estimated value thereof at the time of the eviction.

When, under the circumstances aforesaid, the transferee has planted or sown on the property crops which are growing when he is evicted from, he is entitled to such crops and to free ingress and egress to gather and carry them.

52. Transfer of property pending suit relating thereto During the pendency in any court having authority within the limits of India excluding the State of Jammu and Kashmir] Government or established beyond such limits] by the Central Government of any suit or proceedings which is not collusive and in which any right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the court and on such terms as it may impose.

Explanation : For the purposes of
this section, the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a court of competent jurisdiction, and to continue until the suit or proceeding has been disposed of by a final decree or order and complete satisfaction or discharge of such decree or order has been obtained, or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force.

53. Fraudulent transfer (1) Every transfer of immovable property made with intent to defeat or delay the creditors of the transferor shall be voidable at the option of any creditor so defeated or delayed.

Nothing in this sub-section shall impair the rights of a transferee in good faith and for consideration.

Nothing in this sub-section shall affect any law for the time being in force relating to insolvency.

A suit instituted by a creditor (which term includes a decree-holder whether he has or has not applied for execution of his decree) to avoid a transfer on the ground that it has been made with intent to defeat or delay the creditors of the transferor shall be instituted on behalf of, or for the benefit of, all the creditors.

(2) Every transfer of immovable property made without consideration with intent to defraud a subsequent transferee shall be voidable at the option of such transferee.

For the purposes of this sub-section, no transfer made without consideration shall be deemed to have been made with intent to defraud by reason only that a subsequent transfer for consideration was made.

53A. Part performance Where any person contracts to transfer for consideration any immovable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty,

and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract,

and the transferee has performed or is willing to perform his part of the contract,

then, notwithstanding that the contract, though required to be registered, has not been registered, or, where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefor by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract:

PROVIDED that nothing in this
section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof.

III CHAPTER III OF SALES OF IMMOVABLE PROPERTY

54. “Sale” defined “Sale” is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

Sale how made: Such transfer, in the case of tangible immovable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.

In the case of tangible immovable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.

Delivery of tangible immovable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.

Contract for sale: A contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties.

It does not, of itself, create any interest in or charge on such property.

55. Rights and liabilities of buyer and seller In the absence of a contract to the contrary, the buyer and the seller of immovable property respectively are subject to the liabilities, and have the rights, mentioned in the rules next following or such of them as are applicable to the property sold:

(1) The seller is bound-
(a) to disclose to the buyer any material defect in the property or in the seller’s title thereto of which the seller is, and the buyer is not, aware, and which the buyer could not with ordinary care discover;

(b) to produce to the buyer on his request for examination all documents of title relating to the property which are in the seller’s possession or power;

(c) to answer to the best of his information all relevant questions put to him by the buyer in respect to the property or the title thereto;

(d) on payment or tender of the amount due in respect of the price, to execute a proper conveyance of the property when the buyer tenders it to him for execution at a proper time and place;

(e) between the date of the contract of sale and the delivery of the property, to take as much care of the property and all documents of title relating thereto which are in his possession as an owner of ordinary prudence would take of such property and documents;

(f) to give, on being so required, the buyer, or such person as he directs, such possession of the property as its nature admits;
III CHAPTER III OF SALES OF IMMOVABLE PROPERTY

(g) to pay all public charges and rent accrued due in respect of the property up to the date of the sale, the interest on all encumbrances on such property due on such date, and, except where the property is sold subject to encumbrances, to discharge all encumbrances on the property then existing.

(2) The seller shall be deemed to contract with the buyer that the interest which the seller professes to transfer to the buyer subsists and that he has power to transfer the same:

PROVIDED that, where the sale is made by a person in a fiduciary character, he shall be deemed to contract with the buyer that the seller has done no act whereby the property is encumbered or whereby he is hindered from transferring it.

The benefit of the contract mentioned in this rule shall be annexed to, and shall go with, the interest of the transferee as such, and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested.

(3) Where the whole of the purchase-money has been paid to the seller, he is also bound to deliver to the buyer all documents of title relating to the property which are in the seller’s possession or power:

PROVIDED that,

(a) where the seller retains any part of the property comprised in such documents, he is entitled to retain them all, and,

(b) where the whole of such property is sold to different buyers, the buyers of the lot of greatest value is entitled to such documents.

But in case (a) the seller, and in case (b) the buyer, of the lot of greatest value, is bound, upon every reasonable request by the buyer, or by any of the other buyers, as the case may be, and at the cost of the person making the request, to produce the said documents and furnish such true copies thereof or extracts therefrom as he may require; and in the meantime, the seller, or the buyer of the lot of greatest value, as the case may be, shall keep the said documents safe, uncancelled and undestroyed, unless prevented from so doing by fire or other inevitable accident.

(4) The seller is entitled-

(a) to the rents and profits of the property till the ownership thereof passes to the buyer;

(b) where the ownership of the property has passed to the buyer before payment of the whole of the purchase-money, to a charge upon the property in the hands of the buyer, any transferee without consideration or any transferee with notice of the non-payment, for the amount of the purchase-money, or any part thereof remaining unpaid, and for interest on such amount or part from the date on which possession has been delivered.

(5) The buyer is bound-

(a) to disclose to the seller any fact as to the nature or extent of the seller’s interest in the property of which the buyer is aware, but of which he has reason to believe that
the seller is not aware, and which materially increases the value of such interest;

(b) to pay or tender, at the time and place of completing the sale, the purchase-money to the seller or such person as he directs:

PROVIDED that, where the property is sold free from encumbrances, the buyer may retain out of the purchase-money the amount of any encumbrances on the property existing at the date of the sale, and shall pay the amount so retained to the persons entitled thereto;

(c) where the ownership of the property has passed to the buyer, to bear any loss arising from the destruction, injury or decrease in value of the property not caused by the seller;

(d) where the ownership of the property has passed to the buyer, as between himself and the seller, to pay all public charges and rent which may become payable in respect of the property, the principal moneys due on any encumbrances subject to which the property is sold, and the interest thereon afterwards accruing due.

(6) The buyer is entitled-

(a) where the ownership of the property has passed to him, to the benefit of any improvement in, or increase in value of, the property, and to the rents and profits thereof;

(b) unless he has improperly declined to accept delivery of the property, to a charge on the property, as against the seller and all persons claiming under him, to the extent of the seller's interest in the property, for the amount of any purchase-money properly paid by the buyer in anticipation of the delivery and for interest on such amount; and, when he properly declines to accept the delivery, also for the earnest (if any) and for the costs (if any) awarded to him of a suit to compel specific performance of the contract or to obtain a decree for its rescission.

An omission to make such disclosures as are mentioned in this section, paragraph (1), clause (a) and paragraph (5), clause (a), is fraudulent.

56. Marshalling by subsequent purchaser If the owner of two or more properties mortgages them to one person and then sells one or more of the properties to another person, the buyer is, in the absence of a contract to the contrary, entitled to have the mortgage-debt satisfied out of the property or properties not sold to him, so far as the same will extend, but not so as to prejudice the rights of the mortgagor or persons claiming under him or of any other person who has for consideration acquired an interest in any of the properties.

DISCHARGE OF ENCUMBRANCES ON SALE

57. Provision by court for encumbrances and sale freed therefrom (a) Where immovable property subject to any encumbrances, whether immediately payable or not, is sold by the court or in execution of a decree, or out of court, the court may, if it thinks fit, on the application of any party to the sale, direct or allow
(1) in case of an annual or monthly sum charged on the property, or of a capital sum charged on a determinable interest in the property—of such amount as, when invested in securities of the Central Government, the court considers will be sufficient, by means of the interest thereof, to keep down or otherwise provide for that charge, and

(2) in any other case of a capital sum charged on the property—of the amount sufficient to meet the encumbrance and any interest due thereon.

But in either case there shall also be paid into court such additional amount as the court considers will be sufficient to meet the contingency of further costs, expenses and interest, and any other contingency, except depreciation of investment not exceeding one-tenth part of the original amount to be paid in, unless the court for special reasons (which it shall record) thinks fit to require a large additional amount.

(b) Thereupon the court may, if it thinks fit, and after notice to the encumbrances, unless the court, for reasons to be recorded in writing thinks fit to dispense with such notice, declare the property to be freed from the encumbrance, and make any order for conveyance, or vesting order, proper for giving effect to the sale, and give directions for the retention and investment of the money in court.

(c) After notice served on the persons interested in or entitled to the money or fund in court, the court may direct payment or transfer thereof to the persons entitled to receive or give a discharge for the same, and generally may give directions respecting the application or distribution of the capital or income thereof.

(d) An appeal shall lie from any declaration, order or direction under this section as if the same were a decree.

(e) In this section “court” means (1) a High Court in the exercise of its ordinary or extraordinary original civil jurisdiction, (2) the court of a District Judge within the local limits of whose jurisdiction the property or any part thereof is situate, (3) any other court which the State Government may, from time to time, by notification in the Official Gazette, declare to be competent to exercise the jurisdiction conferred by this section.
gagor, the transferee a mortgagee; the principal money and interest of which payment is secured for the time being are called the mortgage-money, and the instrument (if any) by which the transfer is effected is called a mortgage-deed.

(b) Simple mortgage-Where, without delivering possession of the mortgaged property, the mortgagor binds himself personally to pay the mortgage-money, and agrees, expressly or impliedly, that, in the event of his failing to pay according to his contract, the mortgagee shall have a right to cause the mortgaged property to be sold and the proceeds of sale to be applied, so far as may be necessary, in payment of the mortgage-money, the transaction is called a simple mortgage and the mortgagee a simple mortgagee.

(c) Mortgage by conditional sale-Where, the mortgagor ostensibly sells the mortgaged property-
- on condition that on default of payment of the mortgage-money on a certain date the sale shall become absolute, or
- on condition that on such payment being made the sale shall become void, or
- on condition that on such payment being made the buyer shall transfer the property to the seller,
the transaction is called a mortgage by conditional sale and the mortgagee a mortgagee by conditional sale:

PROVIDED that no such transaction shall be deemed to be a mortgage, unless the condition is embodied in the document which effects or purports to effect the sale.

(d) Usufructuary mortgage-Where the mortgagor delivers possession or expressly or by implication binds himself to deliver possession of the mortgaged property to the mortgagee, and authorises him to retain such possession until payment of the mortgage-money, and to receive the rents and profits accruing from the property or any part of such rents and profits and to appropriate the same in lieu of interest or in payment of the mortgage-money, or partly in lieu of interest or partly in payment of the mortgage-money, the transaction is called a usufructuary mortgage and the mortgagee a usufructuary mortgagee.

(e) English mortgage-Where the mortgagor binds himself to repay the mortgage-money on a certain date, and transfers the mortgaged property absolutely to the mortgagee, but subject to a proviso that he will retransfer it to the mortgagor upon payment of the mortgage-money as agreed, the transaction is called an English mortgage.

(f) Mortgage by deposit of title-deeds-Where a person in any of the following towns, namely, the towns of Calcutta, Madras, and Bombay, and in any other town which the State Government concerned may, by notification in the Official Gazette, specify in this behalf, delivers to a creditor or his agent documents of title to immovable property, with intent to create a security thereon, the transaction is called a mortgage by deposit of title-deeds.
(g) Anomalous mortgage-A mortgage which is not a simple mortgage, a mortgage by conditional sale, a usufructuary mortgage, an English mortgage or a mortgage by deposit of title-deeds within the meaning of this section is called an anomalous mortgage.

59. Mortgage when to be by assurance Where the principal money secured is one hundred rupees or upwards, a mortgage other than a mortgage by deposit of title deeds can be effected only by a registered instrument signed by the mortgagor and attested by at least two witnesses.

Where the principal money secured is less than one hundred rupees, a mortgage may be effected either by a registered instrument signed and attested as aforesaid or (except in the case of a simple mortgage) by delivery of the property.

59A. References to mortgagors and mortgagees to include persons deriving title from them Unless otherwise expressly provided, references in this Chapter to mortgagors and mortgagees shall be deemed to include references to persons deriving title from them respectively.

RIGHTS AND LIABILITIES OF MORTGAGOR

60. Right of mortgagor to redeem At any time after the principal money has become due, the mortgagor has a right, on payment or tender, at a proper time and place, of the mortgage-money, to require the mortgagee (a) to deliver to the mortgagor the mortgage-deed and all documents relating to the mortgaged property which are in the possession or power of the mortgagee, (b) where the mortgagee is in possession of the mortgaged property, to deliver possession thereof to the mortgagor, and (c) at the cost of the mortgagor either to re-transfer the mortgaged property to him or to such third person as he may direct, or to execute and (where the mortgage has been effected by a registered instrument) to have registered an acknowledgement in writing that any right in derogation of his interest transferred to the mortgagee has been extinguished:

PROVIDED that the right conferred by this section has not been extinguished by the act of the parties or by decree of a court.

The right conferred by this section is called a right to redeem and a suit to enforce it is called a suit for redemption.

Nothing in this section shall be deemed to render invalid any provision to the effect that, if the time fixed for payment of the principal money has been allowed to pass or no such time has been fixed, the mortgagee shall be entitled to reasonable notice before payment or tender of such money.

Redemption of portion of mortgaged property-Nothing in this section shall entitle a person interested in a share only of the mortgaged property to redeem his own share only, on payment of a proportionate part of the amount remaining due on the mortgage, except only where a mortgagee, or, if there are more mortgagees than one, all such
mortgagees, has or have acquired, in whole or in part, the share of a mort-
gagor.

60A. Obligation to transfer to third party instead of re-transference to mortgagor (1) Where a mortgagor is entitled to redemption, then, on the fulfilment of any conditions of the fulfilment of which he would be entitled to require a retransfer, he may require the mortgagor, instead of re-transferring the property, to as-
sign the mortgage debt and transfer the mortgaged property to such third person as the mortgagor may direct; and the mortgagee shall be bound to assign and transfer accordingly.

(2) The rights conferred by this section belong to and may be en-
forced by the mortgagor or by any encumbrancer notwithstanding an intermediate encumbrance; but
the requisition of any encumbrance shall prevail over a requisition of the mortgagor and, as between encum-
brancers, the requisition of a prior encumbrancer shall prevail over that of a subsequent encumbrancer.

(3) The provisions of this section do not apply in the case of a mort-
gagor who is or has been in posses-
sion.

60B. Right to inspection and pro-
duction of documents A mortgagor, as long as his right of redemption subsists, shall be entitled at all rea-
sonable times, at his request and at his own cost, and on payment of the mortgagor’s cost and expenses in this behalf, to inspect and make copies or abstracts of, or extracts from, docu-
ments of title relating to the mort-
gaged property which are in the cus-
tody or power of the mortgagor.

61. Right to redeem separately or simultaneously A mortgagor who has executed two or more mortgages in favour of the same mortgagor shall, in the absence of a contract to the contrary, when the principal money of any two or more of the mortgages has become due, be entitled to re-
deem any one such mortgage separate-
lly, or any two or more of such mortgages together.

62. Right of usufructuary mort-
gagor to recover possession In the case of a usufructuary mortgage, the mortgagor has a right to recover possession of the property together with the mortgage-deed and all doc-
uments relating to the mortgaged property which are in the possession or power of the mortgagor,-

(a) where the mortgagor is autho-
rised to pay himself the mortgage-
money from the rents and profits of the property,-when such money is paid;

(b) where the mortgagor is au-
thorised to pay himself from such rents and profits or any part thereof a part only of the mortgage-money,-when the term (if any) prescribed for the payment of the mortgage-
money has expired and the mort-
gagor pays or tenders to the mort-
gagee the mortgage-money or the balance thereof or deposits it in court hereinafter provided.

63. Accession to mortgaged prop-
erty Where mortgaged property in possession of the mortgagor has, dur-
ing the continuance of the mortgage,
received any accession, the mortgagor, upon redemption shall, in the absence of a contract to the contrary, be entitled as against the mortgagee to such accession.

Accession acquired in virtue of transferred ownership- Where such accession has been acquired at the expense of the mortgagee, and is capable of separate possession or enjoyment without detriment to the principal property, the mortgagor desiring to take the accession must pay to the mortgagee the expense of acquiring it. If such separate possession or enjoyment is not possible, the accession must be delivered with the property: the mortgagor being liable, in the case of an acquisition necessary to preserve the property from destruction, forfeiture or sale, or made with his assent, to pay the proper cost thereof, as an addition to the principal money, with interest at the same rate as is payable on the principal, or, where no such rate is fixed, at the rate of nine per cent per annum.

In the case last mentioned the profits, if any, arising from the accession shall be credited to the mortgagor.

Where the mortgage is usufructuary and the accession has been acquired at the expense of the mortgagee, the profits, if any, arising from the accession shall, in the absence of a contract to the contrary, be set off against interest, if any, payable on the money so expended.

63A. Improvements to mortgaged property (1) Where mortgaged property in possession of the mortgagor has, during the continuance of the mortgage, been improved, the mortgagor, upon redemption, shall, in the absence of a contract to the contrary, be entitled to the improvement; and the mortgagor shall not, save only in cases provided for in sub-section (2), be liable to pay the cost thereof.

(2) Where any such improvement was effected at the cost of the mortgagee and was necessary to preserve the property from destruction or deterioration or was necessary to prevent the security from becoming insufficient, or was made in compliance with the lawful order of any public servant or public authority, the mortgagor shall, in the absence of a contract to the contrary, be liable to pay the proper cost thereof as an addition to the principal money with interest at the same rate as is payable on the principal, or, where no such rate is fixed, at the rate of nine per cent per annum, and the profits, if any, accruing by reason of the improvement shall be credited to the mortgagor.

64. Renewal of mortgaged lease Where mortgaged property is a lease, and the mortgagee obtains a renewal of the lease, the mortgagor, upon redemption, shall, in the absence of a contract by him to the contrary, have the benefit of the new lease.

65. Implied contracts by mortgagor In the absence of a contract to the contrary, the mortgagor shall be deemed to contract with the mortgagee,-

(a) that the interest which the mortgagor professes to transfer to the mortgagee subsists, and that the
mortgagor has power to transfer the same;

(b) that the mortgagor will defend, or, if the mortgagee be in possession of the mortgaged property, enable him to defend, the mortgagor’s title. thereto;

(c) that the mortgagor will, so long as the mortgagee is not in possession of the mortgaged property, pay all public charges accruing due in respect of the property;

(d) and, where the mortgaged property is a lease, that the rent payable under the lease, the conditions contained therein, and the contracts binding on the lessee have been paid, performed and observed down to the commencement of the mortgage; and that the mortgagor will, so long as the security exists and the mortgagee is not in possession of the mortgaged property, pay the rent reserved by the lease, or, if the lease be renewed, the renewed lease, perform the conditions contained therein and observe the contracts binding on the lessee, and indemnify the mortgagee against all the claims sustained by reason of the non-payment of the said rent or the non-performance or non-observance of the said conditions and contracts;

(e) and, where the mortgage is a second or subsequent encumbrance on the property, that the mortgagor will pay the interest from time to time accruing due on such prior encumbrance as and when it becomes due, and will at the proper time discharge the principal money due on such prior encumbrance.

The benefit of the contracts mentioned in this section shall be annexed to and shall go with the interest of the mortgagee as such, and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested.

65A. Mortgagor’s power to lease
(1) Subject to the provisions of sub-section (2), a mortgagor, while lawfully in possession of the mortgaged property, shall have power to make leases thereof which shall be binding on the mortgagee.

(2) (a) Every such lease shall be such as would be made in the ordinary course of management of the property concerned, and in accordance with any local law, custom or usage.

(b) Every such lease shall reserve the best rent that can reasonably be obtained, and no premium shall be paid or promised and no rent shall be payable in advance.

(c) No such lease shall contain a covenant for renewal.

(d) Every such lease shall take effect from a date not later than six months from the date on which it is made.

(e) In the case of a lease of buildings, whether leased with or without the land on which they stand, the duration of the lease shall in no case exceed three years, and the lease shall contain a covenant for payment of the rent and a condition of re-entry on the rent not being paid with a time therein specified.

(3) The provisions of sub-section
IV CHAPTER IV OF MORTGAGES OF IMMOVABLE PROPERTY AND CHARGES

(1) apply only if and as far as a contrary intention is not expressed in the mortgage-deed; and the provisions of sub-section (2) may be varied or extended by the mortgage-deed and, as so varied and extended, shall, as far as may be, operate in like manner and with all like incidents, effects and consequences, as if such variations or extensions were contained in that sub-section.

66. Waste by mortgagor in possession A mortgagor in possession of the mortgaged property is not liable to the mortgagee for allowing the property to deteriorate; but he must not commit any act which is destructive or permanently injurious thereto, if the security is insufficient or will be rendered insufficient by such act.

Explanation: A security is insufficient within the meaning of this section unless the value of the mortgaged property exceeds by one-third, or, if consisting of buildings, exceeds by one-half, the amount for the time being due on the mortgage.

RIGHTS AND LIABILITIES OF MORTGAGEE

67. Right to foreclosure or sale In the absence of a contract to the contrary, the mortgagee has, at any time after the mortgage-money has become due to him, and before a decree has been made for the redemption of the mortgaged property, or the mortgage-money has been paid or deposited as hereinafter provided, a right to obtain from the court a decree that the mortgagor shall be absolutely debarred of his right to redeem the property, or a decree that the property be sold.

A suit to obtain a decree that a mortgagor shall be absolutely debarred of his right to redeem the mortgaged property is called a suit for foreclosure.

Nothing in this section shall be deemed-

(a) to authorise any mortgagee other than a mortgagee by conditional sale or a mortgagee under an anomalous mortgage by the terms of which he is entitled to foreclose, to institute a suit for foreclosure, or a usufructuary mortgagee as such or a mortgagee by conditional sale as such to institute a suit for sale; or

(b) to authorise a mortgagor who holds the mortgagee’s rights as his trustee or legal representative, and who may sue for a sale of the property, to institute a suit for foreclosure; or

(c) to authorise the mortgagee of a railway, canal, or other work in the maintenance of which the public are interested, to institute a suit for foreclosure or sale; or

(d) to authorise a person interested in part only of the mortgage-money to institute a suit relating only to a corresponding part of the mortgaged property, unless the mortgagees have, with the consent of the mortgagor, severed their interests under the mortgage.

67A. Mortgagee when bound to bring one suit on several mortgages A mortgagee who holds two or more mortgages executed by the same mortgagor in respect of each of which
he has a right to obtain the same kind of decree under section 67, and who
sues to obtain such decree on any one of the mortgages, shall, in the absence of a contract to the contrary, be bound to sue on all the mortgages in respect of which the mortgage-money has become due.

V CHAPTER IV
OF MORTGAGES
OF IMMOVABLE
PROPERTY AND
CHARGES

68. Right to sue for mortgage-money
(1) The mortgagee has a right to sue for the mortgage-money in the following cases and no others, namely,-
(a) where the mortgagor binds himself to repay the same;
(b) where, by any cause other than the wrongful act or default of the mortgagor or mortgagee, the mortgaged property is wholly or partially destroyed or the security is rendered insufficient within the meaning of section 66, and the mortgagee has given the mortgagor a reasonable opportunity of providing further security enough to render the whole security sufficient, and the mortgagor has failed to do so;
(c) where the mortgagee is deprived of the whole or part of his security by or in consequence of the wrongful act or default of the mortgagor;
(d) where, the mortgagee being entitled to possession of the mortgaged property, the mortgagor fails to deliver the same to him, or to secure the possession thereof to him without disturbance by the mortgagor or any person claiming under a title superior to that of the mortgagor:

PROVIDED that, in the case referred to in clause (a), a transferee from the mortgagor or from his legal representative shall not be liable to be sued for the mortgage-money.

(2) Where a suit is brought under clause (a) or clause (b) of sub-section (1), the court may, at its discretion, stay the suit and all proceedings therein, notwithstanding any contract to the contrary, until the mortgagee has exhausted all his available remedies against the mortgaged property or what remains of it, unless the mortgagee abandons his security and, if necessary, re-transfers the mortgaged property.

69. Power of sale when valid
(1) A mortgagee, or any person acting on his behalf, shall, subject to the provisions of this section have power to sell or concur in selling the mortgaged property or any part thereof, in default of payment of the mortgage-money, without the intervention of the court, in the following cases and in no others, namely,-
(a) where the mortgage is an English mortgage, and neither the mortgagor nor the mortgagee is a Hindu, Mohammedan or Buddhist or a member of any other race, sect, tribe or class from time to time specified in this behalf by the State Government, in the Official Gazette;
(b) where a power of sale with-
out the intervention of the court is expressly conferred on the mortgagee by the mortgage-deed and the mortgagee is the government;

(c) where a power of sale without the intervention of the court is expressly conferred on the mortgagee by the mortgage-deed and the mortgaged property or any part thereof was, on the date of the execution of the mortgage-deed, situate within the towns of Calcutta, Madras, Bombay, or in any other town or area which the State Government may, by notification in the Official Gazette, specify in this behalf.

(2) No such power shall be exercised unless and until-

(a) notice in writing requiring payment of the principal money has been served on the mortgagor, or on one of several mortgagors, and default has been made in payment of the principal money, or of part thereof, for three months after such service; or

(b) some interest under the mortgage amounting at least to five hundred rupees is in arrear and unpaid for three months after becoming due.

(3) When a sale has been made in professed exercise of such a power, the title of the purchaser shall not be impeachable on the ground that no case had arisen to authorise the sale, or that due notice was not given, or that the power was otherwise improperly or irregularly exercised; but any person damaged by an unauthorised or improper or irregular exercise of the power shall have his remedy in damages against the person exercising the power.

(4) The money which is received by the mortgagee, arising from the sale, after discharge of prior encumbrances, if any, to which the sale is not made subject, or after payment into court under section 57 of a sum to meet any prior encumbrance, shall, in the absence of a contract to the contrary, be held by him in trust to be applied by him, first, in payment of all costs, charges and expenses properly incurred by him as incident to the sale or any attempted sale; and, secondly, in discharge of the mortgage-money and costs and other money, if any, due under the mortgage; and the residue of the money so received shall be paid to the person entitled to the mortgaged property, or authorised to give receipts for the proceeds of the sale thereof.

(5) Nothing in this section or in section 69A applies to powers conferred before the first day of July, 1882.

69A. Appointment of receiver (1) A mortgagee having the right to exercise a power of sale under section 69 shall, subject to the provisions of sub-section (2), be entitled to appoint, by writing signed by him or on his behalf, a receiver of the income of the mortgaged property or any part thereof.

(2) Any person who has been named in the mortgage-deed and is willing and able to act as receiver may be appointed by the mortgagee.

If no person has been so named, or if all persons named are unable
or unwilling to act, or are dead, the mortgagee may appoint any person to whose appointment the mortgagor agrees: failing such agreement, the mortgagee shall be entitled to apply to the court for the appointment of a receiver, and any person appointed by the court shall be deemed to have been duly appointed by the mortgagee.

A receiver may at any time be removed by writing signed by or on behalf of the mortgagee and the mortgagor, or by the court on application made by either party and on due cause shown.

A vacancy in the office of receiver may be filled in accordance with the provisions of this sub-section.

(5) A person paying money to the receiver shall not be concerned to inquire if the appointment of the receiver was valid or not.

(6) The receiver shall be entitled to retain out of any money received by him, for his remuneration, and in satisfaction of all costs, charges and expenses incurred by him as receiver, a commission at such rate not exceeding five per cent, on the gross amount of all money received as is specified in his appointment, and, if no rate is so specified, then at the rate of five per cent on that gross amount, or at such other rate as the court thinks fit to allow, on application made by him for that purpose.

(7) The receiver shall, if so directed in writing by the mortgagee, insure to the extent, if any, to which the mortgagee might have insured, and keep insured against loss or damage by fire, out of the money received by him, the mortgaged property or any part thereof being of an insurable nature.

(8) Subject to the provisions of this Act as to the application of insurance money, the receiver shall apply all the money received by him as follows, namely,-

(i) in discharge of all rents, taxes, land revenue, rates and outgoings whatever affecting the mortgaged property;

(ii) in keeping down all annual sums or other payments, and the interest on all principal sums, having priority to the mortgage in right whereof he is receiver;

(iii) in payment of his commis-
sion, and of the premiums of fire, life or other insurances, if any, properly payable under the mortgage-deed or under this Act, and the cost of executing necessary or proper repairs directed in writing by the mortgagee:

(iv) in payment of the interest falling due under the mortgage;

(v) in or towards discharge of the principal money, if so directed in writing by the mortgagee,

and shall pay the residue, of any of the money received by him to the person who, but for the possession of the receiver, would have been entitled to receive the income of which he is appointed receiver, or who is otherwise entitled to the mortgaged property.

(9) The provisions of sub-section (1) apply only if and as far as a contrary intention is not expressed in the mortgage-deed; and the provisions of sub-sections (3) to (8) inclusive may be varied or extended by the mortgage-deed; and, as so varied or extended, shall, as far as may be, operate in like manner and with all the like incidents, effects and consequences, as if such variations or extensions were contained in the said sub-sections.

(10) Applications may be made, without the institution of a suit, to the court for its opinion, advice or direction on any present question respecting the management or administration of the mortgaged property, other than questions of difficulty or importance not proper in the opinion of the court for summary disposal, A copy of such application shall be served upon, and the hearing thereof may be attended by such of the persons interested in the application as the court may think fit.

The costs of every application under this sub-section shall be in the discretion of the court.

(11) In this section, “the court” means the court which would have jurisdiction in a suit to enforce the mortgage.

70. Accession to mortgaged property
If, after the date of a mortgage, any accession is made to the mortgaged property, the mortgagee, in the absence of a contract to the contrary, shall, for the purposes of the security, be entitled to such accession.

Illustrations
(a) A mortgages to B a certain field bordering on a river. The field is increased by alluvion. For the purposes of his security, B is entitled to the increase.

(b) A mortgages a certain plot of building land to B and afterwards erects a house on the plot. For the purposes of his security, B is entitled to the house as well as the plot.

71. Renewal of mortgaged lease
When the mortgaged property is a lease and the mortgagor obtains a renewal of the lease, the mortgagee, in the absence of a contract to the contrary, shall, for the purposes of the security, be entitled to the new lease.

72. Rights of mortgagee, in possession
A mortgagee may spend such money as is necessary:

(a) 6[***]
(b) for the preservation of the mortgaged property from destruction, forfeiture or sale;

(c) for supporting the mortgagor’s title to the property;

(d) for making his own title thereto good against the mortgagor; and

(e) when the mortgaged property is a renewable lease-hold, for the renewal of the lease,

and may, in the absence of a contract to the contrary, add such money to the principal money, at the rate of interest payable on the principal, and, where no such rate is fixed, at the rate of nine percent per annum:

PROVIDED that the expenditure of money by the mortgagee under clause (b) or clause (c) shall not be deemed to be necessary unless the mortgagor has been called upon and has failed to take proper and timely steps to preserve the property or to support the title.

Where the property is by its nature insurable, the mortgagee may also, in the absence of a contract to the contrary, insure and keep insured against loss or damage by fire the whole or any part of such property, and the premiums paid for any such insurance shall be added to the principal money with interest at the same rate as is payable on the principal money or, where no such rate is fixed, at the rate of nine per cent per annum. But the amount of such insurance shall not exceed the amount specified in this behalf in the mortgage-deed or (if no such amount is therein specified) two-thirds of the amount that would be required in case of total destruction to reinstate the property insured.

Nothing in this section shall be deemed to authorise the mortgagee to insure when an insurance of the property is kept up by or on behalf of the mortgagor to the amounts in which the mortgagee is hereby authorised to insure.

73. Right to proceeds of revenue sale or compensation on acquisition

(1) Where the mortgaged property or any part thereof or any interest therein is sold owing to failure to pay arrears or revenue or other charges of a public nature or rent due in respect of such property, and such failure did not arise from any default of the mortgagee, the mortgagee shall be entitled to claim payment of the mortgage-money, in whole or in part, out of any surplus of the sale-proceeds remaining after payment of the arrears and of all charges and deductions directed by law.

(2) Where the mortgaged property or any part thereof or any interest therein is acquired under the Land Acquisition Act, 1894 (1 of 1894), or any other enactment for the time being in force providing for the compulsory acquisition of immovable property, the mortgagee shall be entitled to claim payment of the mortgage-money, in whole or in part, out of the amount due to the mortgagor as compensation.

(3) Such claims shall prevail against all other claims except those
of prior encumbrances, and may be enforced notwithstanding the principal money on the mortgage has not become due.

74. Right of subsequent mortgagee to pay off prior mortgagee [Repealed by the Transfer of Property (Amendment) Act, 1929.]

75. Rights of mesne mortgagee against prior and subsequent mortgagees [Repealed by the Transfer of Property (Amendment) Act, 1929.]

76. Liabilities of mortgagee in possession When, during the continuance of the mortgage, the mortgagee takes possession of the mortgaged property, -

(a) he must manage the property as a person of ordinary prudence would manage it if it were his own;

(b) he must try his best endeavours to collect the rents and profits thereof;

(c) he must, in the absence of a contract to the contrary, out of the income of the property, pay the government revenue, all other charges of a public nature and all rent accruing due in respect thereof during such possession, and any arrears of rent in default of payment of which the property may be summarily sold;

(d) he must in the absence of a contract to the contrary, make such necessary repairs of the property as he can pay for out of the rents and profits thereof after deducting from such rents and profits the payments mentioned in clause (c) and the interest on the principal money;

(e) he must not commit any act which is destructive or permanently injurious to the property;

(f) where he has insured the whole or any part of the property against loss or damage by fire, he must, in case of such loss or damage, apply any money which he actually receives under the policy or so much thereof as may be necessary, in reinstating the property, or, if the mortgagor so directs, in reduction or discharge of the mortgage-money;

(g) he must keep clear, full and accurate accounts of all sums received and spent by him as mortgagee, and, at any time during the continuance of the mortgage, give the mortgagor, at his request and cost, true copies of such accounts and of the vouchers by which they are supported;

(h) his receipts from the mortgaged property, or, where such property is personally occupied by him, a fair occupation-rent in respect thereof, shall, after deducting the expenses properly incurred for the management of the property and the collection of rents and profits and the other expenses mentioned in clauses (c) and (d), and interest thereon, be debited against him in reduction of the amount (if any) from time to time due to him on account of interest and, so far as such receipts exceed any interest due, in reduction or discharge of the mortgage-money; the surplus, if any, shall be paid to the mortgagor;

(i) when the mortgagor tenders, or deposits in the manner hereinafter provided, the amount for the time
being due on the mortgage, the mortgagor must, notwithstanding the provisions in the other clauses of this section, account for his receipts from the mortgaged property from the date of the tender or from the earliest time when he could take such amount out of court, as the case may be, and shall not be entitled to deduct any amount therefrom on account of any expenses incurred after such date or time in connection with the mortgaged property.

Loss occasioned by his default- If the mortgagee fails to perform any of the duties imposed upon him by this section, he may, when accounts are taken in pursuance of a decree made under this Chapter, be debited with the loss, if any, occasioned by such failure.

77. Receipts in lieu of interest
Nothing in section 76, clauses (b), (d), (g) and (h), applies to cases where there is a contract between the mortgagee and the mortgagor that the receipts from the mortgaged property shall, so long as the mortgagor is in possession of the property, be taken in lieu of interest on the principal money, or in lieu of such interest and defined portions of the principal.

VI  CHAPTER  IV
OF MORTGAGES
OF IMMOVABLE PROPERTY AND CHARGES

PRIORITY 78. Postponement of prior mortgagee Where, through the fraud, misrepresentation or gross neglect of prior mortgagee, another person has been induced to advance money on the security of the mortgaged property, the prior mortgagee shall be postponed to the subsequent mortgagee.

79. Mortgage to secure uncertain amount when maximum is expressed If a mortgage made to secure future advances, the performance of an engagement or the balance of a running account, expresses the maximum to be secured thereby, a subsequent mortgage of the same property shall, if made with notice of the prior mortgage, be postponed to the prior mortgage in respect of all advances or debits not exceeding the maximum, though made or allowed with notice of the subsequent mortgage.

Illustration
A mortgages Sultanpur to his bankers, B & Co., to secure the balance of his account with them to the extent of Rs. 10,000. A then mortgages Sultanpur to C, to secure Rs. 10,000, C having notice of the mortgage to B & Co., and C gives notice to B & Co. of the second mortgage. At the date of the second mortgage, the balance due to B & Co. does not exceed Rs. 5,000. B & Co. subse-
quently advance to A sums making
the balance of the account against
him exceed the sum of Rs. 10,000.
B & Co. are entitled, to the extent
of Rs. 10,000, to priority over C.

80. Tacking abolished [Repealed
by the Transfer of Property (Amend-
ment) Act, 1929 (20 of 1929).]

MARSHALLING AND CON-
TRIBUTION 81. Marshalling secur-
ities If the owner of two or more
properties mortgages them to one
person and then mortgages one or
more of the properties to another
person, the subsequent mortgage is,
in the absence of a contract to the
contrary, entitled to have the prior
mortgage-debt satisfied out of the
property or properties not mortgaged
to him, so far as the same will ex-
tend, but not so as to prejudice the
rights of the prior mortgagee or of
any other person who has for consid-
eration acquired an interest in any of
the properties.

82. Contribution to mortgage-
debt Where property subject to a
mortgage belongs to two or more
persons having distinct and separate
rights of ownership therein, the dif-
ferent shares in or parts of such prop-
erty owned by such persons are, in
the absence of a contract to the con-
trary, liable to contribute rateably
to the debt secured by the mort-
gage, and, for the purpose of deter-
mining the rate at which each such
share or part shall contribute, the
value thereof shall be deemed to be
its value at the date of the mortgage
after deduction of the amount of any
other mortgage or charge to which it
may have been subject on that date.

Where, of two properties belong-
ing to the same owner, one is mort-
gaged to secure one debt and then
both are mortgaged to secure an-
other debt, and the former debt is
paid out of the former property, each
property is, in the absence of a con-
tract to the contrary, liable to con-
tribute rateably to the latter debt af-
ter deducting the amount of former
debt from the value of the property
out of which it has been paid.

Nothing in this section applies to
a property liable under section 81 to
the claim of the subsequent mort-
gage.

DEPOSIT IN COURT

83. Power to deposit in court
money due on mortgage At any time
after the principal money payable in
respect of any mortgage has become
due and before a suit for redemption
of the mortgaged property is barred,
the mortgagor, or any other person
entitled to institute such suit, may
deposit, in any court in which he
might have instituted such suit, to
the account of the mortgagee, the
amount remaining due on the mort-
gage.

Right to money deposited by
mortgagor-The court shall thereupon
cause written notice of the deposit
to be served on the mortgagee, and
the mortgagee may, on presenting
a petition (verified in manner pre-
scribed by law for the verification of
plaints) stating the amount then due
on the mortgage, and his willingness
to accept the money so deposited in
full discharge of such amount, and
on depositing in the same court the
mortgage-deed and all documents in his possession or power relating to the mortgaged property, apply for and receive the money, and the mortgage-deed, and all such other documents so deposited shall be delivered to the mortgagor or such other person as aforesaid.

Where the mortgagee is in possession of the mortgaged property, the court shall, before paying to him the amount so deposited direct to him to deliver possession thereof to the mortgagor and at the cost of the mortgagor either to re-transfer the mortgaged property to the mortgagor or to such third person as the mortgagor may direct or to execute and (where the mortgage has been effected by a registered instrument) have registered an acknowledgement in writing that any right in derogation of the mortgagor's interest transferred to the mortgagee has been extinguished.

84. Cessation of interest When the mortgagor or such other person as aforesaid has tendered or deposited in court under section 83 the amount remaining due on the mortgage, interest on the principal money shall cease from the date of the tender or in the case of a deposit, where no previous tender of such amount has been made as soon as the mortgagor or such other person as aforesaid has done all that has to be done by him to enable the mortgagee to take such amount out of court, and the notice required by section 83 has been served on the mortgagee:

PROVIDED that, where the mortgagor has deposited such amount without having made a previous tender thereof and has subsequently withdrawn the same or any part thereof, interest on the principal money shall be payable from the date of such withdrawal.

Nothing in this section or in section 83 shall be deemed to deprive the mortgagee of his right to interest when there exists a contract that he shall be entitled to a reasonable notice before payment or tender of the mortgage-money and such notice has not been given before the making of the tender or deposit, as the case may be.

SUITs FOR FORECLOSURE, SALE OR REDEMPTION

85. Parties to suits for foreclosure, sale and redemption [Repealed by the Code of Civil Procedure, 1908 (5 of 1908).]

FORECLOSURE AND SALE

Sections 86 to 90 - [Repealed by the Code of Civil Procedure, 1908 (5 of 1908).]

REDEMPTION

91. Persons who may sue for redemption Besides the mortgagor, any of the following persons may redeem, or institute a suit for redemption of, the mortgaged property, namely,-

(a) any person (other than the mortgagee of the interest sought to be redeemed) who has any interest in, or charge upon, the property mortgaged or in or upon the right to redeem the same;

(b) any surety for the payment of the mortgage-debt or any part thereof; or
(c) any creditor of the mortgagor who has in a suit for the administration of his estate obtained a decree for sale of the mortgaged property.

92. Subrogation Any of the persons referred to in section 91 (other than the mortgagor) and any co-mortgagor shall, on redeeming property subject to the mortgage, have, so far as regards redemption, foreclosure or sale of such property, the same rights as the mortgagee whose mortgage he redeems may have against the mortgagor or any other mortgagee.

The right conferred by this section is called the right of subrogation, and a person acquiring the same is said to be subrogated to the rights of the mortgagee whose mortgage he redeems.

A person who has advanced to a mortgagor money with which the mortgage has been redeemed shall be subrogated to the rights of the mortgagee whose mortgage he redeems.

Nothing in this section shall be deemed to confer a right of subrogation on any person unless the mortgage in respect of which the right is claimed has been redeemed in full.

93. Prohibition of tacking No mortgagee paying off a prior mortgage, whether with or without notice of an intermediate mortgage, shall thereby acquire any priority in respect of his original security; and, except in the case provided for by section 79, no mortgagee making a subsequent advance to the mortgagor, whether with or without notice of an intermediate mortgage, shall thereby acquire any priority in respect of his security for such subsequent advance.

94. Rights of mesne mortgagee Where a property is mortgaged for successive debts to successive mortgagees, a mesne mortgagee has the same rights against mortgagees posterior to himself as he has against the mortgagor.

95. Right of redeeming co-mortgagor to expenses Where one of several mortgagors redeems the mortgaged property, he shall, in enforcing his right of subrogation under section 92 against his co-mortgagors, be entitled to add to the mortgage money recoverable from them such proportion of the expenses properly incurred in such redemption as is attributable to their share in the property.

96. Mortgage by deposit of title-deeds The provisions hereinbefore contained which apply to a simple mortgage shall, so far as may be, apply to a mortgage by deposit of title-deeds.

97. Application of proceeds [Repealed by the Code of Civil Procedure, 1908 (5 of 1908)]

ANOMALOUS MORTGAGES

98. Rights and liabilities of parties to anomalous mortgage In the case of an anomalous mortgage the rights and liabilities of the parties shall be determined by their contract as evidenced in the mortgage-deed, and, so far as such contract does not extend
by local usage.

ATTACHMENT OF MORTGAGED PROPERTY 99. Attachment of mortgaged property [Repealed by the Code of Civil Procedure, 1908 (5 of 1908).]

CHARGES 100. Charges Where immovable property of one person is by act of parties or operation of law made security for the payment of money to another, and the transaction does not amount to a mortgage, the latter person is said to have a charge on the property and all the provisions hereinbefore contained which apply to a simple mortgage shall, so far as may be, apply to such charge.

Nothing in this section applies to the charge of a trustee on the trust-property for expenses properly incurred in the execution of his trust, and, save as otherwise expressly provided by any law for the time being in force, no charge shall be enforced against any property in the hands of a person to whom such property has been transferred for consideration and without notice of the charge.

101. No merger in case of subsequent encumbrance Any mortgagee of, or person having a charge upon, immovable property, or any transferee from such mortgagee or charge-holder, may purchase or otherwise acquire the rights in the property of the mortgagor or owner, as the case may be, without thereby causing the mortgage or charge to be merged as between himself and any subsequent mortgagee of, or person having a subsequent charge upon, the same property; and no such subsequent mortgagee or charge-holder shall be entitled to foreclose or sell such property without redeeming the prior mortgage or charge, or otherwise than subject thereto.

NOTICE AND TENDER 102. Service or tender on or to agent Where the person on or to whom any notice or tender is to be served or made under this Chapter does not reside in the district in which the mortgaged property or some part thereof is situate, service or tender on or to an agent holding a general power of attorney from such person or otherwise duly authorised to accept such service or tender shall be deemed sufficient.

Where no person or agent on whom such notice should be served can be found or is known to the person required to serve the notice, the latter person may apply to any court in which a suit might be brought for redemption of the mortgaged property, and such court shall direct in what manner such notice shall be served, and any notice served in compliance with such direction shall be deemed sufficient:

PROVIDED that, in the case of a notice required to section 83, in the case of a deposit, the application shall be made to the court in which the deposit has been made.

Where no person or agent to whom such tender should be made can be found or is known to the person desiring to make the tender, the latter person may deposit in any court in which a suit might be
brought for redemption of the mortgaged property the amount sought to be tendered, and such deposit shall have the effect of a tender of such amount.

103. Notice, etc., to or by person incompetent to contract Where, under the provisions of this Chapter, a notice is to be served on or by, or a tender or deposit made or accepted or taken out of court by, any person incompetent to contract, such notice may be served on or by or tender or deposit made, accepted or taken, by the legal curator of the property of such person; but where there is no such curator, and it is requisite or desirable in the interests of such person that a notice should be served or a tender or deposit made under the provisions of this Chapter, application may be made to any court in which a suit might be brought for the redemption of the mortgage to appoint a guardian ad litem for the purpose of serving or receiving service of such notice, or making or accepting such tender, or making or taking out of court such deposit, and for the performance of all consequential acts which could or ought to be done by such person if he were competent to contract; and the provisions of order XXXII in the Schedule I to the Code of Civil Procedure, 1908 (5 of 1908) shall, so far as may be, apply to such application and to parties thereto and to the guardian appointed thereunder.

104. Power to make rules The High Court may, from time to time, make rules consistent with this Act for carrying out, in itself and in the Court of Civil Judicature subject to its superintendence, the provisions contained in this Chapter.

VII CHAPTER V OF LEASES OF IMMOVABLE PROPERTY

105. Lease defined A lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.

Lessor, lessee, premium and rent defined: The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money, share, service or other thing to be so rendered is called the rent.

106. Duration of certain leases in absence of written contract or local usage In the absence of a contract or local law or usage to the contrary, a lease of immovable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor or lessee, by six months’ notice expiring with the end of a year of the tenancy; and a lease of immovable property for any other purpose shall be deemed to be a lease from month to month, ter-
minable, on the part of either lessor or lessee, by fifteen days' notice expiring with the end of a month of the tenancy.

Every notice under this section must be in writing, signed by or on behalf of the person giving it, and either be sent by post to the party who is intended to be bound by it or be tendered or delivered personally to such party, or to one of his family or servants at his residence, or (if such tender or delivery is not practicable) affixed to a conspicuous part of the property.

107. Leases how made A lease of immovable property from year to year, or for any term exceeding one year or reserving a yearly rent, can be made only by a registered instrument.

All other leases of immovable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession.

Where a lease of immovable property is made by a registered instrument, such instrument or, where there are more instruments than one, each such instrument shall be executed by both the lessor and the lessee:

PROVIDED that the State Government from time to time, by notification in the Official Gazette, direct that leases of immovable property, other than leases from year to year, or for any term exceeding one year, or reserving a yearly rent, or any class of such leases, may be made by unregistered instrument or by oral agreement without delivery of possession.

108. Rights and liabilities of lessor and lessee In the absence of a contract or local usage to the contrary, the lessor and the lessee of immovable property, as against one another, respectively, possess the rights and are subject to the liabilities mentioned in the rules next following, or such of them as are applicable to the property leased:

(A) Rights and liabilities of the lessor

(a) The lessor is bound to disclose to the lessee any material defect in the property, with reference to its intended use, of which the former is and the latter is not aware, and which the latter could not with ordinary care discover;

(b) the lessor is bound on the lessee's request to put him in possession of the property;

(c) the lessor shall be deemed to contract with the lessee that, if the latter pays the rent reserved by the lease and performs the contracts binding on the lessee, he may hold the property during the time limited by the lease without interruption.

The benefit of such contract shall be annexed to and go with the lessee's interest as such, and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested.

(B) Rights and liabilities of the lessee

(d) If during the continuance of
the lease any accession is made to the property, such accession (subject to the law relating to alluvion for the time being in force) shall be deemed to be comprised in the lease;

(e) if by fire, tempest or flood, or violence of an army or of a mob, or other irresistible force, any material part of the property be wholly destroyed or rendered substantially and permanently unfit for the purposes for which it was let, the lease shall, at the option of the lessee, be void:

Provided that, if the inquiry be occasioned by the wrongful act or default of the lessee, he shall be entitled to avail himself of the benefit of this provision;

(f) if the lessor neglects to make, within a reasonable time after notice, any repairs which he is bound to make to the property, the lessee may make the same himself, and deduct the expense of such repairs with interest from the rent, or otherwise recover it from the lessor;

(g) if the lessor neglects to make any payment which he is bound to make, and which, if not made by him, is recoverable from the lessee or against the property, the lessee may make such payment himself, and deduct it with interest from the rent, or otherwise recover it from the lessor;

(h) the lessee may even after the determination of the lease remove, at any time whilst he is in possession of the property leased but not afterwards all things which he has attached to the earth; provided he leaves the property in the state in which he received it;

(i) when a lease of uncertain duration determines by any means except the fault of the lessee, he or his legal representative is entitled to all the crops planted or sown by the lessee and growing upon the property when the lease determines, and to free ingress and egress to gather and carry them;

(j) the lessee may transfer absolutely or by way of mortgage or sublease the whole or any part of his interest in the property, and any transferee of such interest or part may again transfer it. The lessee shall not, by reason only of such transfer, cease to be subject to any of the liabilities attaching to the lease;

nothing in this clause shall be deemed to authorise a tenant having an untransferable right of occupancy, the farmer of an estate in respect of which default has been made in paying revenue, or the lessee of an estate under the management of a Court of Wards, to assign his interest as such tenant, farmer or lessee;

(k) the lessee is bound to disclose to the lessor any fact as to the nature or extent of the interest which the lessee is about to take of which the lessee is, and the lessor is not aware, and which materially increases the value of such interest;

(l) the lessee is bound to pay or tender, at the proper time and place, the premium or rent to the lessor or his agent in this behalf;

(m) the lessee is bound to keep, and on the termination of the lease to restore, the property in as good con-
tion as it was in at the time when he was put in possession, subject only to the changes caused by reasonable wear and tear or irresistible force, and to allow the lessor and his agents, at all reasonable times during the term, to enter upon the property and inspect the condition thereof and give or leave notice of any defect in such condition; and, when such defect has been caused by any act or default on the part of the lessee, his servants or agents, he is bound to make it good within three months after such notice has been given or left;

(n) if the lessee becomes aware of any proceeding to recover the property or any part thereof, or of any encroachment made upon, or any interference with, the lessor's rights concerning such property, he is bound to give, with reasonable diligence, notice thereof to the lessor;

(o) the lessee may use the property and its products (if any) as a person of ordinary prudence would use them if they were his own; but he must not use, or permit another to use, the property for a purpose other than that for which it was leased, or fell or sell timber, pull down or damage buildings belonging to the lessor, or work mines or quarries not open when the lease was granted, or commit any other act which is destructive or permanently injurious thereto;

(p) he must not, without the lessor's consent, erect on the property any permanent structure, except for agricultural purposes;

(q) on the determination of the lease, the lessee is bound to put the lessor into possession of the property.

109. Rights of lessor's transferee
If the lessor transfers the property leased, or any part thereof, or any part of his interest therein, the transferee, in the absence of a contract to the contrary, shall possess all the rights, and, if the lessee so elects, be subject to all the liabilities of the lessor as to the property or part transferred so long as he is the owner of it; but the lessor shall not, by reason only of such transfer cease to be subject to any of the liabilities imposed upon him by the lease, unless the lessee elects to treat the transferee as the person liable to him:

PROVIDED that the transferee is not entitled to arrears of rent due before the transfer, and that, if the lessee, not having reason to believe that such transfer has been made, pays rent to the lessor, the lessee shall not be liable to pay such rent over again to the transferee.

The lessor, the transferee and the lessee may determine what proportion of the premium or rent reserved by the lease is payable in respect of the part so transferred, and, in case they disagree, such determination may be made by any court having jurisdiction to entertain a suit for the possession of the property leased.

110. Exclusion of day on which term commences
Where the time limited by a lease of immovable property is expressed as commencing from a particular day, in computing that time such day shall be excluded. Where no day of commencement is
named, the time so limited begins from the making of the lease.

Duration of lease for a year: Where the time so limited is a year or a number of years, in the absence of an express agreement to the contrary, the lease shall last during the whole anniversary of the day from which such time commences.

Option to determine lease: Where the time so limited is expressed to be terminable before its expiration, and the lease omits to mention at whose option it is so terminable, the lessee, and not the lessor, shall have such option.

111. Determination of lease
A lease of immovable property determines-

(a) by efflux of the time limited thereby,

(b) where such time is limited conditionally on the happening of some event—by the happening of such event,

(c) where the interest of the lessor in the property terminates on, or his power to dispose of the same extends only to, the happening of any event—by the happening of such event,

(d) in case the interests of the lessee and the lessor in the whole of the property become vested at the same time in one person in the same right,

(e) by express surrender, that is to say, in case the lessee yields up his interest under the lease to the lessor, by mutual agreement between them,

(f) by implied surrender,

(g) by forfeiture; that is to say,

(1) in case the lessee breaks an express condition which provides that, on breach thereof, the lessor may re-enter; or (2) in case the lessee renounces his character as such by setting up a title in a third person or by claiming title in himself; or (3) the lessee is adjudicated an insolvent and the lease provides that the lessor may re-enter on the happening of such event; and in any of these cases the lessor or his transferee gives notice in writing to the lessee of his intention to determine the lease,

(h) on the expiration of a notice to determine the lease, or to quit, or of intention to quit, the property leased, duly given by one party to the other.

Illustration to clause (f)
A lessee accepts from his lessor a new lease of the property leased, to take effect during the continuance of the existing lease. This is an implied surrender of the former lease, and such lease determines thereupon.

112. Waiver of forfeiture
A forfeiture under section 111, clause (g) is waived by acceptance of rent which has become due since the forfeiture, or by distress for such rent, or by any other act on the part of the lessor showing an intention to treat the lease as subsisting:

PROVIDED that the lessor is aware that the forfeiture has been incurred:

PROVIDED FURTHER that, where rent is accepted after the institution of a suit to eject the lessee on the ground of forfeiture, such acceptance is not a waiver.
113. Waiver of notice to quit A notice given under section 111, clause (h), is waived, with the express or implied consent of the person to whom it is given, by any act on the part of the person giving it showing an intention to treat the lease as subsisting.

Illustrations
(a) A, the lessor, gives B, the lessee, notice to quit the property leased. The notice expires. B tenders and A accepts, rent which has become due in respect of the property since the expiration of the notice. The notice is waived.

(b) A, the lessor, gives B, the lessee, notice to quit the property leased. The notice expires, and B remains in possession. A gives to B as lessee a second notice to quit. The first notice is waived.

114. Relief against forfeiture for non-payment of rent Where a lease of immovable property has been determined by forfeiture for non-payment of rent, and the lessor sues to eject the lessee, if, at the hearing of the suit, the lessee pays or tenders to the lessor the rent in arrear, together with interest thereon and his full costs of the suit, or gives such security as the court thinks sufficient for making such payment within fifteen days, the court may, in lieu of making a decree for ejectment, pass an order relieving the lessee against the forfeiture: and thereupon the lessee shall hold the property leased as if the forfeiture had not occurred.

114A. Relief against forfeiture in certain other cases Where a lease of immovable property has been determined by forfeiture for a breach of an express condition which provides that on breach thereof the lessor may re-enter, no suit for ejectment shall lie unless and until the lessor has served on the lessee a notice in writing-

(a) specifying the particular breach complained of; and

(b) if the breach is capable of remedy, requiring the lessee to remedy the breach,

and the lessee fails, within a reasonable time from the date of the service of the notice, to remedy the breach, if it is capable of remedy.

Nothing in this section shall apply to an express condition against the assigning, under-letting, parting with the possession, or disposing, of the property leased, or to an express condition relating to forfeiture in case of non-payment of rent.

115. Effect of surrender and forfeiture on underleases The surrender, express or implied, of a lease of immovable property does not prejudice an under lease of the property or any part thereof previously granted by the lessee, on terms and conditions substantially the same (except as regards the amount of rent) as those of the original lease; but, unless the surrender is made for the purpose of obtaining a new lease, the rent payable by, and the contracts binding on, the underlessee shall be respectively payable to and enforceable by the lessor.

The forfeiture of such a lease annuls all such underleases, except where such forfeiture has been pro-
cured by the lessor in fraud of the underlessees, or relief against the forfeiture is granted under section 114.

116. Effect of holding over If a lessee or underlessee of property remains in possession thereof after the determination of the lease granted to the lessee, and the lessor or his legal representative accepts rent from the lessee or underlessee, or otherwise assents to his continuing in possession, the lease is, in the absence of an agreement to the contrary, renewed from year to year, or from month to month, according to the purpose for which the property is leased, as specified in section 106.

Illustrations

(a) A lets a house to B for five years. B underlets the house to C at a monthly rent of Rs. 100. The five years expire, but C continues in possession of the house and pays the rent to A. C’s lease is renewed from month to month.

(b) A lets a farm to B for the life of C. C dies, but B continues in possession with A’s assent. B’s lease is renewed from year to year.

117. Exemption of leases for agricultural purposes None of the provisions of this Chapter apply to leases for agricultural purposes, except insofar as the State Government may, by notification published in the Official Gazette, declare all or any of such provisions to be applicable in the case of all or any of such leases, together with, or subject to, those of the local law, if any, for the time being in force.

Such notification shall not take effect until the expiry of six months from the date of its publication.

VIII CHAPTER VI : OF EXCHANGES

118. “Exchange” defined When two persons mutually transfer the ownership of one thing for the ownership of another, neither thing or both things being money only, the transaction is called an “exchange”.

A transfer of property in completion of an exchange can be made only in manner provided for the transfer of such property by sale.

119. Right of party deprived of thing received in exchange If any party to an exchange or any person claiming through or under such party is by reason of any defect in the title of the other party deprived of the thing or any part of the thing received by him in exchange, then, unless a contrary intention appears from the terms of the exchange, such other party is liable to him or any person claiming through or under him for loss caused thereby, or at the option of the person so deprived, for the return of the thing transferred, if still in the possession of such other party or his legal representative or a transferee from him without consideration.

120. Rights and liabilities of parties Save as otherwise provided in this Chapter, each party has the rights and is subject to the liabilities of a seller as to that which he gives, and has the rights and is subject to the liabilities of a buyer as to that
which he takes.

121. Exchange of money On an exchange of money, each party thereby warrants the genuineness of the money given by him.

IX CHAPTER VII OF GIFTS

122. “Gift” defined “Gift” is the transfer of certain existing movable or immovable property made voluntarily and without consideration, by one person, called the donor, to another, called the donor, and accepted by or on behalf of the donee.

Acceptance when to be made—Such acceptance must be made during the lifetime of the donor and while he is still capable of giving.

If the donee dies before acceptance, the gift is void.

123. Transfer how effected For the purpose of making a gift of immovable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses.

For the purpose of making a gift of movable property, the transfer may be effected either by a registered instrument signed as aforesaid or by delivery.

Such delivery may be made in the same way as goods sold may be delivered.

124. Gift of existing and future property A gift comprising both existing and future property is void as to the latter.

125. Gift to several of whom one does not accept A gift of a thing to two or more donees, of whom one does not accept it, is void as to the interest which he would have taken had he accepted.

126. When gift may be suspended or revoked The donor and donee may agree that on the happening of any specified event which does not depend on the will of the donor a gift shall be suspended or revoked; but a gift which the parties agree shall be revocable wholly or in part, at the mere will of the donor, is void wholly or in part, as the case may be.

A gift may also be revoked in any of the cases (save want or failure of consideration) in which, if it were a contract, it might be rescinded.

Save as aforesaid, a gift cannot be revoked.

Nothing contained in this section shall be deemed to affect the rights of transferees for consideration without notice.

Illustrations

(a) A gives a field to B, reserving to himself, with B’s assent, the right to take back the field in case B and his descendants die before A. B dies without descendants in A’s lifetime. A may take back the field.

(b) A gives a lakh of rupees to B, reserving to himself, with B’s assent, the right to take back at pleasure Rs. 10,000 out of the lakh. The gift holds goods as to Rs. 90,000, but is void as to Rs. 10,000, which continue to belong to A.
127. Onerous gifts Where a gift in the form of a single transfer to the same person of several things of which one is, and the others are not burdened by an obligation, the donee can take nothing by the gift unless he accepts it fully.

Where a gift is in the form of two or more separate and independent transfers to the same person of several things, the donee is at liberty to accept one of them and refuse the others, although the former may be beneficial and the latter onerous.

Onerous gift to disqualified person: A donee not competent to contract and accepting property burdened by any obligation is not bound by his acceptance. But if, after becoming competent to contract and being aware of the obligation, he retains the property given, he becomes so bound.

Illustrations

(a) A has shares in X, a prosperous joint stock company, and also shares in Y, a joint stock company in difficulties. Heavy calls are expected in respect of the shares in Y. A gives B all his shares in joint stock companies. B refuses to accept the shares in Y. He cannot take the shares in X.

(b) A, having a lease for a term of years of a house at a rent which he and his representatives are bound to pay during the term, and which is more than the house can be let for, gives to B the lease, and also, as a separate and independent transaction, a sum of money. B refuses to accept the lease. He does not by this refusal forfeit the money.

128. Universal donee Subject to the provisions of section 127, where a gift consists of the donor’s whole property, the donee is personally liable for all the debts due by and liabilities of the donor at the time of the gift to the extent of the property comprised therein.

129. Saving of donations mortis causa and Mohammedan Law Nothing in this Chapter relates to gifts of moveable property made in contemplation of death, or shall be deemed to affect any rule of Mohammedan law.

130. Transfer of actionable claim (1) The transfer of an actionable claim whether with or without consideration shall be effected only by the execution of an instrument in writing signed by the transferor or his duly authorised agent, shall be complete and effectual upon the execution of such instruments, and thereupon all the rights and remedies of the transferor, whether by way of damages or otherwise, shall vest in the transferee, whether such notice of the transfer as is hereinafter provided be given or not:

PROVIDED that every dealing with the debtor other actionable claim by the debtor or other person from or against whom the transferor would, but for such instrument of
transfer as aforesaid, have been entitled to recover or enforce such debt or other actionable claim, shall (save where the debtor or other person is a party to the transfer or has received express notice thereof as hereinafter provided) be valid as against such transfer.

(2) The transferee of an actionable claim may, upon the execution of such instrument of transfer as aforesaid, sue or institute proceedings for the same in his own name without obtaining the transferor’s consent to such suit or proceeding and without making him a party thereto.

Exception: Nothing in this section applies to the transfer of a marine or fire policy of insurance or affects the provisions of section 38 of the Insurance Act, 1938 (4 of 1938).

Illustrations

(i) A owes money to B, who transfers the debt to C. B then demands the debt from A, who, not having received notice of the transfer, as prescribed in section 131, pays B. The payment is valid, and C cannot sue A for the debt.

(ii) A effects a policy on his own life with an insurance company and assigns it to a bank for securing the payment of an existing or future debt. If A dies, the bank is entitled to receive the amount of the policy and to sue on it without the concurrence of A’s executor, subject to the proviso in sub-section (1) of section 130 and to provisions of section 132.

130A. Transfer of policy of marine insurance [Repealed by the Marine Insurance Act, 1963 (11 of 1963), w.e.f. 1-8-1963.]

131. Notice to be in writing, signed Every notice of transfer of an actionable claim shall be in writing, signed by the transferor or his agent duly authorised in this behalf, or, in case the transferor refuses to sign, by the transferee or his agent, and shall state the name and address of the transferee.

132. Liability of transferee of actionable claim The transferee of an actionable claim shall take it subject to all the liabilities and equities and to which the transferor was subject in respect thereof at the date of the transfer.

Illustrations

(i) A transfers to C a debt due to him by B; A being then indebted to B. C sues B for the debt due by B to A. In such suit B is entitled to set off the debt due by A to him; although C was unaware of it at the date of such transfer.

(ii) A executed a bond in favour of B under circumstances entitling the former to have it delivered up and cancelled. B assigns the bond to C for value and without notice of such circumstances. C cannot enforce the bond against A.

133. Warranty of solvency of debtor Where the transferor of a debt warrants the solvency of the debtor, the warranty, in the absence of a contract to the contrary, applies only to his solvency at the time of the transfer, and is limited, where the transfer is made for consideration, to the amount or value of such considera-
134. Mortgaged debt Where a debt is transferred for the purpose of securing an existing or future debt, the debt so transferred, if received by the transferor or recovered by the transferee, is applicable, first, in payment of the costs of such recovery; secondly, in or towards satisfaction of the amount for the time being secured by the transfer, and the residue, if any, belongs to the transferor or other person entitled to receive the same.

135. Assignment of rights under policy of insurance against fire Every assignee by endorsement or other writing, of a policy of insurance against fire, in whom the property in the subject insured shall be absolutely vested at the date of assignment, shall have transferred and vested in him all rights of suit as if the contract contained in the policy has been made with himself.

135A. Assignment of rights under policy of marine insurance [Repealed by the Marine Insurance Act, 1963 (11 of 1963), w.e.f. 1-8-1963.]

136. Incapacity of officers connected with courts of justice No judge, legal practitioner or officer connected with any court of justice shall buy or traffic in, or stipulate for, or agree to receive any share of, or interest in, any actionable claim, and no court of justice shall enforce, at his instance, or at the instance of any person claiming by or through him, any actionable claim so dealt with by him as aforesaid.

137. Saving of negotiable instruments, etc. Nothing in the foregoing sections of this Chapter applies to stocks, shares or debentures, or to instruments which are for the time being, by law or custom, negotiable, or to any mercantile document of title to goods.

Explanation: The expression “mercantile document of title to goods” includes a bill of lading, dock-warrant, warehouse-keeper’s certificate, railway receipt, warrant or order for the delivery of goods, and any other document used in the ordinary course of business as proof of the possession or control of goods, or authorising or purporting to authorise, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented.

Foot Notes
1 Added by Act No. 3 of 1885.
2 Substituted by Act No. 20 of 1929, for the Year “1877”.
3 Substituted by the AO 1950, for the words “in the Provinces or established beyond the limits of the Provinces”.
4 Substituted by Act No. 3 of 1951, for the words “within the limits of Part A States and Part C States”, w.e.f. 1-4-1951.
5 The words and figures “Notwithstanding anything contained in the Trustees’ and Mortgagee Powers Act, 1866” omitted by Act No. 48 of 1952.
6 Clause (a) omitted by Act No. 20 of 1929.
Chapter 27

THE REAL ESTATE (REGULATION AND DEVELOPMENT) BILL, 2013

A BILL to establish the Real Estate Regulatory Authority for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building, as the case may be, in an efficient and transparent manner and to protect the interest of consumers in the real estate sector and establish the Appellate Tribunal to hear appeals from the decisions, directions or orders of the Authority and for matters connected therewith or incidental thereto. BE it enacted by Parliament in the Sixty-fourth Year of the Republic of India as follows:

I CHAPTER I PRELIMINARY

1. (1) This Act may be called the Real Estate (Regulation and Development) Act, 2013. (2) It extends to the whole of India except the State of Jammu and Kashmir. (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint: Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

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

(a) adjudicating officer means the adjudicating officer appointed under subsection (1) of section 61;

(b) advertisement means any document described or issued as advertisement through any form of media and includes any notice, circular
or other documents offering for sale of a plot, building or apartment or inviting persons to purchase in any manner such plot, building or apartment or to make advances or deposits for such purposes;

(c) allottee in relation to a real estate project, means the person to whom a plot, apartment or buildings, as the case may be, has been allotted, sold or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise, but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;

(d) apartment whether called dwelling unit, flat, premises, suite, tenement, unit or by any other name, means a separate and self-contained part of any immovable property located on one or more floors or any part thereof, in a building or on a plot of land, used or intended to be used for residential purposes, or for any other type of independent use ancillary to the purpose specified and includes any covered garage, whether or not adjacent to the building in which such apartment is located which has been provided by the promoter for the use of the allottee for parking any vehicle, or as the case may be, for the residence of any domestic help employed in such apartment;

(e) Appellate Tribunal means the Real Estate Appellate Tribunal established under section 37;

(f) appropriate Government means in respect of matters relating to, (i) the Union territory without Legislature, the Central Government; (ii) the Union territory of Puducherry, the Union territory Government; (iii) the Union territory of Delhi, the Central Ministry of Urban Development; (iv) the State, the State Government;

(g) architect means a person registered as an architect under the provisions of the Architects Act, 1972;

(h) “Authority” means the Real Estate Regulatory Authority established under sub-section (1) of section 18;

(i) building includes any structure or erection or part of a structure or erection which is intended to be used for residential or other related purposes;

(j) carpet area means the net usable floor area of an apartment, excluding the area covered by the walls;

(k) Chairperson means the Chairperson of the Real Estate Regulatory Authority appointed under section 19;

(l) commencement certificate means any certificate issued by the competent authority to allow or permit the promoter to begin development works on an immovable property;

(m) common areas mean (i) the part of the site or plot not occupied by buildings; (ii) the stair cases, lifts, staircase and lift lobbies, fire escapes and common entrances and exits of buildings; (iii) the common basements, parks, play areas, parking areas and common storage spaces; (iv)
the premises for the lodging of persons employed for the management of the property including accommodation for watch and ward staffs; (v) installations of central services such as electricity, gas, water and sanitation, air-conditioning and incinerating; (vi) the water tanks, sumps, motors, fans, compressors, ducts and all apparatus connected with installations for common use; (vii) community and commercial facilities as may be provided; (viii) all other portion of the property necessary or convenient for its maintenance, safety, etc., and in common use;

(n) company means a company incorporated and registered under the Companies Act, 1956 and includes, (i) a corporation established by or under any Central Act or State Act; (ii) a development authority or any public authority established by the Government in this behalf under any law for the time being in force;

(o) competent authority means the local authority or any authority created under any law made by the appropriate Government which exercises authority over land under its jurisdiction, and has powers to give permission for development of such immovable property;

(p) completion certificate means the completion certificate, or such other certificate, as the case may be, issued by the competent authority permitting occupation of any building under any law for the time being in force;

(q) development with its grammatical variations and cognate expressions, means carrying out the development of immovable property, engineering or other operations in, on, over or under the land or the making of any material change in any immovable property or land and includes re-development;

(r) development works means the external development works and internal development works on immovable property;

(s) engineer means a person who possesses a bachelor’s degree or equivalent from an institution recognised by the All India Council of Technical Education or is registered as an engineer under any law for the time being in force;

(t) estimated cost of real estate project means the total cost involved in developing the real estate project and includes the land cost;

(u) external development works includes roads and road systems, landscaping, water supply, sewerage and drainage systems, electricity supply transformer, sub-station of any other work which may have to be executed in the periphery of, or outside, a colony for its benefit, as may be specified under the rules or byelaws of the competent authority;

(v) immovable property includes land, buildings, rights of ways, lights or any other benefit arising out of land and things attached to the earth or permanently fastened to anything which is attached to the earth, but not standing timber, standing crops or grass;

(w) interest means the rates of interest payable by the promoter or the
allottee, as the case may be;

(x) internal development works means roads, footpaths, water supply, sewers, drains, parks, tree planting, street lighting, provision for community buildings and for treatment and disposal of sewage and silage water, social infrastructure such as educational, health and other public amenities or any other work in a colony necessary for its proper development;

(y) local authority means the Municipal Corporation or Municipality or Panchayats or any other Local Body constituted under any law for the time being in force for providing municipal services or basic services, as the case may be, in respect of areas under its jurisdiction;

(z) Member means the member of the Real Estate Regulatory Authority appointed under section 19 and includes the Chairperson;

(za) notification means a notification published in the Official Gazette and the expression notify shall be construed accordingly; (zb) person includes, (i) an individual; (ii) a Hindu undivided family; (iii) a company; (iv) a firm; (v) a competent authority; (vi) an association of persons or a body of individuals whether incorporated or not; (vii) a co-operative society registered under any law relating to co-operative societies; (viii) any such other entity as the appropriate Government may, by notification specify in this behalf; (zc) planning area means a planning area or a development area or a local planning area or a regional development plan area, by whatever name called, or any other area specified as such by the appropriate Government or any competent authority and includes any area designated by the appropriate Government or the competent authority to be a planning area for future planned development, under the law relating to Town and Country Planning for the time being in force; (zd) prescribed means prescribed by rules made under this Act; (ze) project means the real estate project under this Act; (zf) promoter means, (i) a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees and also includes a buyer who purchases in bulk for resale; or (ii) a person who develops a colony for the purpose of selling to other persons all or some of the plots, whether with or without structures thereon; or (iii) any development authority or any other public body in respect of allottees of (a) buildings or apartments, as the case may be, constructed by such authority or body on lands owned by them or placed at their disposal by the Government; or (b) plots owned by such authority or body or placed at their disposal by the Government, for the purpose of selling all or some of the apartments or plots; or (iv) an apex State level co-operative housing finance society and a primary co-operative housing society which constructs apartments or buildings for its Members or in re-
CHAPTER II REGISTRATION OF REAL ESTATE PROJECT AND REGISTRATION OF REAL ESTATE AGENTS

3. No promoter shall book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate project, part of it, in any planning area, without registering the real estate project with the Real Estate Regulatory Authority established under this Act: Provided that no such registration shall be required, (a) where the area of land proposed to be developed does not exceed one thousand square meters or the number of apartments proposed to be developed does not exceed twelve, inclusive of all phases, or an area or number of apartments as notified by the Central Govern-
ment on recommendations from the appropriate Government, which may be different for different States or Union territories but not more than one thousand square meters or twelve apartments, as the case may be; (b) where the promoter has received all requisite approvals and the commencement certificate for the development of the real estate project prior to commencement of this Act; (c) for the purpose of renovation or repair or re-development which does not involve re-allotment and marketing of the real estate project. Explanation. For the purpose of this section, where the real estate project is to be developed in phases, every such phase shall be considered as a stand alone real estate project, and the promoter shall obtain registration under the Act for each phase separately.

4. (1) Every promoter shall make an application to the Authority for registration of the real estate project in such form, manner, within such time and accompanied by such fee as may be specified by the regulations made by the Authority. (2) The promoter shall enclose the following documents along with the application referred to in sub-section (1), namely: (a) a brief details of his enterprise including its name, registered address, type of enterprise (proprietorship, societies, partnership, companies, competent authority) and the particulars of registration; (b) an authenticated copy of the commencement certificate from the competent authority obtained in accordance with the laws as may be applicable for the real estate project mentioned in the application, and where the project is proposed to be developed in phases, an authenticated copy of the approval and sanction from the competent authority for each of such phases; (c) the layout plan of the proposed project or the phase thereof, and also the layout plan of the whole project as sanctioned by the competent authority; (d) the plan of development works to be executed in the proposed project and the proposed facilities to be provided thereof; (e) proforma of the agreements proposed to be signed with the allottees; (f) the number and the carpet area of apartments for sale in the project; (g) the names and addresses of his real estate agents, if any, for the proposed project; (h) the names and addresses of the contractors, architect, structural engineer, if any, and other persons concerned with the development of the proposed project; (i) a declaration, supported by an affidavit, which shall be signed by the promoter or any person authorised by the promoter, stating, (A) that he has a legal title to the land on which the development is proposed along with a legally valid authentication of such title if such land is owned by another person; (B) that the land is free from all encumbrances, or as the case may be, of the encumbrances on such land including any rights, title, interest or name of any party in or over such land along with details; (C) the likely period of time within which he undertakes to complete the project or phase thereof; (D) that seventy per cent., or such lesser per cent., as notified by the appropriate Government, of the amounts realised for the real estate project from the allottees,
from time to time, shall be deposited in a separate account to be maintained in a scheduled bank within a period of fifteen days of its realisation to cover the cost of construction and shall be used only for that purpose. Explanation. For the purpose of this clause, the term scheduled bank means a bank included in the Second Schedule to the Reserve Bank of India Act, 1934; (E) that he has furnished such other documents as may be prescribed by the rules or regulations made under this Act; and (j) such other information and documents as may be prescribed.

5. (1) On receipt of the application under sub-section (1) of section 4, the Authority shall within a period of fifteen days (a) grant registration subject to the provisions of this Act and the rules and regulations made thereunder, and provide a registration number, including a Login Id and password to the applicant for accessing the website of the Authority and to create his web page and to fill therein the details of the proposed project; or (b) reject the application for reasons to be recorded in writing, if such application does not conform to the provisions of this Act and the rules and regulations made thereunder, and provide a registration number and a Login Id and password to the promoter for accessing the website of the Authority and to create his web page and to fill therein the details of the proposed project.

(3) The registration granted under this section shall be valid for a period declared by the promoter under sub-clause (C) of clause (i) of sub-section (2) of section 4 for completion of the project or phase thereof, as the case may be. 6. The registration granted under section 5 may be extended by the Authority on an application made by the promoter under such conditions as may be prescribed and in such form and on payment of such fee as may be specified by the regulations made by the Authority: Provided that no application for extension of registration shall be rejected unless the applicant has been given an opportunity of being heard in the matter. 7. (1) The Authority may, on receipt of a complaint in this behalf or on the recommendation of the competent authority, revoke the registration granted under section 5, after being satisfied that (a) the promoter makes wilful default in doing anything required of him by or under the Act or the rules or the regulations made thereunder; (b) the promoter violates any of the terms or conditions of the approval given by the competent authority; (c) the promoter is involved in any kind of unfair practice or irregularities. Explanation. For the purposes of this clause, the term unfair practice means a practice which, for the purpose of promoting the sale or development of any real estate project
adopts any unfair method or unfair or deceptive practice including any of the following practices, namely:

(A) the practice of making any statement, whether orally or writing or by visible representation which, (i) falsely represents that the services are of a particular standard or grade; (ii) represents that the promoter has approval or affiliation which such promoter does not have; (iii) makes a false or misleading representation concerning the services (B) the promoter permits the publication of any advertisement or prospectus whether in any newspaper or otherwise of services that are not intended to be offered. (2) The registration granted to the promoter under section 5 shall not be revoked unless the Authority has given to the promoter not less than thirty days notice, in writing, stating the grounds on which it is proposed to revoke the registration, and has considered any cause shown by the promoter within the period of that notice against the proposed revocation. (3) The Authority may, instead of revoking the registration under sub-section (1), permit it to remain in force subject to such further terms and conditions as it thinks fit to impose in the interest of the allottees, and any such terms and conditions so imposed shall be binding upon the promoter. (4) Upon the revocation of the registration, the Authority, (a) shall debar the promoter from accessing its website in relation to that project and specify his name in the list of defaulters on its website and also inform the other Real Estate Regulatory Authorities in other States and Union territories about such cancellation; (b) may recommend to the competent authority to facilitate the balance of the development works to be carried out in accordance with the provisions of section 8; (c) may, to protect the interest of prospective buyers or in the public interest, issue such directions as it may deem necessary. 8. Upon lapse of the registration or on revocation of the registration under this Act, the Authority, may consult the appropriate Government to take such action as it may deem fit including the carrying out of the remaining development works by competent authority or by the association of allottees or in any other manner, as may be determined by the Authority: Provided that no direction, decision or order of the Authority under this section shall take effect until the expiry of the period of appeal provided under the provisions of this Act. 9. (1) No real estate agent shall facilitate the sale or purchase of or act on behalf of any person to facilitate the sale or purchase of any plot, apartment or building, as the case may be, in a real estate project or part of it, being the part of the real estate project registered under section 3, being sold by the promoter in any planning area, without obtaining registration under this section. (2) Every real estate agent shall make an application to the Authority for registration in such form, manner, within such time and accompanied by such fee and documents as may be prescribed. (3) The Authority shall, within such period, in such manner and satisfying itself of the fulfilment of such conditions, as may be pre-
scribed (a) grant registration to the real estate agent; (b) reject the application for reasons to be recorded in writing, if such application does not conform to the provisions of this Act or the rules or regulations made thereunder: Provided that no application shall be rejected unless the applicant has been given an opportunity of being heard in the matter. (4) Whereon the completion of the period specified under sub-section (3), if the applicant does not receive any communication about the deficiencies in his application or the rejection of his application, he shall be deemed to have been registered. (5) Every real estate agent who is registered as per the provisions of this Act or the rules and regulations made thereunder, shall be granted a registration number by the Authority, which shall be quoted by the real estate agent in every sale facilitated by him under the Act (6) Every registration shall be valid for such period as may be prescribed, and shall be renewable for a period in such manner and on payment of such fee as may be prescribed. (7) Where any real estate agent who has been granted registration under this Act commits breach of any of the conditions thereof or any other terms and conditions specified under this Act or any rules or regulations made thereunder, or where the Authority is satisfied that such registration has been secured by the real estate agent through misrepresentation or fraud, the Authority may, without prejudice to any other provisions under this Act, revoke the registration or suspend the same for such period as it thinks fit: Provided that no such revocation or suspension shall be made by the Authority unless an opportunity of being heard has been given to the real estate agent. 10. Every real estate agent registered under section 9 shall (a) not facilitate the sale or purchase of any plot, apartment or building, as the case may be, in a real estate project or part of it, being sold by the promoter in any planning area, which is not registered with the Authority; (b) maintain and preserve such books of account, records and documents as may be prescribed; (c) not involve himself in any unfair trade practices, namely: (i) the practice of making any statement, whether orally or in writing or by visible representation which (A) falsely represents that the services are of a particular standard or grade; (B) represents that the promoter has approval or affiliation which such promoter does not have; (C) makes a false or misleading representation concerning the services; (ii) permitting the publication of any advertisement whether in any newspaper or otherwise of services that are not intended to be offered; (d) facilitate the possession of all documents, as the allottee is entitled to, at the time of booking of any plot, apartment or building, as the case may be; (e) discharge such other functions as may be prescribed.
III CHAPTER III
FUNCTIONS AND DUTIES OF PROMOTER

11. (1) The promoter shall, upon receiving his Login Id and password under clause (a) of sub-section (1) of section 5 or under sub-section (2) of section 5, as the case may be, create his web page on the website of the Authority and enter all details of the proposed project as provided under sub-section (2) of section 4, in all the fields as provided, including (a) details of the registration granted by the Authority; (b) quarterly up-to-date list of number and types of apartments or plots, as the case may be, booked; (c) quarterly up-to-date status of the project; and (d) such other information and documents as may be specified by the regulations made by the Authority. (2) The advertisement or prospectus issued or published by the promoter shall mention prominently the website address of the Authority, wherein all details of the registered project have been entered and include the registration number obtained from the Authority and such other matters incidental thereto. (3) The promoter, upon entering into an agreement of sale with the allottee shall be responsible to make available to the allottee, the following information, namely: (a) site and layout plans along with specifications, approved by the competent authority, by display at the site or such other place as may be specified by the regulations made by the Authority; (b) the stage-wise time schedule of completion of the project, including the provisions for water, sanitation and electricity. (4) The promoter shall (a) be responsible to obtain a completion certificate from the relevant competent authority as per local laws or other laws for the time being in force and to make it available to the allottees individually or to the association of allottees, as the case may be; (b) be responsible for providing and maintaining the essential services, as may be specified in the service level agreements, on reasonable charges, till the taking over of the maintenance of the project by the association of the allottees; (c) take steps for the formation of an association or society or co-operative society, as the case may be, of the allottees, or a federation of the same, under the laws applicable. (5) The promoter may cancel the allotment only in terms of the agreement of sale: Provided that the allottee may approach the Authority for relief, if he is aggrieved by such cancellation and such cancellation is not in accordance with the terms of the agreement of sale, unilateral and without any sufficient cause. (6) The promoter shall prepare and maintain all such other details as may be specified, from time to time, by regulations made by the Authority. 12. Where any person makes an advance or a deposit on the basis of the information contained in the advertisement or prospectus and sustains any loss or damage by reason of any incorrect, false statement included therein, he shall be compensated by the promoter in the manner
as provided under this Act: Provided that if the person affected by such incorrect, false statement contained in the advertisement or prospectus, intends to withdraw from the proposed project, he shall be returned his entire investment along with interest at such rate as may be prescribed. 13. (1) A promoter shall not accept a sum more than ten per cent. of the cost of the apartment, plot, or building, as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person. (2) The agreement referred to in sub-section (1) shall be in such form as may be prescribed and specify the particulars of development of the project including the construction of building and apartments, along with specifications and external development works, the dates and the manner by which payments towards the cost of the apartment, plot, or building, as the case may be, are to be made by the allottees and the likely date on which the possession of the apartment, plot, or building is to be handed over and such other particulars, as may be prescribed. 14. (1) The proposed project shall be developed and completed by the promoter in accordance with the plans and structural designs and specifications as approved by the competent authorities. (2) In case any structural defect in such development is brought to the notice of the promoter within a period of two years by the allottee from the date of handing over possession it shall be the duty of the promoter to rectify such defects without further charge, within reasonable time, and in the event of promoter’s failure to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under this Act. 15. (1) The promoter shall take all necessary steps to execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas including the handing over of the possession of the plot, apartment or building, as the case may be, in a real estate project, and the other title documents pertaining thereto. (2) After obtaining the completion certificate and handing over physical possession to the allottees in terms of sub-section (1), it shall be the responsibility of the promoter to hand over the necessary documents and plans, including common areas, to the association of the allottees or the competent authority, as the case may be, as per the local laws. 16. (1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building, (a) in accordance with the terms of the agreement or, as the case may be, duly completed by the date specified therein or any further date agreed to by the parties; or (b) due to discontinuance of his business as a developer on account of suspension or revocation of his registration under this Act or for any other reason, he shall be liable on demand to the allottees, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as
may be prescribed in this behalf including compensation in the manner as provided under this Act. (2) If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act.

IV CHAPTER IV
RIGHTS AND DUTIES OF ALLOTTEES

17. (1) The allottee shall be entitled to obtain the information relating to site and layout plans along with the specifications, approved by the competent authority and such other information as provided in this Act or the rules and the regulations made thereunder or the agreement signed with the promoter. (2) The allottee shall be entitled to know stage-wise time schedule of completion of the project, including the provisions for water, sanitation and electricity. (3) The allottee shall be entitled to claim the possession of apartment, plot or building, as the case may be, as per the declaration given by the promoter under sub-clause (C) of clause (i) of sub-section (2) of section 4. (4) The allottee shall be entitled to claim the refund of amount paid, from the promoter, if the promoter fails to comply or is unable to give possession of the apartment, plot or building, as the case may be, in accordance with the terms of agreement or due to discontinuance of his business as a developer on account of suspension or revocation of his registration under the provisions of this Act or the rules or the regulations made thereunder. (5) The allottee shall be entitled to have the necessary documents and plans, including that of common areas, after handing over the physical possession of the apartment or plot or building, as the case may be, to the allottee by the promoter. (6) Every allottee, who has entered into an agreement of sale to take an apartment, plot or building, as the case may be, under section 13, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement and shall pay at the proper time and place, the proportionate share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other charges, if any, in accordance with such agreement. (7) The allottee shall be liable to pay interest, at such rate as may be prescribed, for any delay in payment towards any amount or charges to be paid under sub-section (6). (8) The obligations of the allottee under sub-section (6) and the liability towards interest under sub-section (7) may be reduced when mutually agreed to between the promoter and such allottee. (9) Every allottee after taking possession of the apartment, plot or building, as the case may be, shall participate towards the formation of an association or society or co-operative society of the allottees, or a federation of the same.
18. (1) The appropriate Government shall, within a period of one year from the date of coming into force of this Act, by notification, establish an Authority to be known as the Real Estate Regulatory Authority to exercise the powers conferred on it and to perform the functions assigned to it under this Act: Provided that the appropriate Government of two or more States or Union territories may, if it deems fit, establish one single Authority: Provided further that the appropriate Government may, if it deems fit, establish more than one Authority in a State or Union territory, as the case may be. (2) The Authority shall be a body corporate by the name aforesaid having perpetual succession and a common seal, with the power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and to contract, and shall, by the said name, sue or be sued. 19. The Authority shall consist of a Chairperson and not less than two whole-time Members to be appointed by the appropriate Government. 20. The Chairperson and other Members of the Authority shall be appointed by the appropriate Government on the recommendations of a Selection Committee consisting of such persons and in such manner as may be prescribed, from amongst persons having adequate knowledge of and professional experience of at least twenty years in case of the Chairperson and fifteen years in the case of the Members in urban development, housing, real estate development, infrastructure, economics, planning, law, commerce, accountancy, industry, management, social service, public affairs or administration: Provided that a person who is, or has been, in the service of the State Government shall not be appointed as a Chairperson unless such person has held the post of additional Secretary to the Central Government or any equivalent post in the Central Government or State Government: Provided further that a person who is, or has been, in the service of the State Government shall not be appointed as a Member unless such person has held the post of Secretary to the State Government or any equivalent post in the State Government or Central Government. 21. (1) The Chairperson and Members shall hold office for a term not exceeding five years from the date on which they enter upon their office, or until they attain the age of sixty-five years, whichever is earlier. (2) Before appointing any person as a Chairperson or Member, the appropriate Government shall satisfy itself that the person does not have any such financial or other interest as is likely to affect prejudicially his functions as such Member 22. (1) The salary and allowances payable to, and the other terms and conditions of service of, the Chairperson and other Members shall be such as may be prescribed and shall not be varied to their disadvantage during
their tenure. (2) Notwithstanding anything contained in sub-sections (1) and (2) of section 21, the Chairperson or a Member, as the case may be, may, (a) relinquish his office by giving in writing, to the appropriate Government, notice of not less than three months; or (b) be removed from his office in accordance with the provisions of section 24 of this Act.

(3) Any vacancy caused to the office of the Chairperson or any other Member shall be filled-up within a period of six months from the date on which such vacancy occurs.

23. The Chairperson shall have powers of general superintendence and directions in the conduct of the affairs of the Authority and he shall, in addition to presiding over the meetings of the Authority, exercise and discharge such administrative powers and functions of the Authority as may be prescribed.

24. (1) The appropriate Government may, by order, remove from office, the Chairperson or other Members, if the Chairperson or such other Member, as the case may be, (a) has been adjudged as an insolvent; or (b) has been convicted of an offence, involving moral turpitude; or (c) has become physically or mentally incapable of acting as a Member; or (d) has acquired such financial or other interest as is likely to affect prejudicially his functions; or (e) has so abused his position as to render his continuance in office prejudicial to the public interest. (2) No such Chairperson or Member shall be removed from his office under clause (d) or clause (e) of sub-section (1) unless he has been given a reasonable opportunity of being heard in the matter.

25. (1) The Chairperson or a Member, ceasing to hold office as such, shall not (a) accept any employment in, or connected with, the management or administration of, any person or organisation which has been associated with any work under the Act, from the date on which he ceases to hold office: Provided that nothing contained in this clause shall apply to any employment under the appropriate Government or a local authority or in any statutory authority or any corporation established by or under any Central, State or provincial Act or a Government Company, as defined in section 617 of the Companies Act, 1956; (b) act, for or on behalf of any person or organisation in connection with any specific proceeding or transaction or negotiation or a case to which the Authority is a party and with respect to which the Chairperson or such Member had, before cessation of office, acted for, or provided advice to, the Authority; (c) give advice to any person using information which was obtained in his capacity as the Chairperson or a Member and being unavailable to or not being able to be made available to the public; (d) enter into a contract of service with, or accept an appointment to a board of directors of, or accept an offer of employment with, an entity with which he had direct and significant official dealings during his term of office as such. (2) The Chairperson and Members shall not communicate or reveal to any person any matter which has been brought under his consideration or known to him while acting as such.

26. (1) The appro-
priate Government may, in consultation with the Authority, appoint such officers and employees as it considers necessary for the efficient discharge of their functions under this Act who would discharge their functions under the general superintendence of the Chairperson. (2) The salary and allowances payable to, and the other terms and conditions of service of, the officers and of the employees of the Authority appointed under subsection (1) shall be such as may be prescribed. 27. (1) The Authority shall meet at such places and times, and shall follow such rules of procedure in regard to the transaction of business at its meetings (including quorum at such meetings), as may be specified by the regulations made by the Authority. (2) The Chairperson if for any reason, is unable to attend a meeting of the Authority, any other Member chosen by the Members present amongst themselves at the meeting, shall preside at the meeting. (3) All questions which come up before any meeting of the Authority shall be decided by a majority of votes by the Members present and voting, and in the event of an equality of votes, the Chairperson or in his absence, the person presiding, shall have a second or casting vote. 28. No act or proceeding of the Authority shall be invalid merely by reason of (a) any vacancy in, or any defect in the constitution of, the Authority; or (b) any defect in the appointment of a person acting as a Member of the Authority; or (c) any irregularity in the procedure of the Authority not affecting the merits of the case. 29. The Authority shall in order to facilitate the growth and promotion of a healthy, transparent, efficient and competitive real estate sector make recommendations to the appropriate Government or the competent authority, as the case may be, on, (a) protection of interest of the allottees and promoter; (b) measures to improve the processes and procedures for clearance and sanction of plans and development of projects; (c) measures to encourage construction of environmentally sustainable and affordable housing, promote standardisation, including grading and use of appropriate construction materials, fixtures, fittings and construction techniques; (d) measures to facilitate amicable conciliation of disputes between the promoters and the allottees through dispute settlement forums set up by the consumer or promoter associations; (e) any other issue that the Authority may think necessary for the promotion of the real estate sector. 30. The functions of the Authority shall, inter alia, include (a) to render advice to the appropriate Government in matters relating to the development of real estate sector; (b) to publish and maintain a website of records of all real estate projects for which registration has been given, with such details as may be prescribed, including information provided in the application for which registration has been granted; (c) to maintain a database, on its website, and enter the names of promoters as defaulters including the project details, registration for which has been revoked or have been penalised under the Act, with reasons therefor,
for access to the general public; (d) to maintain a database, on its website, and enter the names of real estate agents who have applied and registered under this Act, with such details as may be prescribed, including those whose registration has been rejected or revoked; (e) to fix through regulations for each areas under its jurisdiction the standard fees, to be levied on the allottees by the promoter or the association of allottees, as the case may be; (f) to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder; (g) to ensure compliance of its regulations or orders or directions made in exercise of its powers under this Act; (h) to perform such other functions as may be entrusted to the Authority by the appropriate Government as may be necessary to carry out the provisions of this Act. 31. (1) Where the Authority considers it expedient to do so, on a complaint relating to the Act or the rules or regulations made thereunder, it may, by order in writing and recording reasons therefor call upon any promoter or allottee or real estate agent, as the case may be, at any time to furnish in writing such information or explanation relating to its affairs as the Authority may require and appoint one or more persons to make an inquiry in relation to the affairs of any promoter or allottee or the real estate agents, as the case may be. (2) Notwithstanding anything contained in any other law for the time being in force, while exercising the powers under sub-section (1), the Authority shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit, in respect of the following matters, namely: (i) the discovery and production of books of account and other documents, at such place and at such time as may be specified by the Authority; (ii) summoning and enforcing the attendance of persons and examining them on oath; (iii) issuing commissions for the examination of witnesses or documents; (iv) any other matter which may be prescribed. 32. The Authority may, for the purpose of discharging its functions under the provisions of this Act or the rules or the regulations made thereunder, issue such directions from time to time, to the promoters and allottees or real estate agents, as the case may be, as it may consider necessary and such directions shall be binding on all concerned. 33. (1) The Authority shall have powers to impose penalty or interest, in regard to any contravention of obligations cast upon the promoters, the allottees and the real estate agents, under this Act or the rules and the regulations made thereunder. (2) The Authority shall be guided by the principles of natural justice and, subject to the other provisions of this Act and the rules made thereunder, the Authority shall have powers to regulate its own procedure. (3) Where an issue is raised relating to agreement, action, omission, practice or procedure that (a) has an appreciable prevention, restriction or distortion of competition in connection with the development of a real estate project; or (b) has effect of
market power of monopoly situation being abused for affecting interest of allottees adversely, then the Authority, may, suo motu, make reference in respect of such issue to the Competition Commission of India. 34. If a promoter or an allottee or a real estate agent, as the case may be, fails to pay any interest or penalty or compensation imposed on him under this Act, it shall be recoverable from such promoter or allottee or real estate agent, in such manner as may be prescribed.

VI CHAPTER VI CENTRAL ADVISORY COUNCIL

35. (1) The Central Government may, by notification, establish with effect from such date as it may specify in such notification, a Council to be known as the Central Advisory Council. (2) The Minister to the Government of India in charge of the Ministry of the Central Government dealing with Housing shall be the ex officio Chairperson of the Central Advisory Council. (3) The Central Advisory Council shall consist of representatives of the Ministry of Finance, Ministry of Industry and Commerce, Ministry of Urban Development, Ministry of Consumer Affairs, Ministry of Corporate Affairs, Ministry of Law and Justice, Planning Commission, National Housing Bank, Housing and Urban Development Corporation, five representatives of State Governments to be selected by rotation, five representatives of the Real Estate Regulatory Authorities to be selected by rotation, and any other Central Government department as notified. (4) The Central Advisory Council shall also consist of not more than ten members to represent the interests of real estate industry, consumers, construction labourers, nongovernmental organisations and academic and research bodies in the real estate sector. 36. (1) The functions of the Central Advisory Council shall be to advise and recommend the Central Government (a) on all matters concerning the implementation of the Act; (b) on major questions of policy; (c) towards protection of consumer interest; (d) to foster the growth and development of the real estate sector; (e) on any other matter as may be assigned to it by the Central Government. (2) The Central Government may specify the rules to give effect to the recommendations of the Central Advisory Council on matters as provided under sub-section (1).

VII CHAPTER VII THE REAL ESTATE APPELATE TRIBUNAL

37. (1) The appropriate Government shall, within a period of one year from the date of coming into force of this Act, by notification, establish an Appellate Tribunal to be known as the — (State/Union territory) Real Estate Appellate Tribunal: Provided that the appropriate Government of two or more States or Union terri-
tories may, if it deems fit, establish one single Appellate Tribunal. (2) Any person aggrieved by any direction or decision or order made by the Authority or by an adjudicating officer under this Act may prefer an appeal before the Appellate Tribunal which shall have jurisdiction over the matter. 38. (1) The appropriate Government or the competent authority or any person aggrieved by any direction or order or decision of the Authority or the adjudicating officer may prefer an appeal to the Appellate Tribunal. (2) Every appeal made under sub-section (1) shall be preferred within a period of sixty days from the date on which a copy of the direction or order or decision made by the Authority is received by the appropriate Government or the competent authority or the aggrieved person and it shall be in such form, and accompanied by such fee, as may be prescribed: Provided that the Appellate Tribunal may entertain any appeal after the expiry of sixty days if it is satisfied that there was sufficient cause for not filing it within that period. (3) On receipt of an appeal under sub-section (1), the Appellate Tribunal may after giving the parties an opportunity of being heard, pass such orders as it thinks fit. (4) The Appellate Tribunal shall send a copy of every order made by it to the parties and to the Authority or the adjudicating officer, as the case may be. (5) The appeal preferred under sub-section (1), shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal within a period of ninety days from the date of receipt of appeal: Provided that where any such appeal could not be disposed of within the said period of ninety days, the Appellate Tribunal shall record its reasons in writing for not disposing of the appeal within that period. (6) The Appellate Tribunal may, for the purpose of examining the legality or propriety or correctness of any order or decision of the Authority or the adjudicating officer, on its own motion or otherwise, call for the records relevant to disposing of such appeal and make such orders as it thinks fit. 39. The Appellate Tribunal shall consist of a Chairperson and two other Members of which one shall be a Judicial Member and other shall be a Technical or Administrative Member, to be appointed by the appropriate Government. Explanation. For the purposes of this Chapter, (i) Judicial Member means a Member of the Appellate Tribunal appointed as such under clause (b) of sub-section (1) of section 40; (ii) Technical or Administrative Member means a Member of the Appellate Tribunal appointed as such under clause (c) of sub-section (1) of section 40. 40. (1) A person shall not be qualified for appointment as the Chairperson or a Member of the Appellate Tribunal unless he, (a) in the case of Chairperson, is or has been, a Judge of the High Court; and (b) in the case of a Judicial Member he has held a judicial office in the territory of India for at least seven years or has been a member of the Indian Legal Service and has held the post in Grade I of that service or any equivalent post for at least three years, or has been an ad-
vocate for at least fifteen years with experience in dealing with real estate matters; and (c) in the case of a Technical or Administrative Member, he is a person who is well-versed in the field of urban development, housing, real estate development, infrastructure, economics, planning, law, commerce, accountancy, industry, management, public affairs or administration and possesses experience of at least fifteen years in the field or who has held the post in the Central Government or a State Government equivalent to the post of Joint Secretary to the Government of India or an equivalent post in the Central Government or an equivalent post in the State Government.

(2) The Chairperson of the Appellate Tribunal shall be appointed by the appropriate Government in consultation with the Chief Justice of High Court or his nominee. (3) The Judicial Members and Technical or Administrative Members of the Appellate Tribunal shall be appointed by the appropriate Government on the recommendations of a Selection Committee consisting of such persons and in such manner as may be prescribed. 41. (1) The Chairperson of the Appellate Tribunal or a Member of the Appellate Tribunal shall hold office, as such for a term not exceeding five years from the date on which he enters upon his office, but shall not be eligible for reappointment: Provided that in case a person, who is or has been a Judge of a High Court, has been appointed as Chairperson of the Tribunal, he shall not hold office after he has attained the age of sixty-seven years: Provided further that no Judicial Member or Technical or Administrative Member shall hold office after he has attained the age of sixty-five years.

(2) Before appointing any person as Chairperson or Member, the appropriate Government shall satisfy itself that the person does not have any such financial or other interest, as is likely to affect prejudicially his functions as such Member. 42. (1) The salary and allowances payable to, and the other terms and conditions of service of, the Chairperson and other Members shall be such as may be prescribed and shall not be varied to their disadvantage during their tenure. (2) Notwithstanding anything contained in sub-sections (1) and (2) of section 41, the Chairperson or a Member, as the case may be, may: (a) relinquish his office by giving in writing to the appropriate Government a notice of not less than three months; (b) be removed from his office in accordance with the provisions of section 43. (3) A vacancy caused to the office of the Chairperson or any other Member, as the case may be, shall be filled-up within a period of six months from the date on which such vacancy occurs. 43. (1) The appropriate Government may, in consultation with the Chief Justice of the High Court, remove from office of the Chairperson or any Judicial Member of the Appellate Tribunal, who (a) has been adjudged as an insolvent; or (b) has been convicted of an offence which, in the opinion of the appropriate Government involves moral turpitude; or (c) has become physically or mentally incapable; or (d) has acquired
such financial or other interest as is likely to affect prejudicially his functions; or (e) has so abused his position as to render his continuance in office prejudicial to the public interest. (2) The Chairperson or Judicial Member shall not be removed from his office except by an order made by the appropriate Government after an inquiry made by the Judge of the High Court in which such Chairperson or Judicial Member has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. (3) The appropriate Government may suspend from the office of the Chairperson or Judicial Member in respect of whom a reference of conducting an inquiry has been made to the Judge of the High Court under sub-section (2), until the appropriate Government passes an order on receipt of the report of inquiry made by the Judge of the High Court on such reference. (4) The appropriate Government may, by rules, regulate the procedure for inquiry referred to in sub-section (2). (5) The Technical or Administrative Member may be removed from his office by an order of the appropriate Government on the grounds specified in sub-section (1) and in accordance with the procedure notified by the appropriate Government: Provided that the Technical or Administrative Member shall not be removed unless he has been given an opportunity of being heard in the matter. 44. (1) The appropriate Government shall provide the Appellate Tribunal with such officers and employees as it may deem fit. (2) The officers and employees of the Appellate Tribunal shall discharge their functions under the general superintendence of its Chairperson. (3) The salary and allowances payable to, and the other terms and conditions of service of, the officers and employees of the Appellate Tribunal shall be such as may be prescribed. 45. If, for reason other than temporary absence, any vacancy occurs in the office of the Chairperson or a Member of the Appellate Tribunal, the appropriate Government shall appoint another person in accordance with the provisions of this Act to fill the vacancy and the proceedings may be continued before the Appellate Tribunal from the stage at which the vacancy is filled. 46. (1) The Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 but shall be guided by the principles of natural justice. (2) Subject to the provisions of this Act, the Appellate Tribunal shall have power to regulate its own procedure. (3) The Appellate Tribunal shall also not be bound by the rules of evidence contained in the Indian Evidence Act, 1872. (4) The Appellate Tribunal shall have, for the purpose of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 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) issuing commissions for the examination of witnesses or documents; (e) review-
ing its decisions; (f) dismissing an application for default or directing it ex parte; and (g) any other matter which may be prescribed. (5) All proceedings before the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193, 219 and 228 for the purposes of section 196 of the Indian Penal Code, and the Appellate Tribunal shall be deemed to be civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973. 47. The Chairperson shall have powers of general superintendence and direction in the conduct of the affairs of Appellate Tribunal and he shall, in addition to presiding over the meetings of the Appellate Tribunal, exercise and discharge such administrative powers and functions of the Appellate Tribunal as may be prescribed. 48. The applicant or appellant may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of its officers to present his or its case before the Appellate Tribunal. Explanation. For the purposes of this section, (a) “chartered accountant” means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act; (b) company secretary means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act; (d) legal practitioner means an advocate, vakil or an attorney of any High Court, and includes a pleader in practice. 49. (1) Every order made by the Appellate Tribunal under this Act shall be executable by the Appellate Tribunal as a decree of civil court, and for this purpose, the Appellate Tribunal shall have all the powers of a civil court. (2) Notwithstanding anything contained in sub-section (1), the Appellate 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. 50. (1) Any person aggrieved by any decision or order of the Appellate Tribunal, may, file an appeal to the High Court, within a period of ninety days from the date of communication of the decision or order of the Appellate Tribunal, to him, on anyone or more of the grounds specified in section 100 of the Code of Civil Procedure, 1908: Provided that the High Court may, entertain the appeal after the expiry of the said period of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time. Explanation. The expression High Court” means the High Court of a State or Union territory where the real estate project is situated. (2) No appeal shall lie against
any decision or order made by the Appellate Tribunal with the consent of the parties.

**VIII CHAPTER VIII**

**OFFENCES, PENALTIES AND ADJUDICATION**

51. (1) If any promoter contravenes the provisions of section 3, he shall be liable to a penalty which may extend up to ten per cent. of the estimated cost of the real estate project as determined by the Authority.  (2) If any promoter does not comply with the orders, decisions or directions issued under sub-section (1) or continues to violate the provisions of section 3, he shall be punishable with imprisonment for a term which may extend up to three years or with fine which may extend to a further ten per cent. of the estimated cost of the real estate project, or with both.  

52. If any promoter knowingly provides false information or contravenes the provisions of section 4, he shall be liable to a penalty which may extend up to five per cent. of the estimated cost of the real estate project, or with both.  

53. If any promoter contravenes any other provisions of this Act, other than that provided under section 3 or section 4, or the rules or the regulations made thereunder, he shall be liable to a penalty which may extend up to five per cent. of the estimated cost of the real estate project as determined by the Authority.  

54. If any real estate agent wilfully fails to comply with or contravenes the provisions of section 9 or section 10, he shall be liable to a penalty of ten thousand rupees for every day during which such default continues, which may cumulatively extend up to five per cent. of the cost of plot, apartment or building, as the case may be, of the real estate project, for which the sale or purchase has been facilitated as determined by the Authority.  

55. If any promoter, who wilfully fails to comply with, or contravenes any of the orders or directions of the Authority, he shall be liable to a penalty for every day during which such default continues, which may cumulatively extend up to five per cent. of the estimated cost of the real estate project as determined by the Authority.  

56. If any promoter, who wilfully fails to comply with, or contravenes any of the orders, decisions or directions of the Appellate Tribunal, he shall be liable to a penalty for every day during which such default continues, which may cumulatively extend up to ten per cent. of the estimated cost of the real estate project as determined by the Appellate Tribunal.  

57. If any allottee, who wilfully fails to comply with, or contravenes any of the orders, decisions or directions of the Authority he shall be liable to a penalty for the period during which such default continues, which may cumulatively extend up to five per cent. of the plot, apartment or building cost, as the case may be, as determined by the Authority.  

58. If any allottee, who wilfully fails to comply with, or contravenes any of the orders or di-
rections of the Appellate Tribunal, as the case may be, he shall be liable to a penalty for the period during which such default continues, which may cumulatively extend up to ten per cent. of the plot, apartment or building cost, as the case may be, as determined by the Appellate Tribunal.

59. (1) Where an offence under this Act has been committed by a company, every person who, at the time, the offence was committed was in charge of, or was responsible to the company for the conduct of, the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this subsection, shall render any such person liable to any punishment under this Act if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence. (2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company, and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, 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 that offence and shall be liable to be proceeded against and punished accordingly. Explanation. For the purpose of this section, (a) “company” means any body corporate and includes a firm or other association of individuals; and (b) “director” in relation to a firm, means a partner in the firm.

60. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the offence punishable under section 51 of this Act may, either before or after the institution of the prosecution, be compounded by the court on such terms and conditions and on payment of such sums as may be prescribed: Provided that the sum prescribed shall not, in any case, exceed the maximum amount of the fine which may be imposed for the offence so compounded.

61. (1) For the purpose of adjudging compensation under sections 12, 14 and section 16, the Authority shall appoint any officer not below the rank of Joint Secretary to the State Government to be an adjudicating officer for holding an inquiry in the prescribed manner, after giving any person concerned a reasonable opportunity of being heard: Provided that any person whose complaint in respect of matters covered under sections 12, 14 and section 16 is pending before the Consumer Disputes Redressal Forum or the Consumer Disputes Redressal Commission or the National Consumer Redressal Commission, established under section 9 of the Consumer Protection Act, 1986, on or before the commencement of this Act, he may, with the permission of such Forum or Commission, as the case may be, withdraw the complaint pending before it and file an application before the adjudicating officer under this Act. (2) The application for adjudging compensation under sub-section (1), shall be
dealt with by the adjudicating officer as expeditiously as possible and dispose of the same within a period of ninety days from the date of receipt of such application: Provided that where any such application could not be disposed of within the said period of ninety days, the adjudicating officer shall record his reasons in writing for not disposing of the application within that period. (3) While holding an inquiry, the adjudicating officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which in the opinion of the adjudicating officer, may be useful for or relevant to the subject matter of the inquiry and if, on such inquiry, he is satisfied that the person has failed to comply with the provisions of any of the sections specified in sub-section (1), he may direct to pay such compensation or interest, as the case may be, as he thinks fit in accordance with the provisions of any of those sections. 62. While adjudging the quantum of compensation or interest, as the case may be, under section 61, the adjudicating officer shall have due regard to the following factors, namely: (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default; (b) the amount of loss caused as a result of the default; (c) the repetitive nature of the default.

IX CHAPTER IX
FINANCE, ACCOUNTS, AUDITS AND REPORTS

63. The Central Government may, after due appropriation made by Parliament in this behalf, make to the Authority grants and loans of such sums of money as that Government may consider necessary. 64. The State Government may, after due appropriation made by State Legislature by law in this behalf, make to the Authority, grants and loans of such sums of money as the State Government may think fit for being utilised for the purposes of this Act. 65. (1) The appropriate Government shall constitute a Fund to be called the Real Estate Fund and there shall be credited thereto (a) all Government grants received by the Authority; (b) the fees received under this Act; (c) the interest accrued on the amounts referred to in clauses (a) to (b). (2) The Fund shall be applied for meeting (a) the salaries and allowances payable to the Chairperson and other Members and the administrative expenses including the salaries and allowances payable to the officers and other employees of the Authority and the Appellate Tribunal; (b) the other expenses of the Authority in connection with the discharge of its functions and for the purposes of this Act. (3) The Fund shall be administered by a committee of such Members of the Authority as may be determined by the Chairperson. (4)
The committee appointed under sub-section (3) shall spend monies out of the Fund for carrying out the objects for which the Fund has been constituted.

66. (1) All sums realised, by way of penalties, imposed by the Appellate Tribunal or the Authority, in the Union territories, shall be credited to the Consolidated Fund of India. (2) All sums realised, by way of penalties, imposed by the Appellate Tribunal or the Authority, in a State, shall be credited to such account as the State Government may specify.

67. (1) The Authority shall prepare a budget, maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the appropriate Government in consultation with the Comptroller and Auditor-General of India. (2) The accounts of the Authority shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Authority to the Comptroller and Auditor-General of India. (3) The Comptroller and Auditor-General of India and any person appointed by him in connection with the audit of the accounts of the Authority under this Act shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor-General of India generally has in connection with the audit of Government accounts and, in particular shall have the right to demand and production of books, accounts, connected vouchers and other documents and papers, and to inspect any of the offices of the Authority. (4) The accounts of the Authority, as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf, together with the audit report thereon shall be forwarded annually to the appropriate Government by the Authority and the appropriate Government shall cause the audit report to be laid, as soon as may be after it is received, before each House of Parliament or, as the case may be, before the State Legislature or the Union territory Legislature, where it consists of two Houses, or where such legislature consists of one House, before that House.

68. (1) The Authority shall prepare once in every year, in such form and at such time as may be prescribed by the appropriate Government, (a) a description of all the activities of the Authority for the previous year; (b) the annual accounts for the previous year; and (c) the programmes of work for the coming year. (2) A copy of the report received under sub-section (1) shall be laid, as soon as may be after it is received, before each House of Parliament or, as the case may be, before the State Legislature or the Union territory Legislature, where it consists of two Houses, or where such legislature consists of one House, before that House.
X  CHAPTER X MISCELLANEOUS

69. No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

70. The Authority may, by general or special order in writing, delegate to any member, officer of the Authority or any other person subject to such conditions, if any, as may be specified in the order, such of its powers and functions under this Act (except the power to make regulations under section 74) as it may deem necessary.

71. (1) If, at any time, the appropriate Government is of the opinion, (a) that, on account of the circumstances beyond the control of the Authority, it is unable to discharge the functions or perform the duties imposed on it by or under the provisions of this Act; or (b) that the Authority has persistently defaulted in complying with any direction given by the appropriate Government under this Act or in the discharge of the functions or performance of the duties imposed on it by or under the provisions of this Act and as a result of such default the financial position of the Authority or the administration of the Authority has suffered; or (c) that circumstances exist which render it necessary in the public interest so to do, the appropriate Government may, by notification, supersede the Authority for such period, not exceeding six months, as may be specified in the notification and appoint a person or persons as the President or the Governor, as the case may be, may direct to exercise powers and discharge functions under this Act: Provided that before issuing any such notification, the appropriate Government shall give a reasonable opportunity to the Authority to make representations against the proposed supersession and shall consider the representations, if any, of the Authority.

(2) Upon the publication of a notification under sub-section (1) superseding the Authority, (a) the Chairperson and other Members shall, as from the date of supersession, vacate their offices as such; (b) all the powers, functions and duties which may, by or under the provisions of this Act, be exercised or discharged by or on behalf of the Authority shall, until the Authority is reconstituted under sub-section (3), be exercised and discharged by the person or persons referred to in sub-section (1); and (c) all properties owned or controlled by the Authority shall, until the Authority is reconstituted under sub-section (3), vest in the appropriate Government.

(3) On or before the expiration of the period of supersession specified in the notification issued under sub-section (1), the appropriate Government shall reconstitute the Authority by a fresh appointment of its Chairperson and other Members and in such case any person who had vacated his office under clause (a) of sub-section (2) shall
not be deemed to be disqualified for re-appointment. (4) The appropriate Government shall cause a copy of the notification issued under sub-section (1) and a full report of any action taken under this section and the circumstances leading to such action to be laid before each House of Parliament or, as the case may be, before the State Legislature, or the Union territory Legislature, as the case may be, before that House.

72. (1) Without prejudice to the foregoing provisions of this Act, the Authority shall, in exercise of its powers and in performance of its functions under this Act, be bound by such directions on questions of policy, as the appropriate Government may give in writing to it from time to time: Provided that the Authority shall, as far as practicable, be given an opportunity to express its views before any direction is given under this sub-section. (2) If any dispute arises between the appropriate Government and the Authority as to whether a question is or is not a question of policy, the decision of the appropriate Government thereon shall be final. (3) The Authority shall furnish to the appropriate Government such returns or other information with respect to its activities as the appropriate Government may, from time to time, require.

73. (1) The appropriate Government may, by notification, make rules for carrying out the provisions of this Act. (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 information and documents for application to Authority for registration under clause (j) of sub-section (2) of section 4; (b) the conditions under which registration of a promoter may be renewed under section 6; (c) the form and manner of making an application and fee and documents to be accompanied with such application as under sub-section (2) of section 9; (d) the period, manner and conditions under which the registration is to be granted under sub-section (3) of section 9; (e) the validity of the period of registration and the manner and fee for renewal under sub-section (6) of section 9; (f) the maintenance and preservation of books of account, records and documents under clause (b) of section 10; (g) the discharge of other functions by the real estate agent under clause (e) of section 10; (h) the rate of interest payable under section 12; (i) the form and particulars of agreement under sub-section (2) of section 13; (j) the rate of interest payable under clause (b) of sub-section (1) of section 16; (k) the rate of interest payable under sub-section (7) of section 17; (l) the constitution of a Selection Committee for the appointment of Chairperson and Members of Authority, and the manner of selection under section 20; (m) the salaries and allowances payable to, and the other terms and conditions of service of, the Chairperson and other Members of the Authority under sub-section (1) of section 22; (n) the administrative powers of the Chairperson under section 23; (o) the salaries and allowances payable to, and the other terms and conditions of
service of, the officers and other employees of the Authority under sub-section (2) of section 26; (p) the details to be published and maintain on the website as under clauses (b) and under clause (d) of section 30; (q) the additional functions which may be performed by the Authority under clause (iv) of sub-section (2) of section 31; (r) the manner of recovery of interest, penalty and compensation under section 34; (s) the recommendations received from the Central Advisory Council under sub-section (2) of section 36; (t) the form and manner and fee for filing of appeal under sub-section (2) of section 38; (u) the constitution of a Selection Committee for the appointment of Members of the Tribunal, and the manner of selection under sub-section (3) of section 40; (v) the salaries and allowances payable to, and the other terms and conditions of service of, the Chairperson and other Members of the Appellate Tribunal under sub-section (1) of section 42; (w) the procedure for inquiry of the charges against the Chairperson or Judicial Member of the Tribunal under sub-section (4) of section 43; (x) the salaries and allowances payable to, and the other terms and conditions of service of, the officers and employees of the Appellate Tribunal under sub-section (3) of section 44; (y) any other powers of the Tribunal under clause (h) of sub-section (4) of section 46; (z) the powers of the Chairperson of the Appellate Tribunal under section 47; (za) the terms and conditions and the payment of such sum for compounding of the offences under section 60; (zb) the manner of inquiry under sub-section (1) of section 61; (zc) the form to be specified in which the Authority shall prepare a budget, maintain proper accounts and other relevant records and prepare an annual statement of accounts under sub-section (1) of section 67; (zd) the form in which and time at which the Authority shall prepare an annual report under sub-section (1) of section 68; (ze) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be made, by rules. 74. (1) The Authority may, by notification, make regulations, after it is approved by the appropriate Government, in consistent with this Act and the rules made thereunder to carry out the purposes of this Act. (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 form and manner of making application and fee payable herewith under sub-section (1) of section 4; (b) the fee for extension of registration under section 6; (c) such other information and documents required under clause (d) of subsection (1) of section 11; (d) display of site and layout plans along with specifications, approved by the competent authority, for display under clause (a) of sub-section (3) of section 11; (e) preparation and maintenance of other details under sub-section (6) of section 11; (f) time, places and the procedure in regard to transaction of business at the meetings of the Authority under sub-section (1) of section 27; (g) standard fees to be levied by the
promoter on the allottees or the association of allottees under clause (e) of section 30; (h) any other matter which is required to be, or may be, specified by regulation or in respect of which provision is to be made by the regulations 75. (1) Every rule made by the Central Government, every regulation made by the Authority and every notification issued 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 regulation or in the notification, as the case may be, or both Houses agree that the rule or regulation or the notification should not be made, the rule or regulation or notification, as the case may be, 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 or regulation or notification, as the case may be. (2) Every rule made by a State Government or the Union territory Government, as the case may be, under this Act shall be laid as soon as may be, after it is made, before the State Legislature, or the Union territory Legislature, as the case may be, where it consists of two Houses, or where such legislature consists of one House, before that House. 76. The Chairperson, Members and other officers and employees of the Authority and the Appellate Tribunal shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code. 77. The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force. 78. The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force: Provided that where a State has enacted a law for regulation of the real estate sector, and such State law is not inconsistent with this Act, then, the State Government, to that extent, may not apply the provisions of this Act in the State. 79. No suit, prosecution or other legal proceedings shall lie against the appropriate Government or the Authority or any officer of the appropriate Government or any member, officer or other employees of the Authority for anything which is in good faith done or intended to be done under this Act or the rules or regulations made thereunder. 80. (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 may appear to be necessary for removing the difficulty: Provided that no order shall be made under this section after the expiry of two years from the date of the commencement of this Act. (2) Every order made under this section shall be laid, as soon as may be after it
The Real Estate (Regulation and Development) Bill, 2013 is made, before each House of Parliament. Statement of Objects and Reasons The real estate sector plays a catalytic role in fulfilling the need and demand for housing and infrastructure in the country. While this sector has grown significantly in recent years, it has been largely unregulated, with absence of professionalism and standardisation and lack of adequate consumer protection. Though the Consumer Protection Act, 1986 is available as a forum to the buyers in the real estate market, the recourse is only curative and is not adequate to address all the concerns of buyers and promoters in that sector. The lack of standardisation has been a constraint to the healthy and orderly growth of industry. Therefore, the need for regulating the sector has been emphasised in various forums. 2. In view of the above, it becomes necessary to have a Central legislation, namely, the Real Estate (Regulation and Development) Bill, 2013 in the interests of effective consumer protection, uniformity and standardisation of business practices and transactions in the real estate sector. The proposed Bill provides for the establishment of the Real Estate Regulatory Authority (the Authority) for regulation and promotion of real estate sector and to ensure sale of plot, apartment or building, as the case may be, in an efficient and transparent manner and to protect the interest of consumers in real estate sector and establish the Real Estate Appellate Tribunal to hear appeals from the decisions, directions or orders of the Authority. 3. The proposed Bill will ensure greater accountability towards consumers, and significantly reduce frauds and delays as also the current high transaction costs. It attempts to balance the interests of consumers and promoters by imposing certain responsibilities on both. It seeks to establish symmetry of information between the promoter and purchaser, transparency of contractual conditions, set minimum standards of accountability and a fast-track dispute resolution mechanism. The proposed Bill will induct professionalism and standardisation in the sector, thus paving the way for accelerated growth and investments in the long run. 4. The Real Estate (Regulation and Development) Bill, 2013, inter alia, provides for the following, namely: (a) to impose an obligation upon the promoter not to book, sell or offer for sale, or invite persons to purchase any plot, apartment or building, as the case may be, in any real estate project without registering the real estate project with the Authority; (b) to make the registration of real estate project compulsory in case where the area of land proposed to be developed exceed one thousand square meters or number of apartments proposed to be developed exceed twelve; (c) to impose an obligation upon the real estate agent not to facilitate sale or purchase of any plot, apartment or building, as the case may be, without registering himself with the Authority; (d) to impose liability upon the promoter to pay such compensation to the allottees, in the manner as provided under the proposed legislation, in case if he fails to discharge any
obligations imposed on him under the proposed legislation; (e) to establish an Authority to be known as the Real Estate Regulatory Authority by the appropriate Government, to exercise the powers conferred on it and to perform the functions assigned to it under the proposed legislation; (f) the functions of the Authority shall, inter alia, include (i) to render advice to the appropriate Government in matters relating to the development of real estate sector; (ii) to publish and maintain a website of records of all real estate projects for which registration has been given, with such details as may be prescribed; (iii) to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under the proposed legislation; (g) to establish an Advisory Council by the Central Government to advice and recommend the Central Government on (i) matters concerning the implementation of the proposed legislation; (ii) major questions of policy; (iii) protection of consumer interest; (iv) growth and development of the real estate sector; (h) to establish the Real Estate Appellate Tribunal by the appropriate Government to hear appeals from the direction, decision or order of the Authority or the adjudicating officer; (i) to appoint an adjudicating officer by the Authority for adjudging compensation under sections 12, 14 and 16 of the proposed legislation; (j) to make provision for punishment and penalties for contravention of the provisions of the proposed legislation and for non-compliance of orders of Authority or Appellate Tribunal; (k) to empower the appropriate Government to supersede the Authority on certain circumstances specified in the proposed legislation; (l) to empower the appropriate Government to issue directions to the Authority and obtain reports and returns from it. 5. The Notes on clauses explain in detail the various provisions contained in the Real Estate (Regulation and Development) Bill, 2013. 6. The Bill seeks to achieve the above objectives. NEW DELHI; DR. GIRIJA VYAS The 22nd July, 2013.

PRESIDENT’S RECOMMENDATION UNDER ARTICLE 117 OF THE CONSTITUTION OF INDIA (Copy of letter No. O-17034/18/2009-H dated 24th July, 2013 from Dr. Girija Vyas, Minister of Housing and Urban Poverty Alleviation to the Secretary-General, Rajya Sabha) The Hon’ble President having been informed of the subject matter of the proposed the Real Estate (Regulation and Development) Bill, 2013, recommends *** *** *** to the House the consideration of the Bill under article 117(3) of the Constitution. Notes on clauses

Clause 1. This clause relates to the short title, extent and commencement of the proposed legislation.

Clause 2. This clause contains the definitions of various expressions used in the proposed legislation.

Clause 3. This clause relates to the prior registration of real estate project with the Real Estate Regulatory Authority. This clause provides that no promoter shall book, sell or offer for sale, or invite persons to purchase in any manner any plot,
apartment or building, as the case may be, in any real estate project, or part of it, in any planning area, without registering the real estate project with the Real Estate Regulatory Authority established under the proposed legislation. However, no such registration shall be required where the area of land proposed to be developed does not exceed one thousand square meters or the number of apartments proposed to be developed does not exceed twelve or where the promoter has received all requisite approvals and the commencement certificate for the development of immovable property prior to commencement of the proposed legislation or for the purpose of renovation or repair or redevelopment which does not involve re-allotment and marketing of immovable property.

Clause 4. This clause relates to the application to Authority. Sub-clause (1) of this clause provides that every promoter shall make an application to the Authority for registration of the project in such form, manner, within such time and accompanied by such fee as may be specified by the regulations made by the Authority. Sub-clause (2) of this clause of the Bill provides the list of documents that the promoter is required to enclose along with the application for registration.

Clause 5. This clause relates to the grant of registration. Sub-clause (1) of this clause provides that the Authority shall within a period of fifteen days(a) grant registration subject to the provisions of the proposed legislation and the rules and regulations made thereunder, and provide a registration number, including a Login Id and password to the applicant for accessing the website of the Authority and to create his web page and to fill therein the details of the proposed project; or (b) reject the application for reasons to be recorded in writing, if such application does not conform to the provisions of the proposed legislation or the rules or regulations made thereunder. Sub-clause (2) of this clause of the Bill provides that if the Authority fails to grant the registration or reject the application, as the case may be, as provided within the said fifteen days, the project shall be deemed to have been registered, and the Authority shall within two days of the expiry of the said fifteen days, provide a registration number and a Login Id and password to the promoter for accessing the website of the Authority and to create his web page and to fill therein the details of the proposed project. Sub-clause (3) of this clause of the Bill provides that the registration granted under this clause shall be valid for a period declared by the promoter.

Clause 6. This clause relates to the extension of registration. This clause provides that the registration granted may be extended by the Authority on an application made by the promoter under such conditions as may be prescribed and in such form and on payment of such fee as may be specified by the regulations made by the Authority.

Clause 7. This clause relates to
the revocation of registration. Subclause (1) of this clause provides that the Authority may on receipt of a complaint in this behalf or on the recommendation of the competent authority, revoke the registration granted after being satisfied that the promoter has made wilful default in doing anything required of him by or under the proposed legislation or the rules or the regulations made thereunder; the promoter has violated any of the terms or conditions of the approval given by the competent authority; the promoter is involved in any kind of unfair practice or irregularities. Sub-clause (2) of this clause provides that the registration granted to the promoter under clause 5 shall not be revoked unless the Authority has given to the promoter not less than thirty days notice, in writing, stating the grounds on which it is proposed to revoke the registration, and has considered any cause shown by the promoter within the period of that notice against the proposed revocation. Sub-clause (3) of this clause provides that the Authority may, instead of revoking the registration under sub-section (1), permit it to remain in force subject to such further terms and conditions as it thinks fit to impose in the interest of the allottees, and any such terms and conditions so imposed shall be binding upon the promoter. Sub-clause (4) of this clause provides that upon the revocation of the registration, the Authority, (a) shall debar the promoter from accessing its website in relation to that project and specify his name in the list of defaulters on its website and also inform the other Real Estate Regulatory Authorities in other States and Union territories about such cancellation; (b) may recommend to the competent authority to facilitate the balance of the development works to be carried out in accordance with the provisions of clause 8; (c) may, to protect the interest of prospective buyers or in the public interest, issue such directions as it may deem necessary.

Clause 8. This clause relates to the obligation of Authority consequent upon lapse of or revocation of registration. This clause provides that upon lapse of the registration or on revocation of the registration under the proposed legislation, the Authority, may consult the appropriate Government to take such action as it may deem fit including the carrying out of the remaining development works by competent authority or by the association of allottees or in any other manner, as may be determined by the Authority. However, that no direction, decision or order of the Authority under this clause shall take effect until the expiry of the period of appeal provided under the provisions of the proposed legislation.

Clause 9. This clause relates to the registration of real estate agents. Sub-clause (1) of this clause provides that no real estate agent shall facilitate the sale or purchase of or act on behalf of any person to facilitate the sale or purchase of any plot, apartment or building, as the case may be, in a real estate project or part of it, being the part of the real estate project registered under the pro-
posed legislation, being sold by the promoter in any planning area, without registering with the Authority. Sub-clause (2) of this clause provides that the registration shall be in such form, manner, within such time and accompanied by such fee and documents as may be prescribed. Sub-clause (3) of this clause provides that the Authority shall, within such period, in such manner and satisfying itself of the fulfillment of such conditions, as may be prescribed (a) grant registration to the real estate agent; (b) reject the application for reasons to be recorded in writing, if such application does not conform to the provisions of the proposed legislation or the rules or regulations made thereunder. However, no application shall be rejected unless the applicant has been given an opportunity of being heard in the matter. Sub-clause (4) of this clause provides that if on the completion of the period specified under sub-section (3), if the applicant does not receive any communication about the deficiencies in his application or the rejection of his application, he shall be deemed to have been registered. Sub-clause (5) of this clause provides that every real estate agent who is registered as per the provisions of the proposed legislation or the rules and regulations made thereunder, shall be granted a registration number by the Authority, which shall be quoted by the real estate agent in every sale facilitated by him under the proposed legislation. Sub-clause (6) of this clause provides that every registration shall be valid for such period as may be prescribed, and shall be renewable for a period in such manner and on payment of such fee as may be prescribed. Sub-clause (7) of this clause provides that where any real estate agent who has been granted registration under the proposed legislation commits breach of any of the conditions thereof or any other terms and conditions specified under the proposed legislation or any rules or regulations made thereunder, or where the Authority is satisfied that such registration has been secured by the real estate agent through misrepresentation or fraud, the Authority may, without prejudice to any other provisions under the proposed legislation, revoke the registration or suspend the same for such period as it thinks fit. However, no such revocation or suspension shall be made by the Authority unless an opportunity of being heard has been given to the real estate agent.

Clause 10. This clause relates to the functions of real estate agents. This clause provides that every real estate agent registered under clause 9 shall (a) not facilitate the sale or purchase of any plot, apartment or building, as the case may be, in a real estate project or part of it, being sold by the promoter in any planning area, which is not registered with the Authority; (b) maintain and preserve such books of account, records and documents as may be prescribed; (c) not involve himself in any unfair trade practices, namely: (i) the practice of making any statement, whether orally or writing or by visible representation which (A) falsely represents that the services are of
a particular standard or grade; (B) represents that the promoter has approval or affiliation which such promoter does not have; (C) makes a false or misleading representation concerning the services; (ii) permitting the publication of any advertisement whether in any newspaper or otherwise of services that are not intended to be offered; (d) facilitate the possession of all documents, as the allottee is entitled to, at the time of booking of any plot, apartment or building, as the case may be; (e) discharge such other functions as may be prescribed.

Clause 11. This clause relates to the functions and duties of promoter. Sub-clause (1) of this clause provides that the promoter shall, upon receiving his Login-Id and password under clause (a) of sub-section (1) of clause 5 or under sub-section (2) of clause 5, as the case may be, create his web page on the website of the Authority and enter all details of the proposed project as provided under sub-section (2) of clause 4, in all the fields as provided, including those specified. Sub-clause (2) of this clause provides that the advertisement or prospectus issued or published by the promoter shall mention prominently the website address of the Authority and enter all details of the proposed project as provided under sub-section (2) of clause 4, in all the fields as provided, including those specified. Sub-clause (3) of this clause provides that the promoter, upon entering into an agreement of sale with the allottee shall be responsible to make available to the allottee information as specified. Sub-clause (4) of this clause provides that the promoter shall (a) be responsible to obtain a completion certificate from the relevant competent authority as per local laws or other laws for the time being in force and to make it available to the allottees individually or to the association of allottees, as the case may be; (b) be responsible for providing and maintaining the essential services, as may be specified in the service level agreements, on reasonable charges, till the taking over of the maintenance of the project by the association of allottees; (c) take steps for the formation of an association or society or co-operative society, as the case may be, of the allottees, or a federation of the same, under the laws applicable. Sub-clause (5) of this clause provides that the promoter may cancel the allotment only in terms of the agreement of sale. However, the allottee may approach the Authority for relief if he is aggrieved by such cancellation and such cancellation is not in accordance with the terms of the agreement of sale, unilateral and without any sufficient cause.

Clause 12. This clause relates to the obligations of promoter regarding veracity of the advertisement or prospectus. This clause provides that where any person makes an advance or a deposit on the basis of the information contained in the advertisement or prospectus and sustains any loss or damage by reason of any incorrect, false statement included therein, he shall be compen-
sated by the promoter in the manner as provided under the proposed legislation. However, if the person affected by such incorrect, false statement contained in the advertisement or prospectus, intends to withdraw from the proposed project, he shall be returned his entire investment along with interest at such rate as may be prescribed.

Clause 13. This clause relates to no deposit or advance to be taken by promoter without first entering into an agreement of sale. Sub-clause (1) of this clause provides that a promoter shall not accept a sum more than ten per cent. of the cost of the apartment, plot, or building as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person. Sub-clause (2) of this clause provides that the agreement referred to in sub-section (1) shall be in such form as may be prescribed and specify the particulars of development of the project including the construction of building and apartments, along with specifications and external development works, the dates and the manner by which payments towards the cost of the apartment, plot, or building as the case may be, are to be made by the allottees and the likely date on which the possession of the apartment, plot, or building is to be handed over and such other particulars, as may be prescribed.

Clause 14. This clause relates to the adherence to approved plans and project specifications by the promoter. Sub-clause (1) of this clause provides that the proposed project shall be developed and completed by the promoter in accordance with the plans and structural designs and specifications as approved by the competent authorities. Sub-clause (2) of this clause provides that in case any structural defect in such development is brought to the notice of the promoter within a period of two years by the allottee from the date of handing over possession, it shall be the duty of the promoter to rectify such defects without further charge, within reasonable time, and in the event of promoters failure to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under the proposed legislation.

Clause 15. This clause relates to the transfer of title. Sub-clause (1) of this clause provides that the promoter shall take all necessary steps to execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas including the handing over of the possession of the plot, apartment or building, as the case may be, in a real estate project, and the other title documents pertaining thereto. Sub-clause (2) of this clause provides that after obtaining the completion certificate and handing over physical possession to the allottees in terms of sub-section (1), it shall be the responsibility of the promoter to hand over the necessary documents and plans, including common areas, to the association of the allottees or the compe-
tent authority, as the case may be, as per the local laws.

Clause 16. This clause relates to the return of amount and compensation. Sub-clause (1) of this clause provides that if the promoter fails to complete or is unable to give possession of an apartment, plot or building, (a) in accordance with the terms of the agreement or, as the case may be, duly completed by the date specified therein or any further date agreed to by the parties; or (b) due to discontinuance of his business as a developer on account of suspension or revocation of registration under the proposed legislation or for any other reason, he shall be liable on demand to the allottees, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, or building as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under the proposed legislation. Sub-clause (2) of this clause provides that if the promoter fails to discharge any other obligations imposed on him under the proposed legislation or the rules or regulations made thereunder, he shall be liable to pay such compensation to the allottees, in the manner as provided under the proposed legislation.

Clause 17. This clause relates to the rights and duties of allottees. Sub-clause (1) of this clause provides that the allottee shall be entitled to obtain the information relating to site and layout plans along with the specifications, approved by the competent authority and such other information as provided in the proposed legislation or the rules and regulations made thereunder or the agreement signed with the promoter. Sub-clause (2) of this clause provides that the allottee shall be entitled to know stagewise time schedule of completion of the project, including the provisions for water, sanitation and electricity. Sub-clause (3) of this clause provides that the allottees be entitled to claim the possession of apartment, plot or building, as the case may be, as per the declaration given by the promoter under sub-clause (c) of clause (i) of subsection (2) of clause 4. Sub-clause (4) of this clause provides that the allottee shall be entitled to claim the refund of amount paid, from the promoter, if the promoter fails to comply or is unable to give possession of the apartment, plot or building, as the case may be, in accordance with the terms of agreement or due to discontinuance of his business as a developer on account of suspension or revocation of registration under the provisions of the proposed legislation or the rules or regulations made thereunder. Sub-clause (5) of this clause provides that the allottee shall be entitled to have the necessary documents and plans, including that of common areas, after handing over the physical possession of the apartment or plot or building as the case may be, to the allottee by the promoter. Sub-clause (6) of this clause provides that every allottee, who has entered into an agreement of sale to take an apartment, plot or building as the case may be,
under clause 13, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement and shall pay at the proper time and place, the proportionate share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other charges, if any, in accordance with such agreement. Sub-clause (7) of this clause provides that the allottee shall be liable to pay interest, at such rate as may be prescribed, for any delay in payment towards any amount or charges to be paid under sub-section (6). Sub-clause (8) of this clause provides that the obligations of the allottee under subsection (6) and the liability towards interest under sub-section (7) may be reduced when mutually agreed to between the promoter and such allottee. Sub-clause (9) of this clause provides that every allottee after taking possession of the apartment, plot or building as the case may be, shall participate towards the formation of an association or society or co-operative society of the allottees, or a federation of the same.

Clause 18. This clause relates to the establishment and incorporation of the Real Estate Regulatory Authority. Sub-clause (1) of this clause provides the appropriate Government shall, within a period of one year from the date of coming into force of the proposed legislation, by notification, establish an Authority to be known as the Real Estate Regulatory Authority to exercise the powers conferred on it and to perform the functions assigned to it under the proposed legislation. However, the appropriate Government of two or more States or Union territories may, if it deems fit, establish one single Authority, also if the appropriate Government deems fit, it may establish more than one Authority in a State or Union territory, as the case may be.

Clause 19. This clause relates to the composition of the Authority. This clause provides that the Authority shall consist of a Chairperson and not less than two whole-time Members to be appointed by the appropriate Government.

Clause 20. This clause relates to the qualification of Chairperson and Members of Authority. This clause provides that the Chairperson and other Members of the Authority shall be appointed by the appropriate Government on the recommendations of a Selection Committee consisting of such persons and in such manner as may be prescribed, from amongst persons having adequate knowledge of and professional experience of at least twenty years in case of the Chairperson and fifteen years in the case of the Members in urban development, housing, real estate development, infrastructure, economics, planning, law, commerce, accountancy, industry, management, social service, public affairs or administration. However, that a person who is, or has been, in the service of the State Government shall not be appointed as a Chairperson unless such person has held the post of Additional Secretary to the Cen-
tral Government or any equivalent post in the Central Government or in the State Government. It further provides that a person who is, or has been, in the service of the State Government shall not be appointed as a Member unless such person has held the post of Secretary to the State Government or any equivalent post in the State Government or in the Central Government.

Clause 21. This clause relates to the term of office of Chairperson and Members. Sub-clause (1) of this clause provides that the Chairperson and Members shall hold office for a term not exceeding five years from the date on which they enter upon their office, or until they attain the age of sixty-five years, whichever is earlier. Sub-clause (2) of this clause provides that before appointing any person as a Chairperson or Member, the appropriate Government shall satisfy itself that the person does not have any such financial or other interest as is likely to affect prejudicially his functions as such Chairperson or Member.

Clause 22. This clause relates to the salary and allowances payable to Chairperson and Members. Sub-clause (1) of this clause provides that the salary and allowances payable to, and the other terms and conditions of service of, the Chairperson and other Members shall be such as may be prescribed and shall not be varied to their disadvantage during their tenure.

Clause 23. This clause relates to the administrative powers of Chairperson. This clause provides that the Chairperson shall have powers of general superintendence and directions in the conduct of the affairs of the Authority and he shall, in addition to presiding over the meetings of the Authority, exercise and discharge such administrative powers and functions of the Authority as may be prescribed.

Clause 24. This clause relates to the removal of Chairperson and Members from office in certain circumstances. Sub-clause (1) of this clause provides that the appropriate Government may, by order, remove from office the Chairperson or other Members, if the Chairperson or such other Member, as the case may be, (a) has been adjudged as an insolvent; or (b) has been convicted of an offence, involving moral turpitude; or (c) has become physically or mentally incapable of acting as a Member; or (d) has acquired such financial or other interest as is likely to affect prejudicially his functions; or (e) has so abused his position as to render his continuance in office prejudicial to the public interest. Sub-clause (2) of this clause provides that no such Chairperson or Member shall be removed from his office under clause (d) or clause (e) of sub-section (1) unless he has been given a reasonable opportunity of being heard in the matter.

Clause 25. This clause relates to the restrictions on Chairperson or Members on employment after cessation of office. Sub-clause (1) of this clause provides that the Chairperson or a Member, ceasing to hold office as such, shall not accept any
employment in, or connected with, the management or administration of, any person or organisation which has been associated with any work under the proposed legislation from the date on which he ceases to hold office, except under the appropriate Government or a local authority or in any statutory authority or any corporation established by or under any Central, State or provincial Act or a Government Company, as defined in section 617 of the Companies Act, 1956; (b) act, for or on behalf of any person or organisation in connection with any specific proceeding or transaction or negotiation or a case to which the Authority is a party and with respect to which the Chairperson or such Member had, before cessation of office, acted for or provided advice to, the Authority; (c) give advice to any person using information which was obtained in his capacity as the Chairperson or a Member and being unavailable to or not being able to be made available to the public; (d) enter into a contract of service with, or accept an appointment to a board of directors of, or accept an offer of employment with, an entity with which he had direct and significant official dealings during his term of office as such. Sub-clause (2) of this clause provides that the Chairperson and Members shall not communicate or reveal to any person any matter which has been brought under his consideration or known to him while acting as such.

Clause 26. This clause relates to the officers and other employees of the Authority. Sub-clause (1) of this clause provides that the appropriate Government may, in consultation with the Authority appoint such officers and employees as it considers necessary for the efficient discharge of their functions under the proposed legislation who would discharge their functions under the general superintendence of the Chairperson. Sub-clause (2) of this clause provides that the salary and allowances payable to, and the other terms and conditions of service of, the officers and of the employees of the Authority appointed under sub-section (1) shall be such as may be prescribed.

Clause 27. This clause relates to the meetings of the Authority. Sub-clause (1) of this clause provides that the Authority shall meet at such places and times, and shall follow such rules of procedure in regard to the transaction of business at its meetings, (including quorum at such meetings), as may be specified by the regulations made by the Authority. Sub-clause (2) of this clause provides that if the Chairperson, if for any reason, is unable to attend a meeting of the Authority, any other Member chosen by the Members present amongst themselves at the meeting, shall preside at the meeting.

Sub-clause (3) of this clause provides that all questions which come up before any meeting of the Authority shall be decided by a majority of votes by the Members present and voting, and in the event of an equality of votes, the Chairperson or in his absence, the person presiding shall have a second or casting vote.

Clause 28. This clause relates to
the vacancies, etc., not to invalidate proceeding of the Authority. This clause provides that no act or proceeding of the Authority shall be invalid merely by reason of (a) any vacancy in, or any defect in the constitution of the Authority; or (b) any defect in the appointment of a person acting as a Member of the Authority; or (c) any irregularity in the procedure of the Authority not affecting the merits of the case.

Clause 29. This clause relates to the functions of Authority for promotion of real estate sector. This clause provides that the Authority shall in order to facilitate the growth and promotion of a healthy, transparent, efficient and competitive real estate sector make recommendations to the appropriate Government or the competent authority as the case may be, on (a) protection of interest of the allottees and promoter; (b) measures to improve the processes and procedures for clearance and sanction of plans and development of projects; (c) measures to encourage construction of environmentally sustainable and affordable housing, promote standardisation including grading and use of appropriate construction materials, fixtures, fittings and construction techniques; (d) measures to facilitate amicable conciliation of disputes between the promoters and the allottees through dispute settlement forums set up by the consumer or promoter associations; (e) any other issue that the Authority may think necessary for the promotion of the real estate sector.

Clause 30. This clause relates to the functions of the Authority. This clause provides that the functions of the Authority shall, inter alia, include (a) to render advice to the appropriate Government in matters relating to the development of real estate sector; (b) to publish and maintain a website of records of all real estate projects for which registration has been given, with such details as may be prescribed, including information provided in the application for which registration has been granted; (c) to maintain a database, on its website, and enter the names of promoters as defaulters including the project details, registration for which has been revoked or have been penalised under the proposed legislation, with reasons therefor, for access to the general public; (d) to maintain a database, on its website, and enter the names of real estate agents who have applied and registered under the proposed legislation, with such details as may be prescribed, including those whose registration has been rejected or revoked; (e) to fix through regulations for each areas under its jurisdiction the standard fees, to be levied on the allottees by the promoter or the association of allottees, as the case may be; (f) to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under the proposed legislation and the rules and regulations made thereunder; (g) to ensure compliance of its regulations or orders or directions made in exercise of its powers under the proposed legislation; (h) to perform such other functions as may be entrusted to the Authority by the appropriate Govern-
Clause 31. This clause relates to the powers of the Authority to call for information, conduct investigations. Sub-clause (1) of this clause provides that where the Authority considers it expedient to do so, on a complaint relating to the proposed legislation or the rules or regulations made thereunder, it may, by order in writing and recording reasons therefor, call upon any promoter or allottee or real estate agent, as the case may be, at any time to furnish in writing such information or explanation relating to its affairs as the Authority may require and appoint one or more persons to make an inquiry in relation to the affairs of any promoter or allottee or the real estate agents, as the case may be.

Sub-clause (2) of this clause provides that notwithstanding anything contained in any other law for the time being in force, while exercising the powers under sub-section (1), the Authority shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit, in respect of the following matters, namely: (i) the discovery and production of books of account and other documents, at such place and at such time as may be specified by the Authority; (ii) summoning and enforcing the attendance of persons and examining them on oath; (iii) issuing commissions for the examination of witnesses or documents; (iv) any other matter which may be prescribed.

Clause 32. This clause relates to the powers of the Authority to issue directions. This clause provides that the Authority may, for the purpose of discharging its functions under the provisions of the proposed legislation or the rules or the regulations made thereunder, issue such directions from time to time, to the promoters and allottees or real estate agents, as the case may be, as it may consider necessary and such directions shall be binding on all concerned.

Clause 33. This clause relates to the powers of the Authority. Sub-clause (1) of this clause provides that the Authority shall have powers to impose penalty or interest, in regard to any contravention of obligations cast upon the promoters, the allottees and the real estate agents, under the proposed legislation or the rules and the regulations made thereunder. Sub-clause (2) of this clause provides that the Authority shall be guided by the principles of natural justice and subject to the other provisions of the proposed legislation and the rules made thereunder, the Authority shall have powers to regulate its own procedure. Sub-clause (3) of this clause provides that where an issue is raised relating to agreement, action, omission, practice or procedure that (a) has an appreciable prevention, restriction or distortion of competition in connection with the development of a real estate project; or (b) has effect of market power of monopoly situation being abused for affecting interest of allottees adversely, then the Authority, may, suo
motu, make reference in respect of such issue to the Competition Commission of India.

Clause 34. This clause relates to the recovery of interest or penalty or compensation. This clause provides that if a promoter or an allottee or a real estate agent, as the case may be, fails to pay any interest or penalty or compensation imposed on him under the proposed legislation, it shall be recoverable from such promoter or allottee or real estate agent, in such manner as may be prescribed.

Clause 35. This clause relates to the establishment of Central Advisory Council. Sub-clause (1) of this clause provides that the Central Government may, by notification, establish with effect from such date as it may specify in such notification, a Council to be known as the Central Advisory Council. Sub-clause (2) of this clause provides that the Minister to the Government of India in charge of the Ministry of the Central Government dealing with housing shall be the ex officio Chairperson of the Central Advisory Council. Sub-clause (3) of this clause provides that the Central Advisory Council shall consist of representatives of the Ministry of Finance, Ministry of Industry and Commerce, Ministry of Urban Development, Ministry of Consumer Affairs, Ministry of Corporate Affairs, Ministry of Law and Justice, Planning Commission, National Housing Bank, Housing and Urban Development Corporation, five representatives of State Governments to be selected by rotation, five representatives of the Real Estate Regulatory Authorities to be selected by rotation, and any other Central Government department as notified. Sub-clause (4) of this clause provides that the Central Advisory Council shall also consist of not more than ten members to represent the interests of real estate industry, consumers, construction labourers, non-governmental organisations and academic and research bodies in the real estate sector.

Clause 36. This clause relates to the functions of the Central Advisory Council. Sub-clause (1) of this clause provides that the functions of the Central Advisory Council shall be to advise and recommend the Central Government: (a) on all matters concerning the implementation of the proposed legislation; (b) on major questions of policy; (c) towards protection of consumer interest; (d) to foster the growth and development of the real estate sector; (e) on any other matter as may be assigned to it by the Central Government. Sub-clause (2) of this clause provides that the Central Government may specify the rules to give effect to the recommendations of the Central Advisory Council on matters as provided under sub-section (1).

Clause 37. This clause relates to the establishment of Real Estate Appellate Tribunal. Sub-clause (1) of this clause provides that the appropriate Government shall, within a period of one year from the date of coming into force of the proposed legislation, by notification, establish an Appellate Tribunal to be known as the (State/Union territory) Real Es-
tate Appellate Tribunal. However, the appropriate Government of two or more States or Union territories may, if it deems fit, establish one single Appellate Tribunal. Sub-clause (2) of this clause provides that any person aggrieved by any direction or decision or order made by the Authority or by an adjudicating officer under the proposed legislation may prefer an appeal before the Appellate Tribunal which shall have jurisdiction over the matter.

Clause 38. This clause relates to the application for settlement of disputes and appeals to Appellate Tribunal. Sub-clause (1) of this clause provides that the appropriate Government or the competent authority or any person aggrieved by any direction or order or decision of the Authority or the adjudicating officer may prefer an appeal to the Appellate Tribunal. Sub-clause (2) of this clause provides that every appeal made under sub-section (1) shall be preferred within a period of sixty days from the date on which a copy of any direction or decision or order made by the Authority is received by the appropriate Government or the competent authority or the aggrieved person and it shall be in such form, and accompanied by such fee as may be prescribed. However, the Appellate Tribunal may entertain any appeal after the expiry of sixty days if it is satisfied that there was sufficient cause for not filing it within that period. Sub-clause (3) of this clause provides that on receipt of an appeal under sub-section (1), the Appellate Tribunal may after giving the parties an opportunity of being heard, pass such orders as it thinks fit. Sub-clause (4) of this clause provides that the Appellate Tribunal shall send a copy of every order made by it to the parties and to the Authority or the adjudicating officer, as the case may be. Sub-clause (5) of this clause provides that the appeal preferred under sub-section (1), shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal within a period of ninety days from the date of receipt of appeal. However, where any such appeal could not be disposed of within the said period of ninety days, the Appellate Tribunal shall record its reasons in writing for not disposing of the appeal within that period. Sub-clause (6) of this clause provides that the Appellate Tribunal may, for the purpose of examining the legality or propriety or correctness of any order or decision of the Authority or the adjudicating officer, on its own motion or otherwise, call for the records relevant to disposing of such appeal and make such orders as it thinks fit.

Clause 39. This clause relates to the composition of the Appellate Tribunal. This clause provides that the Appellate Tribunal shall consist of a Chairperson and two other Members of which one shall be a Judicial Member and other shall be a Technical or Administrative Member, to be appointed by the appropriate Government.

Clause 40. This clause relates to the qualifications for appointment of Chairperson and Members. Sub-
clause (1) of this clause provides that a person shall not be qualified for appointment as the Chairperson or a Member of the Appellate Tribunal unless he, (a) in the case of Chairperson, is or has been a Judge of the High Court; and (b) in the case of a Judicial Member he has held a judicial office in the territory of India for at least seven years or has been a Member of the Indian Legal Service and has held the post in Grade I of that service or any equivalent post for at least three years, or has been an advocate for at least fifteen years with experience in dealing with real estate matters; and (c) in the case of a Technical or Administrative Member he is a person who is well versed in the field of urban development, housing, real estate development, infrastructure, economics, planning, law, commerce, accountancy, industry, management, public affairs or administration and possesses experience of at least fifteen years in the field or who has held the post in the Central Government or a State Government equivalent to the post of Joint Secretary to the Government of India or an equivalent post in the Central Government or an equivalent post in the State Government. Sub-clause (2) of this clause provides that before appointing any person as Chairperson or Member, the appropriate Government shall satisfy itself that the person does not have any such financial or other interest as is likely to affect prejudicially his functions as such member.

Clause 41. This clause relates to the term of office of Chairperson and Members. Sub-clause (1) of this clause provides that the Chairperson of the Appellate Tribunal or a member of the Appellate Tribunal shall hold office as such for a term not exceeding five years from the date on which he enters upon his office, but shall not be eligible for re-appointment. However, in case a person, who is or has been a Judge of a High Court, has been appointed as Chairperson of the Tribunal, he shall not hold office after he has attained the age of sixty-seven years. Also, no Judicial Member or Technical or Administrative Member shall hold office after he has attained the age of sixty-five years. Sub-clause (2) of this clause provides that before appointing any person as Chairperson or Member, the appropriate Government shall satisfy itself that the person does not have any such financial or other interest as is likely to affect prejudicially his functions as such member.

Clause 42. This clause relates to the salary and allowances payable to Chairperson and Members. This clause provides that the salary and allowances payable to, and the other terms and conditions of service of, the Chairperson and other Members shall be such as may be prescribed and shall not be varied to their disadvantage during their tenure.
Clause 43. This clause relates to the removal of Chairperson and Member from office in certain circumstances. Sub-clause (1) of this clause provides that the appropriate Government may, in consultation with the Chief Justice of the High Court, remove from office of the Chairperson or any Judicial Member of the Appellate Tribunal, who (a) has been adjudged as an insolvent; or (b) has been convicted of an offence which, in the opinion of the appropriate Government involves moral turpitude; or (c) has become physically or mentally incapable; or (d) has acquired such financial or other interest as is likely to affect prejudicially his functions; or (e) has so abused his position as to render his continuance in office prejudicial to the public interest. Sub-clause (2) of this clause provides that the Chairperson or Judicial Member shall not be removed from his office except by an order made by the appropriate Government after an inquiry made by Judge of the High Court in which such Chairperson or Judicial Member has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. Sub-clause (3) of this clause provides that the appropriate Government may suspend from the office of the Chairperson or Judicial Member in respect of whom a reference of conducting an inquiry has been made to the Judge of the High Court under sub-section (2), until the appropriate Government passes an order on receipt of the report of inquiry made by the Judge of the High Court on such reference.

Sub-clause (4) of this clause provides that the appropriate Government may, by rules, regulate the procedure for inquiry referred to in sub-section (2). Sub-clause (5) of this clause provides that the Technical or Administrative Member may be removed from his office by an order of the appropriate Government on the grounds specified in sub-section (1) and in accordance with the procedure notified by the appropriate Government.

Clause 44. This clause relates to the officers and other employees of the Appellate Tribunal. Sub-clause (1) of this clause provides that the appropriate Government shall provide the Appellate Tribunal with such officers and employees as it may deem fit. Sub-clause (2) of this clause provides that the officers and employees of the Appellate Tribunal shall discharge their functions under the general superintendence of its Chairperson. Sub-clause (3) of this clause provides that salary and allowances payable to, and the terms and other conditions of service of the officers and employees of the Appellate Tribunal shall discharge their functions under the general superintendence of its Chairperson. Sub-clause (3) of this clause provides that salary and allowances payable to, and the terms and other conditions of service of the officers and employees of the Appellate Tribunal shall be such as may be prescribed. Clause 45. This clause relates to the vacancies. This clause provides that if, for reason other than temporary absence, any vacancy occurs in the office of the Chairperson or a Member of the Appellate Tribunal, the appropriate Government shall appoint another person in accordance with the provisions of the proposed legislation to fill the vacancy and the proceedings may be continued before the Appellate Tri-
bunal from the stage at which the vacancy is filled.

Clause 46. This clause relates to the powers of Tribunal. Sub-clause (1) of this clause provides that the Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 but shall be guided by the principles of natural justice. Sub-clause (2) of this clause provides that subject to the provisions of the proposed legislation, the Appellate Tribunal shall have power to regulate its own procedure. Sub-clause (3) of this clause provides that the Appellate Tribunal shall also not be bound by the rules of evidence contained in the Indian Evidence Act, 1872. Sub-clause (4) of this clause provides that the Appellate Tribunal shall have, for the purpose of discharging its functions under the proposed legislation, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 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) issuing commissions for the examination of witnesses or documents; (e) reviewing its decisions; (f) dismissing an application for default or directing it ex-parte; and (h) any other matter which may be prescribed. Sub-clause (5) of this clause provides that all proceedings before the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193, 219 and 228 for the purposes of section 196 of the Indian Penal Code, and the Appellate Tribunal shall be deemed to be civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

Clause 47. This clause relates to the administrative powers of Chairperson of the Appellate Tribunal. This clause provides that the Chairperson shall have powers of general superintendence and direction in the conduct of the affairs of the Appellate Tribunal and he shall, in addition to presiding over the meetings of the Appellate Tribunal, exercise and discharge such administrative powers and functions of the Appellate Tribunal as may be prescribed.

Clause 48. This clause relates to the right to legal representation. This clause provides that the applicant or appellant may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of its officers to present his or its case before the Appellate Tribunal.

Clause 49. This clause relates to the orders passed by the Appellate Tribunal to be executable as a decree. Sub-clause (1) of this clause provides that every order made by the Appellate Tribunal under the proposed legislation shall be executable by the Appellate Tribunal as a decree of civil court, and for this purpose, the Appellate Tribunal shall have all the powers of a civil court. Sub-clause (2) of this clause provides that notwithstanding anything contained in sub-section (1),...
the Appellate 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.

Clause 50. This clause relates to the appeal to High Court. Sub-clause (1) of this clause provides that any person aggrieved by any decision or order of the Appellate Tribunal, may, file an appeal to the High Court, within a period of ninety days from the date of communication of the decision or order of the Appellate Tribunal, to him, on anyone or more of the grounds specified in section 100 of the Code of Civil Procedure, 1908. However, the High Court may entertain the appeal after the expiry of the said period of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time. Sub-clause (2) of this clause provides that no appeal shall lie against any decision or order made by the Appellate Tribunal with the consent of the parties.

Clause 51. This clause relates to the punishment for non-registration under clause 3. Sub-clause (1) of this clause provides that if any promoter contravenes the provisions of clause 3, he shall be liable to a penalty which may extend up to ten per cent. of the estimated cost of the real estate project as determined by the Authority. Sub-clause (2) of this clause provides that if any promoter does not comply with the orders, decisions or directions issued under sub-section (1) or continues to violate the provisions of clause 3, he shall be punishable with imprisonment for a term which may extend up to three years or with fine which may extend to a further ten per cent. of the estimated cost of the real estate project, or with both.

Clause 52. This clause relates to the penalty for contravention of clause 4. This clause provides that if any promoter knowingly provides false information or contravenes the provisions of clause 4, he shall be liable to a penalty which may extend up to five per cent. of the estimated cost of the real estate project as determined by the Authority.

Clause 53. This clause relates to the penalty for contravention of other provisions of the Act. This clause provides that if any promoter contravenes any other provisions of the proposed legislation, other than that provided under clause 3 or clause 4, or the rules or regulations made thereunder, he shall be liable to a penalty which may extend up to five per cent. of the estimated cost of the real estate project as determined by the Authority.

Clause 54. This clause relates to the penalty for non-registration and contravention under clauses 9 and 10. This clause provides that if any real estate agent wilfully fails to comply with or contravenes the provisions of clause 9 or clause 10, he shall be liable to a penalty of ten thousand rupees for every day during which such default continues, which may cumulatively extend up to five per cent. of the cost of immovable property, for which the sale or purchase has been
facilitated as determined by the Authority.

Clause 55. This clause relates to the penalty for wilful failure to comply with orders of the Authority by Promoter. This clause provides that if any promoter, who wilfully fails to comply with, or contravenes any of the orders or directions of the Authority, he shall be liable to a penalty for every day during which such default continues, which may cumulatively extend up to five per cent. of the estimated cost of the real estate project as determined by the Authority.

Clause 56. This clause relates to the penalty for wilful failure to comply with orders of Appellate Tribunal by Promoter. This clause provides that if any promoter, who wilfully fails to comply with, or contravenes any of the orders, decisions or directions of the Appellate Tribunal, as the case may be, he shall be liable to a penalty for the period during which such default continues, which may cumulatively extend up to ten per cent. of the apartment cost as determined by the Authority.

Clause 57. This clause relates to the penalty for wilful failure to comply with orders of the Authority by allottee. This clause provides that if any allottee, who wilfully fails to comply with, or contravenes any of the orders, decisions or directions of the Authority, he shall be liable to a penalty for the period during which such default continues, which may cumulatively extend up to five per cent. of the apartment cost as determined by the Authority.

Clause 58. This clause relates to the penalty for wilful failure to comply with orders of Appellate Tribunal by allottee. This clause provides that if any allottee, who wilfully fails to comply with, or contravenes any of the orders or directions of the Appellate Tribunal, as the case may be, he shall be liable to a penalty for the period during which such default continues, which may cumulatively extend up to ten per cent. of the apartment cost as determined by the Appellate Tribunal.

Clause 59. This clause relates to the offences by Companies. Sub-clause (1) of this clause provides that where an offence under the proposed legislation has been committed by a company, every person who, at the time the offence was committed was in charge of, or was responsible to the company for the conduct of, the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. However, nothing contained in this sub-section, shall render any such person liable to any punishment under the proposed legislation if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence. Sub-clause (2) of this clause provides that notwithstanding anything contained in sub-section (1), where an offence under the proposed legislation has been committed by a company, and it is proved that the offence
has been committed with the consent or connivance of, or is attributable to, 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 that offence and shall be liable to be proceeded against and punished accordingly.

Clause 60. This clause relates to the compounding of offences. This clause provides that notwithstanding anything contained in the Code of Criminal Procedure, 1973, the offence punishable under clause 51 of the proposed legislation may, either before or after the institution of the prosecution, be compounded by the court on such terms and conditions and on payment of such sums as may be prescribed. However, the sum prescribed shall not, in any case, exceed the maximum amount of the fine which may be imposed for the offence so compounded.

Clause 61. This clause relates to the power to adjudicate. Sub-clause (1) of this clause provides that for the purpose of adjudging compensation under clauses 12, 14 and 16 the Authority shall appoint any officer not below the rank of Joint Secretary to the State Government to be an adjudicating officer for holding an inquiry in the prescribed manner, after giving any person concerned a reasonable opportunity of being heard. However, if any person whose complaint, in respect of matters covered under clauses 12, 14 and 16 is pending before the Consumer Disputes Redressal Forum or the Consumer Disputes Redressal Commission or the National Consumer Disputes Redressal Commission, established under section 9 of the Consumer Protection Act, 1986, on or before the commencement of the proposed legislation, he may, with the permission of such Forum or Commission, as the case may be, withdraw the complaint pending before it and file an application before the adjudicating officer under the proposed legislation. Sub-clause (2) of this clause provides that the application for adjudging compensation under sub-section (1), shall be dealt with by the adjudicating officer as expeditiously as possible and dispose of the same within a period of ninety days from the date of receipt of such application. However, where any such application could not be disposed of within the said period of ninety days, the adjudicating officer shall record his reasons in writing for not disposing of the application within that period. Sub-clause (3) of this clause provides that while holding an inquiry the adjudicating officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which in the opinion of the adjudicating officer, may be useful for or relevant to the subject matter of the inquiry and if, on such inquiry, he is satisfied that the person has failed to comply with the provisions of any of the sections specified in sub-section (1), he may direct to pay such compensation or interest, as the case may be, as he thinks fit in accordance with the provisions of any of those sec-
Clause 62. This clause relates to the factors to be taken into account by the adjudicating officer. This clause provides that while adjudging the quantum of compensation or interest, as the case may be, under section 61, the adjudicating officer shall have due regard to the following factors, namely: (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default; (b) the amount of loss caused as a result of the default; (c) the repetitive nature of the default.

Clause 63. This clause relates to the grants and loans by the Central Government. This clause provides that the Central Government may, after due appropriation made by Parliament in this behalf, make to the Authority grants and loans of such sums of money as that Government may consider necessary.

Clause 64. This clause relates to the grants and loans by the State Government. This clause provides that the State Government may, after due appropriation made by State Legislature by law in this behalf, make to the Authority grants and loans of such sums of money as that Government may consider necessary.

Clause 65. This clause relates to the Constitution of Fund. Sub-clause (1) of this clause provides that the appropriate Government shall constitute a fund to be called the Real Estate Fund and there shall be credited thereto (a) all Government grants received by the Authority; (b) the fees received under the proposed legislation; (c) the interest accrued on the amounts referred to in clauses (a) to (b). Sub-clause (2) of this clause provides that the Fund shall be applied for meeting (a) the salaries and allowances payable to the Chairperson and other Members and the administrative expenses including the salaries and allowances payable to the officers and other employees of the Authority and the Appellate Tribunal; (b) the other expenses of the Authority in connection with the discharge of its functions and for the purposes of the proposed legislation. Sub-clause (3) of this clause provides that the Fund shall be administered by a committee of such Members of the Authority as may be determined by the Chairperson. Sub-clause (4) of this clause provides that the committee appointed under sub-section (3) shall spend monies out of the Fund for carrying out the objects for which the Fund has been constituted.

Clause 66. This clause relates to the crediting sums realised by way of penalties to Consolidated Fund of India or State account. Sub-clause (1) of this clause provides that all sums realised, by way of penalties, imposed by the Appellate Tribunal or the Authority, in the Union territories, shall be credited to the Consolidated Fund of India. Sub-clause (2) of this clause provides that all sums realised, by way of penalties, imposed by the Appellate Tribunal or the Authority, in a State, shall be credited to such account as the State
Clause 67. This clause relates to the budget, accounts and audit. Sub-clause (1) of this clause provides that the Authority shall prepare a budget, maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the appropriate Government in consultation with the Comptroller and Auditor-General of India. Sub-clause (2) of this clause provides that the accounts of the Authority shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Authority to the Comptroller and Auditor-General of India. Sub-clause (3) of this clause provides that the Comptroller and Auditor-General of India and any person appointed by him in connection with the audit of the accounts of the Authority under the proposed legislation shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor-General of India generally has in connection with the audit of Government accounts and, in particular, shall have the right to demand and production of books, accounts, connected vouchers and other documents and papers, and to inspect any of the offices of the Authority. Sub-clause (4) of this clause provides that the accounts of the Authority, as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf, together with the audit report thereon shall be forwarded annually to the appropriate Government by the Authority and the appropriate Government shall cause the audit report to be laid, as soon as may be after it is received, before each House of Parliament or, as the case may be, before the State Legislature or the Union territory Legislature, where it consists of two Houses, or where such legislature consists of one House, before that House.

Clause 68. This clause relates to the annual report. Sub-clause (1) of this clause provides that the Authority shall prepare once in every year, in such form and at such time as may be prescribed by the appropriate Government (a) a description of all the activities of the Authority for the previous year; (b) the annual accounts for the previous year; and (c) the programmes of work for the coming year. Sub-clause (2) of this clause provides that a copy of the report received under subsection (1) shall be laid, as soon as may be after it is received, before each House of Parliament or, as the case may be, before the State Legislature or the Union territory Legislature, where it consists of two Houses, or where such legislature consists of one House, before that House.

Clause 69. This clause relates to the bar of jurisdiction. This clause provides that no civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate
Tribunal is empowered by or under the proposed legislation to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under the proposed legislation.

Clause 70. This clause relates to the delegation. This clause provides that the Authority may, by general or special order in writing, delegate to any member, officer of the Authority or any other person subject to such conditions, if any, as may be specified in the order, such of its powers and functions under the proposed legislation (except the power to make regulations under clause 74) as it may deem necessary.

Clause 71. This clause relates to the power of appropriate Government to supersede the Authority. Sub-clause (1) of this clause provides that if, at any time, the appropriate Government is of the opinion, (a) that, on account of circumstances beyond the control of the Authority, it is unable to discharge the functions or perform the duties imposed on it by or under the provisions of the proposed legislation; or (b) that the Authority has persistently defaulted in complying with any direction given by the appropriate Government under the proposed legislation or in the discharge of the functions or performance of the duties imposed on it by or under the provisions of the proposed legislation and as a result of such default the financial position of the Authority or the administration of the Authority has suffered; or (c) that circumstances exist which render it necessary in the public interest so to do; the appropriate Government may, by notification, supersede the Authority for such period, not exceeding six months, as may be specified in the notification and appoint a person or persons as the President or the Governor, as the case may be, may direct to exercise powers and discharge functions under the proposed legislation. However, before issuing any such notification, the appropriate Government shall give a reasonable opportunity to the Authority to make representations against the proposed supersession and shall consider the representations, if any, of the Authority. Sub-clause (2) of this clause provides that upon the publication of a notification under sub-section (1) superseding the Authority, (a) the Chairperson and other Members shall, as from the date of supersession, vacate their offices as such; (b) all the powers, functions and duties which may, by or under the provisions of the proposed legislation, be exercised or discharged by or on behalf of the Authority shall, until the Authority is reconstituted under sub-section (3), be exercised and discharged by the person or persons referred to in sub-section (1); and (c) all properties owned or controlled by the Authority shall, until the Authority is reconstituted under sub-section (3), vest in the appropriate Government. Sub-clause (3) of this clause provides that on or before the expiration of the period of supersession specified in the notification issued under sub-section (1), the appropriate Govern-
ment shall reconstitute the Authority by a fresh appointment of its Chairperson and other Members and in such case any person who had vacated his office under clause (a) of sub-section (2) shall not be deemed to be disqualified for re-appointment. Sub-clause (4) of this clause provides that the appropriate Government shall cause a copy of the notification issued under sub-section (1) and a full report of any action taken under this clause and the circumstances leading to such action to be laid before each House of Parliament or, as the case may be, before the State Legislature, or the Union territory Legislature, as the case may be, where it consists of two Houses, or where such legislature consists of one House, before that House.

Clause 72. This clause relates to the powers of appropriate Government to issue directions to the Authority and obtain reports and returns. Sub-clause (1) of this clause provides that without prejudice to the foregoing provisions of the proposed legislation, the Authority shall, in exercise of its powers and in performance of its functions under the proposed legislation, be bound by such directions on questions of policy, as the appropriate Government may give in writing to it from time to time. However, the Authority shall, as far as practicable, be given an opportunity to express its views before any direction is given under this sub-section. Sub-clause (2) of this clause provides that if any dispute arises between the appropriate Government and the Authority as to whether a question is or is not a question of policy, the decision of the appropriate Government thereon shall be final. Sub-clause (3) of this clause provides that the Authority shall furnish to the appropriate Government such returns or other information with respect to its activities as the appropriate Government may, from time to time, require.

Clause 73. This clause relates to the power of appropriate Government to make rules. This clause empowers the appropriate Government to make rules for carrying out the provisions of the proposed legislation.

Clause 74. This clause relates to the power to make regulations. This clause empowers the Authority to make regulations for carrying out the provisions of the proposed legislation.

Clause 75. This clause relates to the laying of rules. This clause provides that every rule, regulation and notification made under the proposed legislation shall be laid, as soon as may be after it is made, before the House of Parliament or State Legislature, as the case may be.

Clause 76. This clause relates to the Members, etc., to be public servants. This clause provides that the Chairperson, Members and other officers and employees of the Authority and the Appellate Tribunal shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

Clause 77. This clause relates to the application of other laws not
barred. This clause provides that the provisions of the proposed legislation shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.

Clause 78. This clause relates to the act to have overriding effect. This clause provides that the provisions of the proposed legislation shall have effect notwithstanding anything inconsistent therein contained in any other law for the time being in force. However, where a State has enacted a law for regulation of the real estate sector, and such State law is not inconsistent with the proposed legislation, then, the State Government, to that extent, may not apply the provisions of the proposed legislation in the State.

Clause 79. This clause relates to the protection of action taken in good faith. This clause provides that no prosecution or other legal proceedings can be instituted against the appropriate Government or the Authority or any of their officers, etc., for anything done in good faith under the proposed legislation or the rules or regulations made thereunder.

Clause 80. This clause relates to power to remove difficulties. Sub-clause (1) of this clause provides that if any difficulty arises in giving effect to the provisions of the proposed legislation, the Central Government may make provisions, by order, published in the Official Gazette, for removing the difficulty. These orders must be consistent with the provisions of the proposed legislation. However, no order shall be made under this clause after the expiry of two years from the commencement of the proposed legislation. Sub-clause (2) of this clause provides that every order made under this clause shall be laid, as soon as may be after it is made, before each House of Parliament.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 73 of the Bill seeks to empower the appropriate Government to make rules to provide for (a) information and documents for application to the Authority for registration under clause (j) of sub-section (2) of section 4; (b) conditions under which registration of a promoter may be renewed under section 6; (c) the form and manner of making application and fee and documents to be accompanied with such application as under sub-section (2) of section 9; (d) the period, manner and conditions under which the registration is to be granted under sub-section (3) of section 9; (e) the validity of the period of registration and the manner and fee for renewal under sub-section (7) of section 9; (f) the maintenance and preservation of books of account, records and documents under clause (b) of section 10; (g) the discharge of other functions by the real estate agent under clause (e) of section 10; (h) the rate of interest payable under section 12; (i) the form and particulars of agreement under sub-section (2) of section 13; (j) the rate of interest payable under clause (b) of sub-section (1) of section 16; (k) the rate of interest payable under sub-section (7) of section 17; (l) constitution of a Selection Committee.
for the appointment of Chairperson and Members of the Authority, and the manner of selection under section 20; (m) the salaries and allowances payable to, and the other terms and conditions of service of, the Chairperson and other Members of the Authority under sub-section (1) of section 22; (n) the administrative powers of the Chairperson under section 23; (o) the salaries and allowances payable to, and the other terms and conditions of service of, the officers and other employees of the Authority under sub-section (2) of section 26; (p) details to be published on the website as under clause (b) and under clause (d) of section 30; (q) the additional functions which may be performed by the Authority under clause (iv) of sub-section (2) of section 31; (r) the manner of recovery of interest, penalty and compensation under section 34; (s) recommendations received from the Central Advisory Council under sub-section (2) of section 36; (t) the form and manner and fee for filing of appeal under sub-section (2) of section 38; (u) constitution of a Selection Committee for the appointment of Members of the Tribunal, and the manner of selection under sub-section (3) of section 40; (v) the salaries and allowances payable to, and the other terms and conditions of service of, the Chairperson and other Members of the Appellate Tribunal under sub-section (1) of section 42; (w) the procedure for inquiry of the charges against the Chairperson or Judicial Member of the Tribunal under sub-section (4) of section 43; (x) the salaries and allowances payable to, and the other terms and conditions of service of, the officers and employees of the Appellate Tribunal under sub-section (3) of section 44; (y) any other powers of the Tribunal under clause (h) of sub-section (4) of section 46; (z) the powers of the Chairperson of the Appellate Tribunal under section 47; (za) the terms and conditions and the payment of such sum for compounding of the offences under section 60; (zb) the manner of inquiry under sub-section (1) of section 61; (zc) the form to be specified in which the Authority shall prepare a budget, maintain proper accounts and other relevant records and prepare an annual statement of accounts under sub-section (1) of section 67; (zd) the form in which and time at which the Authority shall prepare an annual report under sub-section (1) of section 68; and (ze) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be made, by rules. 2. Clause 74 of the Bill empowers the Authority to make regulations to provide for (a) the form and manner of making application and fee payable herewith under sub-section (1) of section 4; (b) the fee for extension of registration under section 6; (c) such other information and documents required under clause (d) of sub-section (1) of section 11; (d) display of site and layout plans along-with specifications, approved by the competent authority, for display under clause (a) of sub-section (3) of section 11; (e) preparation and maintenance of other details under sub-section (6) of section 11; (f) time, places and the procedure
in regard to transaction of business at the meetings of the Authority under sub-section (1) of section 27; (g) standard fees to be levied by the promoter on the allottees or the association of allottees under clause (e) of section 30; and (h) any other matter which is required to be, or may be, specified by regulation or in respect of which provision is to be made by regulations. 3. The matters in respect of which the said rules and regulations may be made are matters of procedure and administrative detail, and as such, it is not practicable to provide for them in the proposed Bill itself. The delegation of legislative power is, therefore, of a normal character.
Chapter 28

The Consumer Protection Act, 1986

Central Government Act

THE CONSUMER PROTECTION ACT, 1986
ACT NO. 68 OF 1986 [24th December, 1986]
An Act to provide for the better protection of the interests of consumers and for that purpose to make provision for the establishment of consumer councils and other authorities for the settlement of consumers’ disputes and for matters connected therewith.

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

CHAPTER I PRELIMINARY

1. Short title extent, commencement and application. (1) This Act may be called the Consumer Protection Act, 1986. (2) It extends to the whole of India except the State of Jammu and Kashmir. (3) It shall come into force on such date as the Central Government may, by notification, appoint and different dates may be appointed for different States and for different provisions of this Act. (4) Save as otherwise expressly provided by the Central Government by notification, this Act shall apply to all goods and services.

2. Definitions. (1) In this Act, unless the context otherwise requires,—
   (a) “appropriate laboratory” means a laboratory or organisation—
   (i) recognised by the Central Government;
   (ii) recognised by a State Government, subject to such guidelines as may be prescribed by the Central Government in this behalf; or
   (iii) any such laboratory or organisation established by or under any law for the time being in force, which is maintained, financed or aided by the Central Government or a State Government for carrying out analysis or test of any goods with a view to de-
terminating whether such goods suffer from any defect;] (aa) “branch office” means– (i) any establishment described as a branch by the opposite party; or (ii) any establishment carrying on either the same or substantially the same activity as that carried on by the head office of the establishment;] 1. The provisions of Chapters I, II and IV of this Act came in to force in the whole of India except the State of Jammu and Kashmir on 15-4-1987: vide notification No. S. O. 390 (E), dated 15-4-1987, Gazette of India, Extraordinary 1987, Part II, section 3 (ii). The provisions of Chapter III of this Act came in to force in the whole of India except the State of Jammu and Kashmir on 1-7-1987: vide Notification No. S. O. 568 (E), dated 10. 6. 87, Gazette of India Extraordinary, 1987, part II, Section 3 (ii). 2. Subs. by Act 50 of 1993, s. 2 (w. e. f. 18-6-1993 ). 3 Ins. by s. 2, ibid. (b) “complainant” means– (i) a consumer; or (ii) any voluntary consumer association registered under the Companies Act, 1956 (1 of 1956 ) or under any other law for the time being in force; or (iii) the Central Government or any State Government, who or which makes a complaint; (iv) 1[ one or more consumers, where there are numerous consumers having the same interest;] (c) “complaint” means any allegation in writing made by a complainant that– (i) 2[ an unfair trade practice or a restrictive trade practice has been adopted by any trader]; (ii) 2[ the goods bought by him or agreed to be bought by him] suffer from one or more defects; (iii) 2[ the services hired or availed of or agreed to be hired or availed of by him] suffer from deficiency in any respect; (iv) a trader has charged for the goods mentioned in the complaint a price in excess of the price fixed by or under any law for the time being in force or displayed on the goods or any package containing such goods; (v) 1[ goods which will be hazardous to life and safety when used, are being offered for sale to the public in contravention of the provisions of any law for the time being in force requiring traders to display information in regard to the contents, manner and effect of use of such goods], with a view to obtaining any relief provided by or under this Act; (d) “consumer” means any person who,— (i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or (ii) 2[ hires or avails of] any services for a consideration which has been paid or promised or partly paid and part by promised, or under any system of deferred payment when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or (ii) 2[ hires or avails of] any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment, when
such services are availed of with the approval of the first mentioned person. 1\[ Explanation.– For the purposes of sub- clause (i), “commercial purpose” does not include use by a consumer of goods bought and used by him exclusively for the purpose of earning his livelihood, by means of self- employment:] (e) “consumer dispute” means a dispute where the person against whom a complaint has been made, denies or disputes the allegations contained in the complaint. (f) “defect” means any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard which is required to be maintained by or under any law for the time being in force or as is claimed by the trader in any manner whatsoever in relation to any goods; (g) “deficiency” means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service; (h) “District Forum” means a Consumer Dispute Redres- sal Forum established under clause (a) of section 9; (i) “goods” means goods as defined in the Sale of Goods Act, 1930 (3 of 1930 ); (j) “manufacturer” means a person who– (i) makes or manufactures any goods or parts thereof; or (ii) does not make or manufacture any goods but assembles parts thereof made or manufac-
tured by others and claims the end-product to be goods manufactured by himself; or (iii) puts or causes to be put his own mark on any goods made or manufactured by any other manufacturer and claims such goods to be goods made or manufactured by himself. Explanation.– Where a manufacturer despatches any goods or part thereof to any branch office maintained by him, such branch office shall not be deemed to be the manufacturer even though the parts so despatched to it are assembled at such branch office and are sold or distributed from such branch office; (jj) 1[ “ member” includes the President and a member of the National Com- mission or a State Commission or a District Forum, as the case may be;] (k) “ National Commission” means the National Consumer Disputes Redressal Commission established under clause (c) of section 9; (l) “ no- tification” means a notification published in the Official Gazette; (m) “ person” includes,– (i) a firm whether registered or not; (ii) a Hindu undi- vided family; (iii) a co- operative so- ciety; (iv) every other association of persons whether registered under the Societies Registration Act, 1860 (21 of 1860 ) or not; (n) “ prescribed” means prescribed by rules made by the State Government, or as the case may be, by the Central Government under this Act; (nn) “ restric- tive trade practice” means any trade prac- tice which requires a consumer to buy, hire or avail of any goods or, as the case may be, services as a condition precedent for buying, hiring or availing of other goods or ser-
vas;] (o) “ service” means service of
any description which is made available to potential users and includes the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, board or lodging or both, \[1\text{ housing construction,}\] enter- 1. Ins. by Act 50 of 1993, s. 2 (w. e. f. 18-6-1993 ). tainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service; (p) “State Commission” means a Consumer Disputes Redressal Commission established in a State under clause (b) of section 9; (q) “trader” in relation to any goods means a person who sells or distributes any goods for sale and includes the manufacturer thereof, and where such goods are sold or distributed in package form, includes the packer thereof; (r) \[1\text{ unfair trade practice} \] means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive practice including any of the following practices, namely:- (i) the practice of making any statement, whether orally or in writing or by visible representation which,- (i) falsely represents that the goods are of a particular standard, quality, quantity, grade, composition, style or model; (ii) falsely represents that the services are of a particular standard, quality or grade; (iii) falsely represents any re-built, second-hand, renovated, reconditioned or old goods as new goods; (iv) represents that the goods or services have sponsorship, approval, performance, characteristics, accessories, uses or benefits which such goods or services do not have; (v) represents that the seller or the supplier has a sponsorship or approval or affiliation which such seller or supplier does not have; (vi) makes a false or misleading representation concerning the need for, or the usefulness of, any goods or services; (vii) gives to the public any warranty or guaranty of the performance, efficacy or length of life of a product or of any goods that is not based on an adequate or proper test thereof: Provided that where a defence is raised to the effect that such warranty or guarantee is based on adequate or proper test, the burden of proof of such defence shall lie on the person raising such defence; (viii) makes to the public a representation in a form that purports to be– (i) a warranty or guarantee of a product or of any goods or services; or (ii) a promise to replace, maintain or repair an article or any part thereof or to repeat or continue a service until it has achieved a specified result, if such purported warranty or guarantee or promise is materially misleading or if there is no reasonable prospect that such warranty, guarantee or promise will be carried out; (ix) materially misleads the public concerning the price at which a product or like products or goods or services, have been or are, ordinarily sold or provided, and, for this purpose, a representation as to price shall be deemed to refer to the price at which the product or goods or ser-
vices has or have been sold by sell-
ers or provided by suppliers gener-
ally in the relevant market unless it is clearly specified to be the price at which the product has been sold or services have been provided by the person by whom or on whose behalf the representation is made; (x) gives false or misleading facts disparaging goods, services or trade of another person. Explanation.– For the pur-
poses of clause (1), a statement that is– (a) expressed on an article offered or displ-
ayed for sale, or on its wrap-
per or container; or (b) expressed on
anything attached to, inserted in, or
accompanying, an article offered or
displayed for sale, or on anything on
which the article is mounted for dis-
play or sale; or (c) contained in or
on anything that is sold, sent, de-
ivered, transmitted or in any other
manner whatsoever made available
to a member of the public, shall be
deemed to be a statement made to
the public by, and only by, the per-
son who had caused the statement to
be so expressed, made or contained;
(2) permits the publication of any
advertisement whether in any new-
paper or otherwise, for the sale or
supply at a bargain price, of goods
or services that are not intended to
be offered for sale or supply at the
bargain price, or for a period that
is, and in quanti-
ties that are, rea-
sonable, having regard to the nature
of the market in which the business
is carried on, the nature and size of
business, and the nature of the ad-
vertisement. Explanation.– For the
purposes of clause (2), “bargaining
price” means– (a) a price that is
stated in any advertisement to be a
bargain price, by reference to an ordi-
nary price or otherwise, or (b) a price
that a person who reads, hears or sees
the adver-
tisement, would reason-
ably understand to be a bargain price
having regard to the prices at which
the product advertised or like prod-
ucts are ordinarily sold; (3) permits–
(a) the offering of gifts, prizes or
other items with the intention of not
providing them as offered or creat-
ing impression that something is be-
ing given or offered free of charge
when it is fully or partly covered
by the amount charged in the trans-
action as a whole; (b) the conduct of
any contest, lottery, game of chance
or skill, for the purpose of promoting,
directly or indirectly, the sale, use or
supply of any product or any busi-
ness interest; (4) permits the sale or
supply of goods intended to be used,
or are of a kind likely to be used, by
consumers, knowing or having reason
to believe that the goods do not com-
ply with the standards prescribed by
competent authority relating to per-
formance, composition contents, de-
sign, constructions, finishing or pack-
aging as are necessary to prevent or
reduce the risk of injury to the per-
son using the goods; (5) permits the
hoarding or destruction of goods, or
refuses to sell the goods or to make
them available for sale or to provide
any service, if such hoarding or de-
struction or refusal raises or tends
to raise or is intended to raise, the
cost of those or other similar goods
or services. (2) Any reference in
this Act to any other Act or pro-
vision thereof which is not in force
in any area to which this Act ap-
plies shall be construed to have a
reference to the corresponding Act or provision thereof in force in such area. 3. Act not in derogation of any other law. The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. CHAP CONSUMER PROTECTION COUNCILS

II CHAPTER II CONSUMER PROTECTION COUNCILS

4. The Central Consumer Protection Council. (1) The Central Government may, by notification, establish with effect from such date as it may specify in such notification, a Council to be known as the Central Consumer Protection Council (hereinafter referred to as the Central Council). (2) The Central Council shall consist of the following members, namely:– (a) the Minister in charge of Consumer affairs in the Central Government, who shall be its Chairman, and (b) such number of other official or non-official members representing such interests as may be prescribed. 5. Procedure for meetings of the Central Council. (1) The Central Council shall meet as and when necessary, but 3[ at least one meeting] of the Council shall be held every year. (2) The Central Council shall meet at such time and place as the Chairman may think fit and shall observe such procedure in regard to the transaction of its business as may be prescribed. 6. Objects of the Central Council. The objects of the Central Council shall be to promote and protect the rights of the consumers such as,– (a) the right to be protected against the marketing of goods and services which are hazardous to life and property; 1. Subs by Act 50 of 1993, s. 2 (w. e. f. 18- 6- 1993 ). 2 Subs by s. 3, ibid (w. e. f. 18- 6- 1993 ). 3 Subs by s. 4, ibid (w. e. f. 18- 6- 1993 ). 4 Ins. by s. 5, ibid (w. e. f. 18- 6- 1993 ). (b) the right to be informed about the quality, quantity, potency, purity, standard and price of goods or services, as the case may be] so as to protect the consumer against unfair trade practices; (c) the right to be assured, wherever possible, access to a variety of goods or services at competitive prices; (d) the right to be heard and to be assured that consumers’ interests will receive due consideration at appropriate forums; (e) the right to seek redressal against unfair trade practices or restrictive trade practices] or unscrupulous exploitation of consumers; and (f) the right to consumer education. 7. The State Consumer Protection Councils. (1) The State Government may, by notification, establish with effect from such date as it may specify in such notification, a Council to be known as the Consumer Protection Council for....................... (hereinafter referred to as the State Council). (2) The State Council shall consist of the following members, namely:– (a) the Minister in charge of consumer affairs in the State Government who shall be its Chairman; (b) such number of other official or non-official members representing such interests as may be prescribed by the State
Governments. (3) The State Council shall meet as and when necessary but not less than two meetings shall be held every year. (4) The State Council shall meet at such time and place as the Chairman may think fit and shall observe such procedure in regard to the transaction of its business as may be prescribed by the State Government. 8. Objects of the State Council. The objects of every State Council shall be to promote and protect within the State the rights of the consumers laid down in clauses (a) to (f) of section 6. CHAP CONSUMER DISPUTES REDRESSAL AGENCIES

9. Establishment of Consumer Disputes Redressal Agencies. There shall be established for the purposes of this Act, the following agencies, namely:— (a) a Consumer Disputes Redressal Forum to be known as the “District Forum” established by the State Government in each district of the State by notification: 4[ Provided that the State Government may, if it deems fit, establish more than one District Forum in a district.] (b) a Consumer Disputes Redressal Commission to be known as the “State Commission” established by the State Government in the State by notification; and (c) a National Consumer Disputes Redressal Commission established by the Central Government by notification. Composition of the District Forum. Composition of the District Forum. 5[ (1) Each District Forum shall consist of— (a) a person who is, or has been or is qualified to be a District Judge, who shall be its President; (b) two other members, who shall be persons of ability, integrity and standing, and have adequate knowledge or experience of, or have shown capacity in dealing with, problems relating to economics, law, commerce, accountancy, industry, public affairs or administration, one of whom shall be a woman.] (1A) Every appointment under sub-section (1) shall be made by the State Government on the recommendation of a selection committee consisting of the following, namely:— (i) President of the State Commission— Chairman, (ii) Secretary, Law Department of the State— Member, (iii) Secretary in-charge of the Department dealing with consumer affairs in the State— Members.] (2) Every member of the District Forum shall hold office for a term of five years or up to the age of 65 years, whichever is earlier, and shall not be eligible for re-appointment: 1. Ins. by Act 50 of 1993, s. 5 (w. e. f. 18-6-1993). 2 Subs. by s. 6, ibid (w. e. f. 18-6-1993). 3 Certain words omitted by s. 7, ibid (w. e. f. 18-6-1993). 4 Ins. by s. 7, ibid. 5 Subs. s. 8, ibid (w. e. f. 18-6-1993). 6 Ins. by s. 8, ibid (w. e. f. 18-6-1993). Provided that a member may resign his office in writing under his hand addressed to the State Government and on such resignation being accepted, his office shall become vacant and
The Consumer Protection Act, 1986

may be filled by the appointment of a person possessing any of the qualifications mentioned in subsection (1) in relation to the category of the member who has resigned. (3) The salary or honorarium and other allowances payable to, and the other terms and conditions of service of the members of the District Forum shall be such as may be prescribed by the State Government.

11. Jurisdiction of the District Forum. (1) Subject to the other provisions of this Act, the District Forum shall have jurisdiction to entertain complaints where the value of the goods or services and the compensation, if any, claimed does not exceed rupees five lakhs.

(2) A complaint shall be instituted in a District Forum within the local limits of whose jurisdiction,— (a) the opposite party or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides or carries an business or has a branch office or personally works for gain; or (b) any of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or carries on business or has a branch office or personally works for gain, provided that in such case either the permission of the District Forum is given, or the opposite parties who do not reside, or carry on business, or have a branch office or personally work for gain, as the case may be, acquiesce in such institution; or (c) the cause of action, wholly or in part, arises.

12. Manner in which complaint shall be made. A complaint, in relation to any goods sold or delivered or agreed to be sold or delivered or any service provided or agreed to be provided may be filed with a District Forum by— (a) the consumer to whom such goods are sold or delivered or agreed to be sold or delivered or such service provided or agreed to be provided; (b) any recognised consumer association whether the consumer to whom the goods sold or delivered or agreed to be sold or delivered or service provided or agreed to be provided is a member of such association or not; (c) one or more consumers, where there are numerous consumers having the same interest, with the permission of the District Forum, on behalf of, or for the benefit of, all consumers so interested; or (d) the Central or the State Government.

Explanation.— For the purposes of this section, “recognised consumer association” means any voluntary consumer association registered under the Companies Act, 1956 (1 of 1956) or any other law for the time being in force.

13. Procedure on receipt of complaint. (1) The District Forum shall, on receipt of a complaint, if it relates to any goods,— (a) refer a copy of the complaint to the opposite party mentioned in the complaint directing him to give his version of the case within a period of thirty days or such extended period not exceeding fifteen days as may be granted by the District Forum; (b) where the opposite party on receipt of a complaint referred to him under clause (a) denies or disputes the allegations contained. 1. Subs. by Act 50 of 1993, s. 9 (w. e. f. 18-6-1993). 2 Subs. by s. 10, ibid (w. e. f. 18-
6-1993). In the complaint, or omits or fails to take any action to represent his case within the time given by the District Forum, the District Forum shall proceed to settle the consumer dispute in the manner specified in clauses (c) to (g); (c) where the complaint alleges a defect in the goods which cannot be determined without proper analysis or test of the goods, the District Forum shall obtain a sample of the goods from the complainant, seal it and authenticate it in the manner prescribed and refer the sample so sealed to the appropriate laboratory along with a direction that such laboratory make an analysis or test, whichever may be necessary, with a view to finding out whether such goods suffer from any defect alleged in the complaint or from any other defect and to report its findings thereon to the District Forum within a period of forty-five days of the receipt of the reference or within such extended period as may be granted by the District Forum; (d) before any sample of the goods is referred to any appropriate laboratory under clause (c), the District Forum may require the complainant to deposit to the credit of the Forum such fees as may be specified, for payment to the appropriate laboratory for carrying out the necessary analysis or test in relation to the goods in question; (e) the District Forum shall remit the amount deposited to its credit under clause (d) to the appropriate laboratory to enable it to carry out the analysis or test mentioned in clause (c) and on receipt of the report from the appropriate laboratory, the District Forum shall forward a copy of the report along with such remarks as the District Forum may feel appropriate to the opposite party; (f) if any of the parties disputes the correctness of the findings of the appropriate laboratory, or disputes the correctness of the methods of analysis or test adopted by the appropriate laboratory, the District Forum shall require the opposite party or the complainant to submit in writing his objections in regard to the report made by the appropriate laboratory; (g) the District Forum shall thereafter give a reasonable opportunity to the complainant as well as the opposite party of being heard as to the correctness or otherwise of the report made by the appropriate laboratory and also as to the objection made in relation thereto under clause (f) and issue an appropriate order under section 14. (2) The District Forum shall, if the complaint received by it under section 12 relates to goods in respect of which the procedure specified in sub-section (1) cannot be followed, or if the complaint relates to any services,– (a) refer a copy of such complaint to the opposite party directing him to give his version of the case within a period of thirty days or such extended period not exceeding fifteen days as may be granted by the District Forum; (b) where the opposite party, on receipt of a copy of the complaint, referred to him under clause (a) denies or disputes the allegations contained in the complaint, or omits or fails to take any action to represent his case within the time given by the District Forum, the District Forum shall proceed to settle the consumer dispute,– (i) on the ba-
sis of evidence brought to its notice by the complainant and the opposite party, where the opposite party denies or disputes the allegations contained in the complaint, or (ii) on the basis of evidence brought to its notice by the complainant where the opposite party omits or fails to take any action to represent his case within the time given by the Forum.

(3) No proceedings complying with the procedure laid down in sub-sections (1) and (2) shall be called in question in any court on the ground that the principles of natural justice have not been complied with.

(4) For the purposes of this section, the District Forum shall have 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) the summoning and enforcing the attendance of any defendant or witness and examining the witness on oath;
(ii) the discovery and production of any document or other material object producible as evidence;
(iii) the reception of evidence on affidavits;
(iv) the requisitioning of the report of the concerned analysis or test from the appropriate laboratory or from any other relevant source;
(v) issuing of any commission for the examination of any witness; and (vi) any other matter which may be prescribed.

(5) Every proceeding before the District Forum shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860) and the District Forum 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).

(6) 1[Where the complainant is a consumer referred to in sub-clause (iv) of clause (b) of sub-section (1) of section 2, the provisions of rule 8 of Order I of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908) shall apply subject to the modification that every reference therein to a suit or decree shall be construed as a reference to a complaint or the order of the District Forum thereon.]


(1) If, after the proceeding conducted under section 13, the District Forum is satisfied that the goods complained against suffer from any of the defects specified in the complaint or that any of the allegations contained in the complaint about the services are proved, it shall issue an order to the opposite party directing him to do one or more of the following things, namely:

(a) to remove the defect pointed out by the appropriate laboratory from the goods in question;
(b) to replace the goods with new goods of similar description which shall be free from any defect;
(c) to return to the complainant the price, or, as the case may be, the charges paid by the complainant;
(d) to pay such amount as may be awarded by it as compensation to the consumer for any loss or injury suffered by the consumer due to the negligence of the opposite party.

(e) 1[to remove the defects or deficiencies in the services in question; (f) to discontinue the unfair trade prac-
practice or the restrictive trade practice or not to repeat them; (g) not to offer the hazardous goods for sale; (h) to withdraw the hazardous goods from being offered for sale; (i) to provide for adequate costs to parties.] (2) 2[Every proceeding referred to in subsection (1) shall be conducted by the President of the District Forum and at least one member thereof sitting together: Provided that where the member, for any reason, is unable to conduct the proceeding till it is completed, the President and the other member shall conduct such proceeding de novo. (2A) Every order made by the District Forum under sub-section (1) shall be signed by its President and the member or members who conducted the proceeding: Provided that where the proceeding is conducted by the President and one member and they differ on any point or points, they shall state the point or points on which they differ and refer the same to the other member for hearing on such point or points and the opinion of the majority shall be the order of the District Forum.] (3) Subject to the foregoing provisions, the procedure relating to the conduct of the meetings of the District Forum, its sittings and other matters shall be such as may be prescribed by the State Government. 15. Appeal. Any person aggrieved by an order made by the District Forum may prefer an appeal against such order to the State Commission within a period of thirty days from the date of the order, in such form and manner as may be prescribed: Provided that the State Commission may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing it within that period. 16. Composition of the State Commission. (1) Each State Commission shall consist of— (a) a person who is or has been a Judge of a High Court, appointed by the State Government, who shall be its President: 3[Provided that no appointment under this clause shall be made except after consultation with the Chief Justice of the High Court;] (b) two other members, who shall be persons of ability, integrity and standing and have adequate knowledge or experience of, or have shown capacity in dealing with, problems relating to economics, law, commerce, accountancy, industry, public affairs or administration, one of whom shall be a woman: 4[Provided that every appointment under this clause shall be made by the State Government on the recommendation of a selection committee consisting of the following, namely:— (i) President of the State Commission—Chairman, (ii) Secretary of the Law Department of the State—Member, (iii) Secretary, in charge of the Department dealing with consumer affairs in the State—Member.] (2) The salary or honorarium and other allowances payable to, and the other terms and conditions of service 5[of, the members of the State Commission shall be such as may be prescribed by the State Government. (3) 3[Every member of the State Commission shall hold office for a term of five years or up to the age of sixty-seven years, whichever is earlier and shall not be eligible for reappointment. (4) Notwithstanding
anything contained in sub-section (3), a person appointed as a President or as a member before the commencement of the Consumer Protection (Amendment) Act, 1993, shall continue to hold such office as President or member, as the case may be, till the completion of his term.

17. Jurisdiction of the State Commission. Subject to the other provisions of this Act, the State Commission shall have jurisdiction—

(a) to entertain—

(i) complaints where the value of the goods or services and compensation, if any, claimed exceeds five lakhs but does not exceed twenty lakhs; and

(ii) appeals against the orders of any District Forum within the State; and

(b) to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any District Forum within the State, where it appears to the State Commission that such District Forum has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested or has acted in exercise of its jurisdiction illegally or with material irregularity.

1. Ins by Act 50 of 1993, s. 12 (w. e. f. 18-6-1993).


3. Ins. by Act 50 of 1993, s. 13 (w. e. f. 18-6-1993).

4. Subs. by s. 13, ibid (w. e. f. 18-6-1993).

5. Certain words omitted by s. 13, ibid (w. e. f. 18-6-1993).

6. Subs. by s. 14, ibid (w. e. f. 18-6-1993).

18. Procedure applicable to State Commissions. 1[The provisions of sections 12, 13 and 14 and the rules made thereunder] for disposal of complaints by the District Forum shall, with such modifications as may be necessary, be applicable to the disposal of disputes by the State Commission.

18A. 2[Vacancy in the office of the President. When the office of the President of the District Forum or of the State Commission, as the case may be, is vacant or when any such President is, by reason of absence or otherwise, unable to perform the duties of his office, the duties of the office shall be performed by such person, who is qualified to be appointed as President of the District Forum or, as the case may be, of the State Commission, as the State Government may appoint for the purpose.]

19. Appeals. Any person aggrieved by an order made by the State Commission in exercise of its powers conferred by sub-clause (i) of clause (a) of section 17 may prefer an appeal against such order to the National Commission within a period of thirty days from the date of the order in such form and manner as may be prescribed: Provided that the National Commission may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing it within that period.

20. Composition of the National Commission. (1) The National Commission shall consist of—

(a) a person who is or has been a Judge of the Supreme Court, to be appointed by the Central Government, who shall be its President;

(b) four other members who shall be persons of ability, integrity and standing and
have adequate knowledge or experience of, or have shown capacity in dealing with, problems relating to economics, law, commerce, accountancy, industry, public affairs or administration, one of whom shall be a woman: Provided that every appointment under this clause shall be made by the Central Government on the recommendation of a selection committee consisting of the following, namely:— (a) a person who is a Judge of the Supreme Court, to be nominated by the Chief Justice of India— Chairman, (b) the Secretary in the Department of Legal Affairs in the Government of India— Member, (c) Secretary of the Department dealing with consumer affairs in the Government of India— Member.]

(2) The salary or honorarium and other allowances payable to and the other terms and conditions of service of the members of the National Commission shall be such as may be prescribed by the Central Government.

(3) Every member of the National Commission shall hold office for a term of five years or up to the age of seventy years, whichever is earlier and shall not be eligible for re-appointment. (4) Notwithstanding anything contained in sub-section (3), a person appointed as a President or as a member before the commencement of the Consumer Protection (Amendment) Act, 1993, shall continue to hold such office as President or member, as the case may be, till the completion of his term.

Jurisdiction of the National Commission. Subject to the other provisions of this Act, the National Commission shall have jurisdiction—

(a) to entertain— (i) complaints where the value of the goods or services and compensation, if any, claimed exceeds rupees thirty lakhs; and (ii) appeals against the orders of any State Commission; and (b) to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any State Commission where it appears to the National Commission that such State Commission has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity.

22. Procedure applicable to the National Commission. The National Commission shall, in the disposal of any complaints or of any proceedings before it, have— (a) the powers of a civil court as specified in sub-sections (4), (5) and (6) of section 13; (b) the power to issue an order to the opposite party directing him to do any one or more of the things referred to in clauses (a) to (i) of sub-section (1) of section 14, and follow such procedure as may be prescribed by the Central Government.

23. Appeal Any person, aggrieved by an order made by the National Commission in exercise of its power con-
ferred by sub-clause (i) of clause (a) of section 21, may prefer an appeal against such order to the Supreme Court within a period of thirty days from the date of the order: Provided that the Supreme Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing it within that period.

24. Finality of orders. Every order of a District Forum, the State Commission or the National Commission shall, if no appeal has been preferred against such order under the provisions of this Act, be final. Limitation period.

24A. Limitation period.

(1) The District Forum, the State Commission or the National Commission shall not admit a complaint unless it is filed within two years from the date on which the cause of action has arisen. (2) Notwithstanding anything contained in sub-section (1), a complaint may be entertained after the period specified in sub-section (1), if the complainant satisfies the District Forum, the State Commission or the National Commission, as the case may be, that he had sufficient cause for not filing the complaint as such period: Provided that no such complaint shall be entertained unless the National Commission, the State Commission or the District Forum, as the case may be, records its reasons for condoning such delay. Administrative control.

24B. Administrative control. (1) The National Commission shall have administrative control over all the State Commissions in the following matters, namely:— (i) calling for periodical returns regarding the institution, disposal, pendency of cases; (ii) issuance of instructions regarding adoption of uniform procedure in the hearing of matters, prior service of copies of documents produced by one party to the opposite parties, furnishing of English translation of judgments written in any language, speedy grant of copies of documents; (iii) generally overseeing the functioning of the State Commissions or the District Forums to ensure that the objects and purposes of the Act are best served without in any way interfering with their quasi-judicial freedom. (2) The State Commission shall have administrative control over all the District Forums within its jurisdiction in all matters referred to in sub-section (1).

25. Enforcement of orders by the Forum, the State Commission or the National Commission. Every order made by the District Forum, the State Commission or the National Commission may be enforced by the District Forum, the State Commission or the National Commission, as the case may be, in the same manner as if it were a decree or order made by a court in a suit pending therein and it shall be lawful for the District Forum, the State Commission or the National Commission to send, in the event of its inability to execute it, such order to the court within the local limits of whose jurisdiction,— (a) in the case of an order against a company, the registered office of the company is situated, or (b) in the case of an order against any other person, the place where the person concerned voluntarily resides or carries on business or personally works for
gain is situated, and thereupon, the court to which the order is so sent, shall execute the orders as if it were a decree or order sent to it for execution. 26. Dismissal of frivolous or vexatious complaints. Where a complaint instituted before the District Forum, the State Commission or, as the case may be, the National Commission is found to be frivolous or vexatious, it shall, for reasons to be recorded in writing, dismiss the complaint and make an order that the complainant shall pay to the opposite party such cost, not exceeding ten thousand rupees, as may be specified in the order. 27. Penalties. Where a trader or a person against whom a complaint is made fails or omits to comply with any order made by the District Forum, the State Commission or the National Commission, as the case may be, such trader or person shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to three years, or with fine which shall not be less than two thousand rupees but which may extend to ten thousand rupees, or with both: Provided that the District Forum, the State Commission or the National Commission, as the case may be, may, if it is satisfied that the circumstances of any case so require, impose a sentence of imprisonment or fine, or both, for a term lesser than the minimum term and the amount lesser than the minimum amount, specified in this section.

28. Protection of action taken in good faith. No suit, prosecution or other legal proceedings shall lie against the members of the District Forum, the State Commission or the National Commission or any officer or person acting under the direction of the District Forum, the State Commission or the National Commission for 1. Ins by Act 50 of 1993, s. 19 (w. e. f. 18-6-1993 ). 2 Subs by s. 20, ibid (w. e. f. 18-6-1993 ). 3 Ins by s. 21, ibid (w. e. f. 18-6-1993 ). executing any order made by it or in respect of anything which is in good faith done or intended to be done by such member, officer or person under this Act or under any rule or order made thereunder. 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 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 two years from the commencement of this Act. (2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament. 29A. Vacancies or defects in appointment not to invalidate orders. No act or proceeding of the District Forum, the State Commission or the National Commission shall be invalid by reason only of the existence of any vacancy amongst its members or any defect in the constitution thereof.

30. Power to make rules. (1) The Central Government may, by notification, make rules for
carrying out the provisions contained in 2[ clause (a) of sub- section (1) of section 2] clause (b) of sub- section (2) of section 4, sub- section (2) of section 5, clause (vi) of sub- section (4) of section 13, section 19, sub- section (2) of section 20 and section 22 of this Act. (2) The State Government may, by notification, make rules for carrying out the provisions contained in 2[ clause (b) of sub- section (2) and sub- section (4) of section 7], sub- section (3) of section 10, clause (c) of sub- section (1) of section 13, sub- section (3) of section 14, section 15 and sub- section (2) of section 16. 31. Laying of rules. (1) Every rule made by the Central Government 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 or anything previously done under that rule. (2) Every rule made by a State Government under this Act shall be laid as soon as may be after it is made, before the State Legislature. 1. Ins. by Act 34 of 1991, S. 4 (w. e. f 15- 6- 1991 ). 2 Ins. by Act 50 of 1993, s. 22 (w. e. f. 18- 6- 1993 ).


G.S.R. 342(E). - In exercise of the powers conferred by section 30A of the Consumer Protection Act, 1986 (68 of 1986), the National Consumer Disputes Redressal Commission with the previous approval of the Central Government, hereby makes the following regulations, namely:-

1. Short title and commencement.—(1) These regulations may be called the Consumer Protection Regulations, 2005. (2) They shall come into force on the date of their publication in the Official Gazette.

2. Definitions.—In these regulations unless the context otherwise requires,—

(a) “Act” means the Consumer Protection Act, 1986 (68 of 1986); (b) “Consumer Forum” means a District Forum. a Consumer Disputes Redressal Commission established in a State under clause (b) of section 9 (hereafter called the State Commission) or the National Consumer Disputes Redressal Commission; (c) “Registrar” means the head of the ministerial establishment of the Consumer Forum and exercising such powers and functions as are conferred upon him by the President of the Consumer Forum: (d)
“rules” means the rules made under the Act; (e) “section” means a section of the Act; (f) words and expressions used in these regulations and not defined herein but defined either in the Act or in the rules shall have the same meaning respectively assigned to them either in the Act or in the rules, as the case may be.

3. Arrangements in Consumer Forum.–(1) A Consumer Forum, being not a regular court, shall have the arrangements as to depict it distinct from a court.

(2) In the hall in which the Consumer Forum shall hear the parties, the dais may not be kept more than 30 cm. in height than the place earmarked for the parties to occupy.

(3) At the dais of the hall, the President and the members of the Consumer Forum shall use the same type of chairs at the same level and these chairs need not have high backs.

4. Dress code.–(1) The President and members of every Consumer Forum while presiding over the Benches,—

(a) shall wear simple and sober dress;

(b) shall not wear—

(i) flashy dress or dress display any affluence;

(ii) Jeans or T-shirts.

(iii) as if they are holding Courts as Judges of a High Court or a District Court.

(2) The advocates shall be allowed to appear in the usual dress as prescribed by the High Court but without the gown.

5. Hearing hours.–Subject to the provisions of the rules, the normal working hours of the Consumer Forum for hearing matters shall be from 10.30 am to 1.00 p.m and 2.00 p.m to 4.00 p.m on all working days of the Central Government in the case of the National Commission and on all working days of the State Government in the case of the State Commission and the District Forum

6. Cause List.–(1) Cause list of the Consumer forum for the following entire week shall be made ready before the close of the working hours of the preceding week and displayed on the notice board. The cause list in respect of a Consumer Forum having a website shall also be hosted on the website.

(2) Cause list shall be split into three different parts, namely—

(i) Admission and after notice matters;

(ii) Matters where evidence is to be recorded;

(iii) Final disposal matters.

(3) Every cause list shall contain the following particulars, namely—

(1) Sl. No. (2) No. of the matter (3) Names of the parties (4) Name of the party or Counsel or agent appearing

(4) If a date of hearing is given in the presence of parties or their agents, it shall not be a ground for non-appearance for the reason that the cause list for the concerned date does not show the matter or contains incorrect entry or there is omission of
the particulars of the matter.

7. Institution of complaints, appeals and revision petitions.-(1) Where a complaint is filed in District Forum or State Commission it shall be filed in three sets and where it is filed in the National Commission it shall be filed in four sets with additional sets equal to the number of opposite party(ies)/respondent(s).

(2) Every complaint shall clearly contain particulars of dispute and the relief claimed and shall also be accompanied by copies of such documents as are necessary to prove the claim made in the complaint.

8. Nomenclature to be given to the complaints, appeals and revision petitions. -(1) A complaint shall hereinafter be referred to as Consumer Complaint (C.C.) instead of O.P., e.g., C.C. No.2 of 2005.

(2) An appeal shall be referred to as F.A., Revision Petition as R.P., Execution Application as E.A, Transfer Application T.A. and Review as RA containing the number and the year of filing.

9. Scrutiny of complaint, appeal, petition and revision petition.-(1) Every complaint, appeal, or revision petition shall after it is filed be numbered by the Registrar.

(2) If there is any defect in the filing of the complaint, appeal or revision petition, the particulars of such defects shall be recorded and the party or his agents shall be informed of the defects asking them for removing the defects within 15 days.

(3) In case the party disputes in the correctness of the defects pointed out the matter shall be placed before the Consumer Forum for appropriate orders.

(4) After the expiry of the time given, the matter shall, irrespective of the fact as to whether the defects have been removed or not, be placed before the Consumer Forum for appropriate orders.

(5) If the objections raised by the Registrar are substantial and are not removed within the time allowed for the purpose, those days shall not be excluded for counting the period of limitation.

(6) As required by the second proviso to sub-section (3) of section 12, the admissibility of the complaint shall ordinarily be decided within twenty-one days from the date on which the complaint was received.

(7) In case any defect is pointed out by the Registrar, twenty-one days from the date on which such defect was removed shall be reckoned for the purpose of sub-regulation (5).

(8) All pending complaints, appeals and revision petitions which have not come up for admission till the date of commencement of these regulations and are pending for admission for more than 21 days shall be listed immediately by the Consumer Forum for admission and not later than 21 days from the date of commencement of these regulations.

10. Issue of notice.-(1) Whenever the Consumer Forum directs the issuance of a notice in respect of a complaint, appeal or revision petition, as the case may be, to the opposite party(ies)/respondent(s), or-
ordinarily such notice shall be issued for a period of 30 days and depending upon the circumstances of each case even for less than 30 days.

(2) When there is a question of raising presumption of service, 30 days notice shall be required.

(3) Whenever notices are sought to be effected by a courier service, it shall be ascertained that the courier is of repute.

(4) While appointing the courier for the purpose of effecting service, security deposit may also be taken.

(5) Along with the notice, copies of the complaint, memorandum of grounds of appeal, petitions as the case may be and other documents filed shall be served upon the opposite party(ies)/respondent(s).

(6) After the opposite party or respondent has put in appearance, no application or document shall be received by the Registrar unless it bears an endorsement that a copy thereof has been served upon the other side.

11. Adjournment.—(1) Every proceeding before a Consumer Forum shall be conducted as expeditiously as possible and as per the requirements of the Act.

(2) The Consumer Forum shall record the reasons for any adjournment made by it.

(3) The cost of adjournment, if asked by the opposite party or parties, shall not be less than five hundred rupees per adjournment and could be more depending upon the value and nature of the complaint as may be decided by the Consumer Forum.

(4) The complainant, appellant or petitioner, as the case may be, may also be burdened with cost unless sufficient cause is shown for seeking adjournment:

Provided that in the circumstances of a particular case, the amount of cost imposed may be less than five hundred rupees but in no case less than one hundred rupees.

(5) The cost imposed may be given to the other party or parties to defray his or their expenses or be deposited in the Consumer Legal Aid Account to be maintained by the respective Consumer Forum, as the Consumer Forum may order.

(6) If any adjournment is granted without awarding cost, the order sheet shall mention the reasons thereof.

(7) All orders adjourning the matter shall be signed by the President and members constituting the Bench and not by the Court Master or Bench Clerk.

(8) Non-availability of a lawyer who is representing the party shall not be a ground for seeking adjournment of the matter unless absence is beyond the control of the lawyer such as his sudden illness or bereavement in the family.

12. Hearing by Benches.—Where a Bench, constituted by the President of the State Commission or the National Commission as provided under section 16 or section 20, as the case may be, does not have a member with judicial background and any
complex question of law arises and there is no precedent to decide the law point, the Bench so constituted may refer the matter to the President of the State Commission or the National Commission as the case may be to constitute another Bench of which the President shall be a member.

13. Arguments.(1 ) Arguments should be as brief as possible and to the point at issue.
(2) Where a party is represented by a counsel, it shall be mandatory to file a brief of written arguments two days before the matter is fixed for arguments.
(3) In case of default to file briefs, the cost shall be imposed at the same rates as laid down for grant of adjournments.

14. Limitation.(1 ) Subject to the provisions of sections 15, 19 and 24A, the period of limitation in the following matters shall be as follows:-

(i) Revision Petition shall be filed within 90 days from the date of the order or the date of receipt of the order as the case may be;

(ii) Application for setting aside the ex-parte order under section 22A or dismissal of the complaint in default shall be maintainable if filed within thirty days from the date of the order or date of receipt of the order, as the case may be;

(iii) An application for review under sub-section (2) of section 22 shall be filed to the National Commission within 30 days from the date of the order or receipt of the order, as the case may be;

(iv) The period of limitation for filing any application for which no period of limitation has been specified in the Act, the rules of these regulations shall be thirty days from the date of the cause of action or the date of knowledge.

(2) Subject to the provisions of the Act, the Consumer Forum may condone the delay in filing an application or a petition referred to in sub-regulation (1) if valid and sufficient reasons to its satisfaction are given.

15. Review.(1 ) It shall set out clearly the grounds for review.
(2) Unless otherwise ordered by the National Commission, an application for review shall be disposed of by circulation without oral arguments, as far as practicable between the same members who had delivered the order sought to be reviewed.

16. Appearance of Voluntary Consumer Organisations.(1 ) Recognised Consumer Organisations have a right of audience before the Consumer Forum

(2) An authorisation of a Voluntary Consumer Organisation may be by way of special power of attorney executed on a non-judicial paper or even on plain paper duly attested by a Gazetted Officer or a Notary Public.

(3) The Power of Attorney holder shall be entitled to engage a counsel, if authorised to do so.

(4) A Voluntary Consumer Organisation can engage a counsel or an advocate of its choice or it can itself represent through one of its office bearers as per the rules governing it.
(5) In case of a complaint where the Voluntary Consumer Organisation is a complainant along with the consumer himself and the dispute affects the complainant individually, he can withdraw the complaint:

Provided that if the issue involves unfair trade practice or restrictive trade practice a Voluntary Consumer Organisation may continue to proceed with the complaint even if the complainant wishes to withdraw the same.

(6) A Consumer Forum has to guard itself from touts and busybodies in the garb of power of attorney holders or authorised agents in the proceedings before it.

(7) While a Consumer Forum may permit an authorised agent to appear before it, but authorised agent shall not be one who has used this as a profession: Provided that this sub-regulation shall not apply in case of advocates.

(8) An authorised agent may be debarred from appearing before a Consumer Forum if he is found guilty of misconduct or any other malpractice at any time.

17. Ex-parte interim order.-Any ex-parte interim order issued by the Consumer Forum shall stand vacated after 45 days if in the meanwhile the objections to the interim order are not heard and disposed of.

18. Final order.- (1) An order on the top right hand corner shall show as to when the complaint was filed and the date of the order.

(2) The cause title of the order shall contain the names of all the parties with their addresses. (3) In the body of the order it is desirable that after mentioning the complainant or the opposite party, their names as shown in the title be mentioned and parties thereafter may not be mentioned as complainant or opposite party No.1 or opposite party No.2, etc.

(4) The cause title shall also clearly show if the appellant or respondent was the complainant or opposite party.

(5) The order of a Consumer Forum disposing of a matter shall be as short and precise as practicable and unnecessary long quotations from the judgments of the higher courts or otherwise shall be avoided.

(6) When a copy of the order is sent to a party, the mode by which it is sent and the date on which it is sent shall be stamped on the last page of the order.

(7) The Consumer Forum shall pass final order invariably within fifteen days of the conclusion of the arguments.

19. Return on institution and disposal of cases.- (1) A Consumer Forum is expected to dispose of at least 75 to 100 matters every month.

(2) A periodic monthly return of institution and disposal of cases shall be sent by the District Forums to the State Commission.

(3) The State Commission shall submit a periodic monthly return of institution and disposal of cases to the National Commission.

(4) Notwithstanding anything
contained in this regulation, the President of the National Commission may, at any time, call for any return or information relating to its functioning from a State Commission or District Forums.

20. Preservation of records. -(1) In the case of complaint, the record containing main files with original order sheet shall be preserved for a period five years.

(2) In the case of records of first appeal and revision petitions, it shall be preserved for three years from the date of disposal of the appeal or revision as the case may be.

(3) Immediately after the consumer complaint, first appeal or revision petition, as the case may be, is disposed of, extra sets shall be given to the parties who may use the same for filing of appeal or revision petition and in that case the necessity to summon the record from the forums below can be dispensed with.

(4) The Registrar shall inform the parties while forwarding the certified copy of the final order, where they do not appear in person at the time of finally disposing of the matter to arrange to collect the extra sets.

(5) A period of at least one month shall be given for the purpose of collection of records by the party and in case of default the extra sets shall be weeded out.

21. Certified copy.- (1) A copy of the order is to be given to the parties free of cost as required under the Act and the rules made thereunder.

(2) In case a party requires an extra copy, it shall be issued to him duly certified by the Registry on a payment of Rs.20/- irrespective of number of pages.

(3) A certified copy of an order shall clearly specify the date when free copy was issued, date of application, date when the copy was made ready and the date when it was so delivered to him.

(4) A fee of Rs.20/- shall be paid for obtaining another certified copy.

(5) Any party desiring to get a certified copy of any document on the file of the Consumer Forum, may get the same on payment of certification fee of twenty rupees per copy. Provided that if any such document of which certified copy is sought, is over and above 5 pages, an extra amount of one rupee per page shall be charged over and above the fee of twenty rupees.

(6) Certified copy of any miscellaneous order passed by the Consumer Forum shall be supplied on payment of Rs.5 per copy.

22. Inspection of records.-Parties or their agents can inspect the records of any matter by filing an application on payment of five rupees.

23. Filing of criminal complaint.- Wherever a complaint is required to be filed by the Consumer Forum under sub-section (5) of section 13, the Consumer Forum may authorise its Registrar to file the complaint.

24. Practice Directions.- The National Commission shall be entitled to issue practice directions from time to time as may be necessary for the proper conduct of the cases before
25. Parcsha Yad-dast.- Where a party appears in person and is illiterate, the Court Master or Bench Clerk shall give to that party the next date of hearing in writing.

26. Miscellaneous.- (1) In all proceedings before the Consumer Forum, endeavour shall be made by the parties and their counsel to avoid the use of provisions of Code of Civil Procedure, 1908 (5 of 1908):

Provided that the provisions of the Code of Civil Procedure, 1908 may be applied which have been referred to in the Act or in the rules made thereunder.

(2) Every State Commission and every District Forum shall take steps for its computerisation and networking. (3) The Consumer Forum shall give proper respect and courtesy to the parties who appear in person and shall provide separate accommodation in the Hall for the convenience of the parties.

(4) The Consumer Forum shall not insist upon the parties to engage advocates.

(5) The Fees collected for inspection of the documents and supply of certified copies shall be deposited in the account maintained for the purpose of depositing fee for filing a complaint as prescribed by the Central Government by rules.

(6) The cases filed by or against the senior citizens, physically challenged, widows and persons suffering from serious ailments shall be listed and disposed of on a priority basis.

[ F.No.A-105/NCDRC/2005 ]

( B.V. SHARMA ) Joint Registrar
336 The Consumer Protection Act, 1986
Chapter 29

The Prevention Of Corruption Act, 1988

THE PREVENTION OF CORRUPTION ACT, 1988

CHAPTER I - PRELIMINARY

1. Short title and extent.- (1) This Act may be called the Prevention of Corruption Act, 1988. (2) It extends to the whole of India except the State of Jammu and Kashmir and it applies also to all citizens of India outside India.

2. Definitions.- In this Act, unless the context otherwise requires,— (a) “election” means any election, by whatever means held under any law for the purpose of selecting members of Parliament or of any Legislature, local authority or other public authority; (b) “public duty” means a duty in the discharge of which the State, the public or the community at large has an interest; Explanation.— In this clause “State” includes a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956); (c) “public servant” means— (i) any person in the service or pay of the Government or remunerated by the Government by fees or commission for the performance of any public duty; (ii) any person in the service or pay of a local authority; (iii) any person in the service or pay of a corporation evidence by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956); (iv) any Judge, including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions; (v) any person authorised by a court of justice to perform any duty, in connection with the administration of justice, including a liquidator, receiver or commission appointed by
such court; (vi) any arbitrator or other person to whom any cause or matter has been referred for decision or report by a court of justice or by a competent public authority; (vii) any person who holds an office by virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election; (viii) any person who holds an office by virtue of which he is authorised or required to perform any public duty; (ix) any person who is the president, secretary or other office-bearer of a registered cooperative society engaged in agriculture, industry, trade or banking, receiving or having received any financial aid from the Central Government or a State Government or from any corporation established by or under a Central, Provincial or State Act, or any authority or body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956); (x) any person who is a chairman, member or employee of any Service Commission or Board, by whatever name called, or a member of any selection committee appointed by such Commission or Board; (xi) any person who is a Vice-Chancellor or member of any governing body, professor, reader, lecturer or any other teacher or employee, by whatever designation called, of any University and any person whose services have been availed of by a University or any other public authority in connection with holding or conducting examinations; (xii) any person who is an office-bearer or an employee of an educational, scientific, social, cultural or other institution, in whatever manner established, receiving or having received any financial assistance from the Central Government or any State Government, or local or other public authority. Explanation 1.- Persons falling under any of the above sub-clauses are public servants, whether appointed by the Government or not. Explanation 2.- Wherever the words “public servant” occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation. 3. Power to appoint special Judges.- (1) The Central Government or the State Government may, by notification in the Official Gazette, appoint as many special Judges as may be necessary for such area or areas or for such case or group of cases as may be specified in the notification to try the following offences, namely:– (a) any offence punishable under this Act; and (b) any conspiracy to commit or any attempt to commit or any abetment of any of the offences specified in clause (a). (2) A person shall not be qualified for appointment as a special Judge under this Act unless he is or has been a Sessions Judge or an Additional Sessions Judge or an Assistant Sessions Judge under the Code of Criminal Procedure, 1973 (2 of 1974). 4. Cases triable by special Judges.- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974
or in any other law for the time being in force, the offences specified in sub-section (1) of section 3 shall be tried by special Judges only. (2) Every offence specified in sub-section (1) of section 3 shall be tried by the special Judge for the area within which it was committed, or, as the case may be, by the special Judge appointed for the case, or where there are more special Judges than one for such area, by such one of them as may be specified in this behalf by the Central Government. (3) When trying any case, a special Judge may also try any offence, other than an offence specified in section 3, with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974.), be charged at the same trial. (4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974.), a special Judge may take cognizance of offences without the accused being committed to him for trial and, in trying the accused persons, shall follow the procedure prescribed by the Code of Criminal Procedure, 1973 (2 of 1974.), for the trial of warrant case by Magistrates. (2) A special Judge may, with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, an offence, tender a pardon to such person on condition of his making a full and true disclosure of the whole circumstances within his knowledge relating to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof and any pardon so tendered shall, for the purposes of sub-sections (1) to (5) of section 308 of the Code of Criminal Procedure, 1973 (2 of 1974.), be deemed to have been tendered under section 307 of that Code. (3) Save as provided in sub-section (1) or sub-section (2), the provisions of the Code of Criminal Procedure, 1973 (2 of 1974.), shall, so far as they are not inconsistent with this Act, apply to the proceedings before a special Judge; and for the purposes of the said provisions, the Court of the special Judge shall be deemed to be a Court of Session and the person conducting a prosecution before a special Judge shall be deemed to be a public prosecutor. (4) In particular and without prejudice to the generality of the provisions contained in sub-section (3), the provisions of sections 326 and 457 of the Code of Criminal Procedure, 1973 (2 of 1974.), shall, so far as may be, apply to the proceedings before a special Judge and for the purposes of the said provisions, a special Judge shall be deemed to be a Magistrate. (5) A special Judge may pass upon any person convicted by him any sentence authorised by law for the punishment of the offence of which such person is convicted. (6) A special Judge, while trying an offence punishable, under this Act, shall exercise all the powers and functions exercisable by a District Judge under the Criminal Law Amendment Ordinance, 1944. (Ord. 38 of 1944.) 6. Power to try summarily.- (1) Where a special Judge tries any of-
fence specified in sub-section (1) of section 3, alleged to have been committed by a public servant in relation to the contravention of any special order referred to in sub-section (1) of section 12A of the Essential Commodities Act, 1955 (10 of 1955) or of an order referred to in clause (a) of sub-section (2) of that section, then, notwithstanding anything contained in sub-section (1) of section 5 of this Act or section 260 of the Code of Criminal Procedure, 1973 (2 of 1974), the special Judge shall try the offence in a summary way, and the provisions of sections 262 to 265 (both inclusive) of the said Code shall, as far as may be, apply to such trial: Provided that, in the case of any conviction in a summary trial under this section, it shall be lawful for the special Judge to pass a sentence of imprisonment for a term not exceeding one year: Provided further that when at the commencement of, or in the course of, a summary trial under this section, it appears to the special Judge that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily, the special Judge shall, after hearing the parties, record an order to that effect and thereafter recall any witnesses who may have been examined and proceed to hear or re-hear the case in accordance with the procedure prescribed by the said Code for the trial of warrant cases by Magistrates. (2) Notwithstanding anything to the contrary contained in this Act or in the Code of Criminal Procedure, 1973 (2 of 1974), there shall be no appeal by a convicted person in any case tried summarily under this section in which the special Judge passes a sentence of imprisonment not exceeding one month, and of fine not exceeding two thousand rupees whether or not any order under section 452 of the said Code is made in addition to such sentence, but an appeal shall lie where any sentence in excess of the aforesaid limits is passed by the special Judge.

II CHAPTER III-
OFFENCES AND PENALTIES

7. Public servant taking gratification other than legal remuneration in respect of an official Act.- Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of section 2, or with any public servant, whether named or otherwise, shall be punish-
able with imprisonment which shall be not less than six months but which may extend to five years and shall also be liable to fine. Explanations—
(a) “Expecting to be a public servant.” If a person not expecting to be in office obtains a gratification by deceiving others into a belief that he is about to be in office, and that he will when serve them, be may be guilty of cheating, but he is not guilty of the offence defined in this section. (b) “Gratification.” The word “gratification” is not restricted to pecuniary gratifications or to gratifications estimable in money. (c) “Legal remuneration.” The words “legal remuneration” are not restricted to remuneration which a public servant can lawfully demand, but include all remuneration which he is permitted by the Government or the organisation, which he serves, to accept. (d) “A motive or reward for doing.” A person who receives a gratification as a motive or reward for doing what he does not intend or is not in a position to do, or has not done, comes within this expression. (e) Where a public servant induces a person erroneously to believe that his influence with the Government has obtained a title for that person and thus induces that person to give the public servant, money or any other gratification as a reward for this service, the public servant has committed an offence under this section. 8. Taking gratification, in order, by corrupt or illegal means, to influence public servant.—Whoever accepts or obtains, or agrees to accept, or attempts to obtain, from any person, for himself or for any other person, any gratification whatever as a motive or reward for including, by the exercise of personal influence, any public servant, whether named or otherwise, to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine. 9. Taking gratification, for exercise of personal influence with public servant.—Whoever accepts or obtains, or agrees to accept, or attempts to obtain, from any person, for himself or for any other person, any gratification whatever as a motive or reward for including, by the exercise of personal influence, any public servant, whether named or otherwise, to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of section 2, or with any public servant,
whether named or otherwise, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine. 10. Punishment for abetment by public servant of offences defined in section 8 or 9.- Whoever, being a public servant, in respect of whom either of the offences defined in section 8 or section 9 is committed, abets the offence, whether or not that offence is committed in consequence of that abetment, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine. 11. Public servant obtaining valuable thing without consideration from person concerned in proceeding or business transacted by such public servant.- Whoever, being a public servant, accepts or obtains or agrees to accept or attempts to obtain for himself, or for any other person, any valuable thing without consideration, or for a consideration which he knows to be inadequate, from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted by such public servant, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine. 12. Punishment for abetment of offences defined in section 7 irregular 11.- Whoever abets any offence punishable under section 7 or section 11 whether or not that offence is committed in consequence of that abetment, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to five. 13. Criminal, misconduct by a public servant.- (1) A public servant is said to commit the offence of criminal misconduct.- (a) if he habitually accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person for himself or for any other person any gratification other than legal remuneration as a motive or reward such as is mentioned in section 7; or (b) if he habitually accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person, any valuable thing without consideration or for a consideration which he knows to be inadequate from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceedings or business transacted or about to be transacted by him, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned; or (c) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person so to do; or (d) if he,—
corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or (ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or (iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or (e) if he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income. Explanation. – For the purposes of this section, “known sources of income” means income received from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant. (2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than one year but which may extend to three years and with fine.

14. Habitual committing of offence under sections 8, 9 and 12. – Whoever habitually commits— (a) an offence punishable under section 8 or section 9; or (b) an offence punishable under section 12. shall be punishable with imprisonment for a term which shall be not less than two years but which may extend to seven years and shall also be liable to fine. 15. Punishment for attempt. – Whoever attempts to commit an offence referred to in clause (e) or clause (d) of sub-section (1) of section 13 shall be punishable with imprisonment for a term which may extend to three years and with fine.

16. Matters to be taken into consideration for fixing fine. – Where a sentence of fine is imposed under subsection (2) of section 13 or section 14, the court in fixing the amount of the fine shall take into consideration the amount or the value of the property, if any, which the accused person has obtained by committing the offence or where the conviction is for an offence referred to in clause (e) of sub-section (1) of section 13, the pecuniary resources or property referred to in that clause for which the accused person is unable to account satisfactorily. THE PREVENTION OF CORRUPTION ACT, 1988

17. Persons authorised to investigate. – Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974.), no police officer below the rank— (a) in the case of the Delhi Special Police Establishment, of an Inspector of Police; (b) in the metropolitan areas of Bombay, Calcutta, Madras and Ahmedabad and in any other metropolitan area notified as such under sub-section (1) of section 8 of the Code of Criminal Procedure, 1973 (2 of 1974.), of an Assistant Commissioner of Police; (c) else-
The Prevention Of Corruption Act, 1988

where, of a Deputy Superintendent of
Police or a police officer of equivalent,
rank, shall investigate any offence
punishable under this Act without
the order of a Metropolitan Mag-
istrate or a Magistrate of the first
class, as the case may be, or make
any arrest therefor without a war-
rant: Provided that if a police officer
not below the rank of an Inspector
of Police is authorised by the State
Government in this behalf by gen-
eral or special order, he may also
investigate any such offence without
the order of a Metropolitan Mag-
istrate or a Magistrate of the first
class, as the case may be, or make
arrest therefor without a warrant:

18. Power to inspect bankers books.-
If from information received or oth-
erwise, a police officer has reason to
suspect the commission of an offence
which he is empowered to investigate
under section 17 and considers that
for the purpose of investigation or
inquiry into such offence, it is neces-
sary to inspect any bankers’ books,
then, notwithstanding anything con-
tained in any law for the time being
in force, he may inspect any bankers’
books in so far as they relate to the
accounts of the persons suspected
to have committed that offence or
of any other person suspected to be
holding money on behalf of such per-
son, and take or cause to be taken
certified copies of the relevant entries
therefrom, and the bank concerned
shall be bound to assist the police
officer in the exercise of his powers
under this section: Provided that no
power under this section in relation
to the accounts of any person shall
be exercised by a police officer below
the rank of a Superintendent of Po-
lice, unless he is specially authorised
in this behalf by a police officer of
or above the rank of a Superinten-
dent of Police. Explanation.– In this
section, the expressions “bank” and
“bankers’ books” shall have the mean-
ings respectively assigned to them in
the Bankers’ Books Evidence Act,
1891 (18 of 1891 ).

IV CHAPTER V-
SANCTION FOR
PROSECUTION
AND OTHER MIS-
CELLANEOUS
PROVISIONS

19. Previous sanction necessary for
prosecution.- (1) No court shall take
cognizance of an offence punishable
under sections 7, 10, 11, 13 and 15
alleged to have been committed by a
public servant, except with the pre-
vious sanction,– (a) in the case of a
person who is employed in connec-
tion with the affairs of the Union
and is not removable from his office
save by or with the sanction of the
Central Government, of that Govern-
ment; (b) in the case of a person
who is employed in connection with
the affairs of a State and is not re-
movable from his office save by or
with the sanction of the State Gov-
ernment, of that Government; (c) in
the case of any other person, of the
authority competent to remove him
from his office. (2) Where for any
reason whatsoever any doubt arises
as to whether the previous sanction
as required under sub-section (1) should be given by the Central Government or the State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed. (3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—(a) no finding, sentence or order passed by a special Judge shall be reversed or altered by a Court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that court, a failure of justice has in fact been occasioned thereby; (b) no court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice; (c) no court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings. (4) In determining under sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice the court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings. Explanation.—For the purposes of this section,—(a) sanction includes competency of the authority to grant sanction; (b) a sanction required for prosecution includes reference to any requirement that the prosecution shall be at the instance of a specified authority or with the sanction of a specified person or any requirement of a similar nature.

20. Presumption where public servant accepts gratification other than legal remuneration.—(1) Where, in any trial of an offence punishable under section 7 or section 11 or clause (a) or clause (b) or sub-section (1) of section 13 it is proved that an accused person has accepted or obtained or has agreed to accept or attempted to obtain for himself, or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in section 7 or, as the case may be, without consideration or for a consideration which he knows to be inadequate. (2) Where in any trial of an offence punishable under section 12 or under clause (b) of section 14, it is proved that any gratification (other than legal remuneration) or any valuable thing has been given or offered to be given or attempted to be given by an accused person, it shall be presumed, unless the contrary is proved, that he gave or offered to give or attempted to give that gratification or that valuable thing, as the case may be, as
a motive or reward such as is men-
tioned in section 7, or, as the case
may be, without consideration or for
a consideration which he knows to
be inadequate. (3) Notwithstanding
anything contained in sub- sections (1) and (2), the court may de-
cline to draw the presumption re-
ferred to in either of the said sub-
sections, if the gratification or thing
aforesaid is, in its opinion, so triv-
ial that no inference of corruption
may fairly be drawn. 21. Accused to
be a competent witness.- Any person
charged with an offence punishable
under this Act, shall be a compe-
tent witness for the defence and may
give evidence on oath in disproof of
the charges made against him or any
person charged together with him at
the same trial: Provided that– (a) he
shall not be called as a witness except
at his own request; (b) his failure
to give evidence shall not be made
the subject of any comment by the
prosecution or give rise to any pre-
sumption against himself or any per-
son charged together with him at the
same trial: Provided that– (a) he
shall not be called as a witness except
at his own request; (b) his failure
to give evidence shall not be made
the subject of any comment by the
prosecution or give rise to any pre-
sumption against himself or any per-
son charged together with him at the
same trial; (c) he shall not be asked,
and if asked shall not be required to
answer, any question tending to show
that he has committed or been con-
victed of any offence other than the
offence with which he is charged, or is
of bad character, unless– (i) the proof
that he has committed or been con-
victed of such offence is admissible
evidence to show that he is guilty of
the offence with which he is charged,
or (ii) he has personally or by his
pleader asked any question of any
witness for the prosecution with a
view to establish his own good char-
acter, or has given evidence of his
good character, or the nature or con-
duct of the defence is such as to in-
volve imputations on the character
of the prosecutor or of any witness
for the prosecution, or (iii) he has
given evidence against any other per-
son charged with the same offence.
22. The Code of Criminal Proce-
dure, 1973 , to apply subject certain
modifications.- The provisions of the
Code of Criminal Procedure, 1973 (2
of 1974 .), shall in their application to
any proceeding in relation to an of-
fence punishable under this Act have
effect as if– (a) in sub- section (1) of
section 243, for the words“ The ac-
cused shall then be called upon”, the
words “ The accused shall then be re-
quired to give in writing at once or
within such time as the Court may
allow, a list of the persons (if any)
whom he proposes to examine as his
witnesses and of the documents (if
any) on which he proposes to rely
and he shall then be called upon”
had been substituted; (b) in sub- sec-
tion (2) of section 309, after the third
proviso, the following proviso had
been inserted, namely:–“ Provided
also that the proceeding shall not be
adjourned or postponed merely on
the ground that an application un-
der section 397 has been made by a
party to the proceeding.”; (c) after
sub- section (2) of section 317, the
following sub- section had been in-
serted, namely:–“ (3) Notwithstanding
anything contained in sub- sec-
tion (1) or section (2), the Judge
may, if he thinks fit and for rea-
sons to be recorded by him, proceed
with inquiry or trial in the absence of
the accused or his pleader and record
the evidence of any witness subject
to the right of the accused to recall the witness for cross- examination.

(d) in sub-section (1) of section 397, before the Explanation, the following proviso had been inserted, namely:

Provided that where the powers under this section are exercised by a Court on an application made by a party to such proceedings, the Court shall not ordinarily call for the record of the proceedings:

(a) without giving the other party an opportunity of showing cause why the record should not be called for; or

(b) if it is satisfied that an examination of the record of the proceedings may be made from the certified copies.

23. Particulars in a charge in relation to an offence under section 131 c. Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), when an accused is charged with an offence under clause (c) of sub-section (1) of section 13, it shall be sufficient to describe in the charge the property in respect of which the offence is alleged to have been committed and the dates between which the offence is alleged to have been committed, without specifying particular items or exact dates, and the charge so framed shall be deemed to be a charge of one offence within the meaning of section 219 of the said Code: Provided that the time included between the first and last of such dates shall not exceed one year.

24. Statement by bribe giver not to subject him to prosecution.- Notwithstanding anything contained in any law for the time being in force, a statement made by a person in any proceeding against a public servant for an offence under sections 7 to 11 or under section 13 or section 15, that he offered or agreed to offer any gratification (other than legal remuneration) or any valuable thing to the public servant, shall not subject such person to a prosecution under section 12.

25. Military, Naval and Air Force or other law not to be affected.- (1) Nothing in this Act shall affect the jurisdiction exercisable by, or the procedure applicable to, any court or other authority under the Army Act, 1950 (45 of 1950), the Air Force Act, 1950 (46 of 1950), the Navy Act, 1957 (62 of 1957), the Border Security Force Act, 1968 (47 of 1968), the Coast Guard Act, 1978 (30 of 1978) and the National Security Guard Act, 1986 (47 of 1986). (2) For the removal of doubts, it is hereby declared that for the purposes of any such law as is referred to in sub-section (1), the court of a special Judge shall be deemed to be a court of ordinary criminal justice.

26. Special Judges appointed under Act 46 of 1952 to be special Judges appointed under this Act.- Every special Judge appointed under the Criminal Law Amendment Act, 1952 to be special Judges appointed under this Act.- Every special Judge appointed under the Criminal Law Amendment Act, 1952, for any area or areas and is holding office on the commencement of this Act shall be deemed to be a special Judge appointed under section 3 of this Act for that area or areas and, accordingly, on and from such commencement, every such Judge shall continue to deal with all the proceedings pending before him on such commencement in accordance with the provisions of this Act.

27. Appeal and revision.- Subject to the provisions of this Act, the High Court may
exercise, so far as they may be applicable, all the powers of appeal and revision conferred by the Code of Criminal Procedure, 1973 (2 of 1974) on a High Court as if the court of the special Judge were a court of Session trying cases within the local limits of the High Court. 28. Act to be in addition to any other law.- The provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being in force, and nothing contained herein shall exempt any public servant from any proceeding which might, apart from this Act, be instituted against him. 29. Amendment of Ordinance 38 of 1944.- In the Criminal Law Amendment Ordinance, 1944,– (a) in sub-section (1) of section 3, sub-section (1) of section 9, clause (a) of section 10, sub-section (1) of section 11 and sub-section (1) of section 13, for the words State Government, wherever they occur, the words “State Government or, as the case may be, the Central Government” shall be substituted; (b) in section 10, in clause (a), for the words “three months”, the words “one year” shall be substituted; (c) in the Schedule,– (i) paragraph 1 shall be omitted; (ii) in paragraphs 2 and 4,– (a) after the words “a local authority”, the words and figures “or a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by Government or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956)” or a society aided by such corporation, authority, body or Government company” shall be inserted; (b) after the words “or authority”, the words “or corporation or body or Government company or society” shall be inserted; (iii) for paragraph 4A, the following paragraph shall be substituted, namely:– “4A. An offence punishable under the Prevention of Corruption Act, 1988.”; (iv) in paragraph 5, for the words and figures “items 2, 3 and 4”, the words, figures and letter “items 2, 3, 4 and 4A” shall be substituted. 30. Repeal and saving.- (1) The Prevention of Corruption Act, 1947 (2 of 1947) and the Criminal Law Amendment Act, 1952 (46 of 1952) are hereby repealed. (2) Notwithstanding such repeal, but without prejudice to the application of section 6 of the General Clauses Act, 1897 (10 of 1897), anything done or any action taken or purported to have been done or taken under or in pursuance of the Acts so repealed shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under or in pursuance of the corresponding provision of this Act. 31. Omission of certain sections of Act 45 of 1860.- Sections 161 to 165A (both inclusive) of the Indian Penal Code shall be omitted, and section 6 of the General Clauses Act, 1897 (10 of 1897), shall apply to such omission as if the said sections had been repealed by a Central Act.
Chapter 30

The Competition Act, 2002

THE COMPETITION ACT, 2002


An Act to provide, keeping in view of the economic development of the country, for the establishment of a Commission to prevent practices having adverse effect on competition, to promote and sustain competition in markets, to protect the interests of consumers and to ensure freedom of trade carried on by other participants in markets, in India, and for matters connected therewith or incidental thereto.

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

CHAP

PRELIMINARY

I CHAPTER I PRELIMINARY

1. Short title, extent and commencement.- (1) This Act may be called the Competition Act, 2002. (2) It extends to the whole of India except the State of Jammu and Kashmir. (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint: Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

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

(a) “acquisition” means, directly or indirectly, acquiring or agreeing to acquire- (i) shares, voting rights or assets of any enterprise; or (ii) control over management or control over assets of any enterprise; (b) “agreement” includes any arrangement or understanding or action in concert,- (i) whether or not, such arrangement, understanding or action is formal or in writing; or (ii) whether or not such arrangement, understanding or action is intended to be enforceable by legal proceedings; (c) “cartel” includes an association of pro-
ducers, sellers, distributors, traders or service providers who, by agreement amongst themselves, limit, control or attempt to control the production, distribution, sale or price of, or, trade in goods or provision of services; (d) “Chairperson” means the Chairperson of the Commission appointed under sub-section (1) of section 8; (e) “Commission” means the Competition Commission of India established under sub-section (1) of section 7; (f) “consumer” means any person who—(i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, whether such purchase of goods is for resale or for any commercial purpose or for personal use; (ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment when such use is made with the approval of the first-mentioned person whether such hiring or availing of services is for any commercial purpose or for personal use; (g) “Director General” means the Director General appointed under sub-section (1) of section 16 and includes any Additional, Joint, Deputy or Assistant Directors General appointed under that section; (h) “enterprise” means a person or a department of the Government, who or which is, or has been, engaged in any activity, relating to the production, storage, supply, distribution, acquisition or control of articles or goods, or the provision of services of any kind, or in investment, or in the business of acquiring, holding, underwriting or dealing with shares, debentures or other securities of any other body corporate, either directly or through one or more of its units or is located at the same place where the enterprise is located or at a different place or at different places, but does not include any activity of the Government relatable to the sovereign functions of the Government divisions or subsidiaries, whether such unit or division or subsidiary includes all activities carried on by the departments of the Central Government dealing with atomic energy, currency, defence and space. Explanation.—For the purposes of this clause,— (a) “activity” includes profession or occupation; (b) “article” includes a new article and “service” includes a new service; (c) “unit” or “division”, in relation to an enterprise, includes—(i) a plant or factory established for the production, storage, supply, distribution, acquisition or control of any article or goods; (ii) any branch or office established for the provision of any service; (i) “goods” means goods as defined in the Sale of Goods Act, 1930 (8 of
1930) and includes-(A) products manufactured, processed or mined; 
(B) debentures, stocks and shares after allotment; (C) in relation to 
goods supplied, distributed or controlled in India, goods imported into 
India; (j) “Member” means a Member of the Commission appointed 
under sub-section (1) of section 8 and includes the Chairperson; (k) 
“notification” means a notification published in the Official Gazette; (l) 
“person” includes- (i) an individual; (ii) a Hindu undivided family; (iii) a 
company; (iv) a firm; (v) an association of persons or a body of individ-
uals, whether incorporated or not, in India or outside India; (vi) any cor-
poration established by or under any Central, State or Provincial Act or a 
Government company as defined in section 617 of the Companies Act, 
1956 (1 of 1956); (vii) any body corporate incorporated by or under the 
laws of a country outside India; (viii) a co-operative society registered un-
der any law relating to co-operative societies; (ix) a local authority; (x) 
every artificial juridical person, not falling within any of the preceding 
sub-clauses; (m) “practice” includes any practice relating to the carrying 
on of any trade by a person or an enterprise; (n) “prescribed” means 
prescribed by rules made under this Act; (o) “price”, in relation to the 
sale of any goods or to the performance of any services, includes ev-
ery valuable consideration, whether direct or indirect, or deferred, and 
includes any consideration which in effect relates to the sale of any goods 
or to the performance of any services although ostensibly relating to any 
other matter or thing; (p) “public financial institution” means a public 
financial institution specified under section 4A of the Companies Act, 
1956 (1 of 1956) and includes a State Financial, Industrial or Invest-
ment Corporation; (q) “regulations” means the regulations made by the 
Commission under section 64; (r) “relevant market” means the mar-
ket which may be determined by the Commission with reference to the rel-
levant product market or the relevant geographic market or with reference 
to both the markets; (s) “relevant geographic market” means a mar-
ket comprising the area in which the conditions of competition for sup-
ply of goods or provision of services or demand of goods or services are 
distinctly homogenous and can be distinguished from the conditions re-
vailing in the neighbouring areas; (t) “relevant product market” means 
a market comprising all those prod-
ucts or services which are regarded as interchangeable or substitutable by 
the consumer, by reason of character-
istics of the products or services, 
their prices and intended use; (u) 
“service” means service of any de-
scription which is made available to 
potential users and includes the pro-
vision of services in connection with 
business of any industrial or com-
mercial matters such as banking, com-
munication, education, financing, ins-
urance, chit funds, real estate, trans-
port, storage, material treatment, 
processing, supply of electrical or 
other energy, boarding, lodging, en-
tertainment, amusement, construc-
tion, repair, conveying of news or 
information and advertising; (v) “
shares” means shares in the share capital of a company carrying voting rights and includes- (i) any security which entitles the holder to receive shares with voting rights; (ii) stock except where a distinction between stock and share is expressed or implied; (w) “statutory authority” means any authority, board, corporation, council, institute, university or any other body corporate, established by or under any Central, State or Provincial Act for the purposes of regulating production or supply of goods or provision of services or markets therefor or any matter connected therewith or incidental thereto; (x) “trade” means any trade, business, industry, profession or occupation relating to the production, supply, distribution, storage or control of goods and includes the provision of any services; (y) “turnover” includes value of sale of goods or services; (z) words and expressions used but not defined in this Act and defined in the Companies Act, 1956 (1 of 1956) shall have the same meanings respectively assigned to them in that Act. CHAP PROHIBITION OF CERTAIN AGREEMENTS, ABUSE OF DOMINANT POSITION AND REGULATION OF COMBINATIONS

Prohibition of agreements 3. Anti-competitive agreements.- (1) No enterprise or association of enterprises or person or association of persons shall enter into any agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition within India. (2) Any agreement entered into in contravention of the provisions contained in sub-section (1) shall be void. (3) Any agreement entered into between enterprises or associations of enterprises or persons or associations of persons or between any person and enterprise or practice carried on, or decision taken by, any association of enterprises or association of persons, including cartels, engaged in identical or similar trade of goods or provision of services, which (a) directly or indirectly determines purchase or sale prices; (b) limits or controls production, supply, markets, technical development, investment or provision of services; (c) shares the market or source of production or provision of services by way of allocation of geographical area of market, or type of goods or services, or
II CHAPTER II PROHIBITION OF CERTAIN AGREEMENTS, ABUSE OF DOMINANT POSITION AND REGULATION OF COMBINATIONS

number of customers in the market or any other similar way; (d) directly or indirectly results in bid rigging or collusive bidding, shall be presumed to have an appreciable adverse effect on competition: Provided that nothing contained in this sub-section shall apply to any agreement entered into by way of joint ventures if such agreement increases efficiency in production, supply, distribution, storage, acquisition or control of goods or provision of services. Explanation.- For the purposes of this sub-section, “bid rigging” means any agreement, between enterprises or persons referred to in sub-section (3) engaged in identical or similar production or trading of goods or provision of services, which has the effect of eliminating or reducing competition for bids or adversely affecting or manipulating the process for bidding.

(4) Any agreement amongst enterprises or persons at different stages or levels of the production chain in different markets, in respect of production, supply, distribution, storage, sale or price of, or trade in goods or provision of services, including-

(a) tie-in arrangement;
(b) exclusive supply agreement;
(c) exclusive distribution agreement;
(d) refusal to deal;
(e) resale price maintenance,

shall be an agreement in contravention of sub-section (1) if such agreement causes or is likely to cause an appreciable adverse effect on competition in India. Explanation.- For the purposes of this sub-section,-

(a) “tie-in arrangement” includes any agreement requiring a purchaser of goods, as a condition of such purchase, to purchase some other goods;
(b) “exclusive supply agreement” includes any agreement restricting in any manner the purchaser in the course of his trade from acquiring or otherwise dealing in any goods other than those of the seller or any other person;
(c) “exclusive distribution agreement” includes any agreement to limit, restrict or withhold the output or supply of any goods or allocate any area or market for the disposal or sale of the goods;
(d) “refusal to deal” includes any agreement which restricts, or is likely to restrict, by any method the persons or classes of persons to whom goods are sold or from whom goods are bought;
(e) “resale price maintenance” includes any agreement to sell goods on condition that the prices to be charged on the resale by the purchaser shall be the prices stipulated by the seller unless it is clearly stated that prices lower than those prices may be charged.

(5) Nothing contained in this section shall restrict-

(i) the right of any person to restrain any infringement of, or to impose reasonable conditions, as may be necessary for protecting any of his rights which have been or may be conferred upon him under-

(a) the Copyright Act, 1957 (14 of 1957);
(b) the Patents Act, 1970 (39 of 1970);
(c) the Trade and Merchandise Marks Act, 1958 (43 of 1958) or the Trade Marks Act, 1999 (47 of 1999);
(d) the Geographical Indications of Goods (Registration and Protection) Act, 1999 (48 of 1999);
(e) the Designs Act, 2000 (16 of 2000);
(f) the Semiconductor Integrated Circuits Layout-Design Act, 2000 (37 of 2000);
(ii) the right of any person to ex-
port goods from India to the extent to which the agreement relates exclusively to the production, supply, distribution or control of goods or provision of services for such export. Prohibition of abuse of dominant position 4. Abuse of dominant position.- (1) No enterprise shall abuse its dominant position. (2) There shall be an abuse of dominant position under sub-section (1), if an enterprise,- (a) directly or indirectly, imposes unfair or discriminatory- (i) condition in purchase or sale of goods or service; or (ii) price in purchase or sale (including predatory price) of goods or service. Explanation.- For the purposes of this clause, the unfair or discriminatory condition in purchase or sale of goods or service referred to in sub-clause (i) and unfair or discriminatory price in purchase or sale of goods (including predatory price) or service referred to in sub-clause (ii) shall not include such discriminatory condition or price which may be adopted to meet the competition; or (b) limits or restricts- (i) production of goods or provision of services or market therefor; or (ii) technical or scientific development relating to goods or services to the prejudice of consumers; or (c) indulges in practice or practices resulting in denial of market access; or (d) makes conclusion of contracts subject to acceptance by other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts; or (e) uses its dominant position in one relevant market to enter into, or protect, other relevant market. Explanation.- For the purposes of this section, the expression- (a) “dominant position” means a position of strength, enjoyed by an enterprise, in the relevant market, in India, which enables it to- (i) operate independently of competitive forces prevailing in the relevant market; or (ii) affect its competitors or consumers or the relevant market in its favour; (b) “predatory price” means the sale of goods or provision of services, at a price which is below the cost, as may be determined by regulations, of production of the goods or provision of services, with a view to reduce competition or eliminate the competitors. Regulation of combinations 5. Combination.- The acquisition of one or more enterprises by one or more persons or merger or amalgamation of enterprises shall be a combination of such enterprises and persons or enterprises, if- (a) any acquisition where- (i) the parties to the acquisition, being the acquirer and the enterprise, whose control, shares, voting rights or assets have been acquired or are being acquired jointly have,- (A) either, in India, the assets of the value of more than rupees one thousand crores or turnover more than rupees three thousand crores; or (B) in India or outside India, in aggregate, the assets of the value of more than five hundred million US dollars or turnover more than fifteen hundred million US dollars; or (ii) the group, to which the enterprise whose control, shares, assets or voting rights have been acquired or are being acquired, would belong after the acquisition, jointly have,- (A) either in India, the assets of the value of more than rupees three thousand crores; or (B) in India or outside India, in aggregate, the assets of the value of more than five hundred million US dollars; or (ii) the group, to which the enterprise whose control, shares, assets or voting rights have been acquired or are being acquired, would belong after the acquisition, jointly have or would jointly have,- (A) either in India, the assets of the value of more than ru-
pees four thousand crores or turnover more than rupees twelve thousand crores; or (B) in India or outside India, in aggregate, the assets of the value of more than two billion US dollars or turnover more than six billion US dollars; or (b) acquiring of control by a person over an enterprise when such person has already direct or indirect control over another enterprise engaged in production, distribution or trading of a similar or identical or substitutable goods or provision of a similar or identical or substitutable service, if- (i) the enterprise over which control has been acquired along with the enterprise over which the acquirer already has direct or indirect control jointly have,- (A) either in India, the assets of the value of more than rupees one thousand crores or turnover more than rupees three thousand crores; or (B) in India or outside India, in aggregate, the assets of the value of more than five hundred million US dollars or turnover more than fifteen hundred million US dollars; or (ii) the group, to which the enterprise remaining after the merger or the enterprise created as a result of the amalgamation, would belong after the merger or the amalgamation, as the case may be, have or would have,- (A) either in India, the assets of the value of more than rupees four thousand crores or turnover more than rupees twelve thousand crores; or (B) in India or outside India, the assets of the value of more than two billion US dollars or turnover more than six billion US dollars. Explanation.- For the purposes of this section,- (a) “control” includes controlling the affairs or management by- (i) one or more enterprises, either jointly or singly, over another enterprise or group; (ii) one or more groups, either jointly or singly, over another group or enterprise; (b) “group” means two or more enterprises which, directly or indirectly, are in a position to- (i) exercise twenty-six per cent. or more of the voting rights in the other enterprise; or (ii) appoint more than fifty per cent. of the members of the board of directors in the other enterprise; or (iii) control the management or affairs of the other enterprise; (c) the value of assets shall be determined by taking the book value of the assets as
shown, in the audited books of account of the enterprise, in the financial year immediately preceding the financial year in which the date of proposed merger falls, as deduced by any depreciation, and the value of assets shall include the brand value, value of goodwill, or value of copyright, patent, permitted use, collective mark, registered proprietor, registered trade mark, registered user, homonymous geographical indication, geographical indications, design or layout- design or similar other commercial rights, if any, referred to in sub-section (5) of section 3.

6. Regulation of combinations.- (1) No person or enterprise shall enter into a combination which causes or is likely to cause an appreciable adverse effect on competition within the relevant market in India and such a combination shall be void. (2) Subject to the provisions contained in sub-section (1), any person or enterprise, who or which proposes to enter into a combination, may, at his or its option, give notice to the Commission, in the form as may be specified, and the fee which may be determined, by regulations, disclosing the details of the proposed combination, within seven days of- (a) approval of the proposal relating to merger or amalgamation, referred to in clause (c) of section 5, by the board of directors of the enterprises concerned with such merger or amalgamation, as the case may be; (b) execution of any agreement or other document for acquisition referred to in clause (a) of section 5 or acquiring of control referred to in clause (b) of that section. (3) The Commission shall, after receipt of notice under sub-section (2), deal with such notice in accordance with the provisions contained in sections 29, 30 and 31. (4) The provisions of this section shall not apply to share subscription or financing facility or any acquisition, by a public financial institution, foreign institutional investor, bank or venture capital fund, pursuant to any covenant of a loan agreement or investment agreement. (5) The public financial institution, foreign institutional investor, bank or venture capital fund, referred to in sub-section (4), shall, within seven days from the date of the acquisition, file, in the form as may be specified by regulations, with the Commission the details of the acquisition including the details of control, the circumstances for exercise of such control and the consequences of default arising out of such loan agreement or investment agreement, as the case may be.

Explanation.- For the purposes of this section, the expression-(a) “foreign institutional investor” has the same meaning as assigned to it in clause (a) of the Explanation to section 115AD of the Income-tax Act, 1961 (43 of 1961); (b) “venture capital fund” has the same meaning as assigned to it in clause (b) of the Explanation to clause (23FB) of section 10 of the Income-tax Act, 1961 (43 of 1961).

CHAP COMPETITION COMMISSION OF INDIA
7. Establishment of Commission.—
(1) With effect from such date as the Central Government may, by notification, appoint, there shall be established, for the purposes of this Act, a Commission to be called the “Competition Commission of India”.
(2) The Commission shall be a body corporate by the name aforesaid having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and to contract and hall, by the said name, sue or be sued.
(3) The head office of the Commission shall be at such place as the Central Government may decide from time to time.
(4) The Commission may establish offices at other places in India.

8. Composition of Commission.—
(1) The Commission shall consist of a Chairperson and not less than two and not more than ten other Members to be appointed by the Central Government: Provided that the Central Government shall appoint the Chairperson and a Member during the first year of the establishment of the Commission.
(2) The Chairperson and every other Member shall be a person of ability, integrity and standing and who, has been, or is qualified to be, a judge of a High Court, or, has special knowledge of, and professional experience of not less than fifteen years in international trade, economics, business, commerce, law, finance, accountancy, management, industry, public affairs, administration or in any other matter which, in the opinion of the Central Government, may be useful to the Commission.
(3) The Chairperson and other Members shall be whole-time Members.

9. Selection of Chairperson and other Members.—The Chairperson and other Members shall be selected in the manner as may be prescribed.

10. Term of office of Chairperson and other Members.—
(1) The Chairperson and every other Member shall hold office as such for a term of five years from the date on which he enters upon his office and shall be eligible for re-appointment: Provided that no Chairperson or other Member shall hold office as such after he has attained,
(a) in the case of the Chairperson, the age of sixty-seven years; (b) in the case of any other Member, the age of sixty-five years.
(2) A vacancy caused by the resignation or removal of the Chairperson or any other Member under section 11 or by death or otherwise shall be filled by fresh appointment in accordance with the provisions of sections 8 and 9.
(3) The Chairperson and every other Member shall, before entering upon his office, make and subscribe to an oath of office and of secrecy in such form, manner and before such authority, as may be prescribed.
(4) In the event of the occurrence of a vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the senior-most Member shall act as the Chairperson, until the date on which
a new Chairperson, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office. (5) When the Chairperson is unable to discharge his functions owing to absence, illness or any other cause, the senior-most Member shall discharge the functions of the Chairperson until the date on which the Chairperson resumes the charge of his function. 11. Resignation, removal and suspension of Chairperson and other Members.- (1) The Chairperson or any other Member may, by notice in writing under his hand addressed to the Central Government, resign his office: Provided that the Chairperson or a Member shall, unless he is permitted by the Central Government 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) Notwithstanding anything contained in sub-section (1), the Central Government may, by order, remove the Chairperson or any other Member from his office if such Chairperson or Member, as the case may be,- (a) is, or at any time has been, adjudged as an insolvent; or (b) has engaged at any time, during his term of office, in any paid employment; or (c) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or (d) has acquired such financial or other interest as is likely to affect prejudicially his functions as a Member; or (e) has so abused his position as to render his continuance in office prejudicial to the public interest; or (f) has become physically or mentally incapable of acting as a Member. (3) Notwithstanding anything contained in sub-section (2), no Member shall be removed from his office on the ground specified in clause (d) or clause (e) of that sub-section unless the Supreme Court, on a reference being made to it in this behalf by the Central Government, has, on an inquiry, held by it in accordance with such procedure as may be prescribed in this behalf by the Supreme Court, reported that the Member, ought on such ground or grounds to be removed. 12. Restriction on employment of Chairperson and other Members in certain cases.- The Chairperson and other Members shall not, for a period of one year from the date on which they cease to hold office, accept any employment in, or connected with the management or administration of, any enterprise which has been a party to a proceeding before the Commission under this Act: Provided that nothing contained in this section shall apply to any employment under the Central Government or a State Government or local authority or in any statutory authority or any corporation established by or under any Central, State or Provincial Act or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956). 13. Financial and administrative powers of Member Administration.- The Central Government shall designate any Member as Member Administration who shall exercise such financial and administrative powers as may be
vested in him under the rules made by the Central Government: Provided that the Member Administration shall have authority to delegate such of his financial and administrative powers as he may think fit to any other officer of the Commission subject to the condition that such officer shall, while exercising such delegated powers continue to act under the direction, superintendence and control of the Member Administration.

14. Salary and allowances and other terms and conditions of service of Chairperson and other Members.- (1) The salary, and the other terms and conditions of service, of the Chairperson and other Members, including travelling expenses, house rent allowance and conveyance facilities, sumptuary allowance and medical facilities shall be such as may be prescribed. (2) The salary, allowances and other terms and conditions of service of the Chairperson or a Member shall not be varied to his disadvantage after appointment.

15. Vacancy, etc., not to invalidate proceedings of Commission.- No act or proceeding of the Commission shall be invalid merely by reason of- (a) any vacancy in, or any defect in the constitution of, the Commission; or (b) any defect in the appointment of a person acting as a Chairperson or as a Member; or (c) any irregularity in the procedure of the Commission not affecting the merits of the case.

16. Appointment of Director-General, etc.- (1) The Central Government may, by notification, appoint a Director General and as many Additional, Joint, Deputy or Assistant Directors General or such other advisers, consultants or officers, as it may think fit, for the purposes of assisting the Commission in conducting inquiry into contravention of any of the provisions of this Act and for the conduct of cases before the Commission and for performing such other functions as are, or may be, provided by or under this Act. (2) Every Additional, Joint, Deputy and Assistant Directors General or such other advisers, consultants and officers, shall exercise his powers, and discharge his functions, subject to the general control, supervision and direction of the Director General. (3) The salary, allowances and other terms and conditions of service of the Director General and Additional, Joint, Deputy and Assistant Directors General or such other advisers, consultants or officers, shall be such as may be prescribed. (4) The Director General and Additional, Joint, Deputy and Assistant Directors General or such other advisers, consultants or officers shall be appointed from amongst persons of integrity and outstanding ability and who have experience in investigation, and knowledge of accountancy, management, business, public administration, international trade, law or economics and such other qualifications as may be prescribed.

17. Registrar and officers and other employees of Commission.- (1) The Commission may appoint a Registrar and such officers and other employees as it considers necessary for the efficient performance of its functions under this Act. (2) The salaries and allowances payable to and other terms and conditions of service of the Registrar and officers
and other employees of the Commission and the number of such officers and other employees shall be such as may be prescribed. CHAP DUTIES, POWERS AND FUNCTIONS OF COMMISSION

IV CHAPTER IV DUTIES, POWERS AND FUNCTIONS OF COMMISSION

18. Duties of Commission.- Subject to the provisions of this Act, it shall be the duty of the Commission to eliminate practices having adverse effect on competition, promote and sustain competition, protect the interests of consumers and ensure freedom of trade carried on by other participants, in markets in India: Provided that the Commission may, for the purpose of discharging its duties or performing its functions under this Act, enter into any memorandum or arrangement with the prior approval of the Central Government, with any agency of any foreign country. 19. Inquiry into certain agreements and dominant position of enterprise.- (1) The Commission may inquire into any alleged contravention of the provisions contained in sub-section (1) of section 3 or sub-section (1) of section 4 either on its own motion or on- (a) receipt of a complaint, accompanied by such fee as may be determined by regulations, from any person, consumer or their association or trade association; or (b) a reference made to it by the Central Government or a State Government or a statutory authority. (2) Without prejudice to the provisions contained in sub-section (1), the powers and functions of the Commission shall include the powers and functions specified in sub-sections (3) to (7). (3) The Commission shall, while determining whether an agreement has an appreciable adverse effect on competition under section 3, have due regard to all or any of the following factors, namely:- (a) creation of barriers to new entrants in the market; (b) driving existing competitors out of the market; (c) foreclosure of competition by hindering entry into the market; (d) accrual of benefits to consumers; (e) improvements in production or distribution of goods or provision of services; (f) promotion of technical, scientific and economic development by means of production or distribution of goods or provision of services. (4) The Commission shall, while inquiring whether an enterprise enjoys a dominant position or not under section 4, have due regard to all or any of the following factors, namely:- (a) market share of the enterprise; (b) size and resources of the enterprise; (c) size and importance of the competitors; (d) economic power of the enterprise including commercial advantages over competitors; (e) vertical integration of the enterprises or sale or service network of such enterprises; (f) dependence of consumers on the enterprise; (g) monopoly or dominant position whether acquired as a result of any statute or by virtue of being a Government company or a public sector undertaking or otherwise; (h) entry barriers including barriers
such as regulatory barriers, financial risk, high capital cost of entry, marketing entry barriers, technical entry barriers, economies of scale, high cost of substitutable goods or service for consumers; (i) countervailing buying power; (j) market structure and size of market; (k) social obligations and social costs; (l) relative advantage, by way of the contribution to the economic development, by the enterprise enjoying a dominant position having or likely to have an appreciable adverse effect on competition; (m) any other factor which the Commission may consider relevant for the inquiry. (5) For determining whether a market constitutes a “relevant market” for the purposes of this Act, the Commission shall have due regard to the “relevant geographic market” and “relevant product market”. (6) The Commission shall, while determining the “relevant geographic market”, have due regard to all or any of the following factors, namely:- (a) regulatory trade barriers; (b) local specification requirements; (c) national procurement policies; (d) adequate distribution facilities; (e) transport costs; (f) language; (g) consumer preferences; (h) need for secure or regular supplies or rapid after-sales services. (7) The Commission shall, while determining the “relevant product market”, have due regard to all or any of the following factors, namely:- (a) physical characteristics or end-use of goods; (b) price of goods or service; (c) consumer preferences; (d) exclusion of in-house production; (e) existence of specialised producers; (f) classification of industrial products. 20. Inquiry into combination by Commission.- (1) The Commission may, upon its own knowledge or information relating to acquisition referred to in clause (a) of section 5 or acquiring of control referred to in clause (b) of section 5 or merger or amalgamation referred to in clause (c) of that section, inquire into whether such a combination has caused or is likely to cause an appreciable adverse effect on competition in India: Provided that the Commission shall not initiate any inquiry under this sub-section after the expiry of one year from the date on which such combination has taken effect. (2) The Commission shall, on receipt of a notice under sub-section (2) of section 6 or upon receipt of a reference under sub-section (1) of section 21, inquire whether a combination referred to in that notice or reference has caused or is likely to cause an appreciable adverse effect on competition in India. (3) Notwithstanding anything contained in section 5, the Central Government shall, on the expiry of a period of two years from the date of commencement of this Act and thereafter every two years, in consultation with the Commission, by notification, enhance or reduce, on the basis of the wholesale price index or fluctuations in exchange rate of rupee or foreign currencies, the value of assets or the value of turnover, for the purposes of that section. (4) For the purposes of determining whether a combination would have the effect of or is likely to have an appreciable adverse effect on competition in the relevant market, the Commission shall have due
regard to all or any of the following factors, name y:- (a) actual and potential level of competition through imports in the market; (b) extent of barriers to entry into the market; (c) level of combination in the market; (d) degree of countervailing power in the market; (e) likelihood that the combination would result in the parties to the combination being able to significantly and sustainably increase prices or profit margins; (f) extent of effective competition likely to sustain in a market; (g) extent to which substitutes are available or are likely to be available in the market; (h) market share, in the relevant market, of the persons or enterprise in a combination, individually and as a combination; (i) likelihood that the combination would result in the removal of a vigorous and effective competitor or competitors in the market; (j) nature and extent of vertical integration in the market; (k) possibility of a failing business; (l) nature and extent of innovation; (m) relative advantage, by way of the contribution to the economic development, by any combination having or likely to have appreciable adverse effect on competition; (n) whether the benefits of the combination outweigh the adverse impact of the combination, if any. 21. Reference by statutory authority.- (1) Where in the course of a proceeding before any statutory authority an issue is raised by any party that any decision which such statutory authority has taken or proposes to take, is or would be, contrary to any of the provisions of this Act, then such statutory authority may make a reference in respect of such issue to the Commission. (2) On receipt of a reference under subsection (1), the Commission shall, after hearing the parties to the proceedings, give its opinion to such statutory authority which shall thereafter pass such order on the issues referred to in that subsection as it deems fit: Provided that the Commission shall give its opinion under this section within sixty days of receipt of such reference. 22. Benches of Commission.- (1) The jurisdiction, powers and authority of the Commission may be exercised by Benches thereof. (2) The Benches shall be constituted by the Chairperson and each Bench shall consist of not less than two Members. (3) Every Bench shall consist of at least one Judicial Member. Explanation.- For the purposes of this sub-section, “Judicial Member” means a Member who is, or has been, or is qualified to be, a Judge of a High Court. (4) The Bench over which the Chairperson presides shall be the Principal Bench and the other Benches shall be known as the Additional Benches. (5) There shall be constituted by the Chairperson one or more Benches to be called the Mergers Bench or Mergers Benches, as the case may be, exclusively to deal with matters referred to in sections 5 and 6. (6) The places at which the Principal Bench, other Additional Bench or Mergers Bench shall ordinarily sit, shall be such as the Central Government may, by notification, specify. 23. Distribution of business of Commission amongst Benches.- (1) Where any Benches are constituted, the Chairperson may, from time to time, by order, make provisions as to the dis-
tribution of the business of the Commission 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 Chairperson thereon shall be final. (3) The Chairperson may—(i) transfer a Member from one Bench to another Bench; or (ii) authorise the Members of one Bench to discharge also the functions of the Members of other Bench: Provided that the Chairperson shall transfer, with the prior approval of the Central Government, a Member from one Bench situated in one city to another Bench situated in another city. (4) The Chairperson may, for the purpose of securing that any case or matter which, having regard to the nature of the questions involved, requires or is required in his opinion or under the rules made by the Central Government in this behalf, to be decided by a Bench composed of more than two Members, issue such general or special orders as he may deem fit.

24. Procedure for deciding a case where Members of a Bench differ in opinion.—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 Chairperson 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.

25. Jurisdiction of Bench.—An inquiry shall be initiated or a complaint be instituted or a reference be made under this Act before a Bench within the local limits of whose jurisdiction—(a) the respondent, or each of the respondents, where there are more than one, at the time of the initiation of inquiry or institution of the complaint or making of reference, as the case may be, actually and voluntarily resides, or carries on business, or personally works for gain; or (b) any of the respondents, where there are more than one, at the time of the initiation of inquiry or institution of the complaint or making of reference, as the case may be, actually and voluntarily resides or carries on business or personally works for gain provided that in such case either the leave of the Bench is given, or the respondents who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or (c) the cause of action, wholly or in part, arises.

Explanation.—A respondent, being a person referred to in sub-clause (iii) or sub-clause (vi) or sub-clause (vii) or sub-clause (viii) of clause (l) of section 2, shall be deemed to carry on business at its sole or principal place of business in India or its registered office in India or where it has also a subordinate office at such place.

26. Procedure for inquiry on complaints under section 19.—(1) On receipt of a complaint or a reference from the Central Government or a State Government or a statutory authority or on its own knowledge or there exists a prima facie case, it shall direct the Director General to cause an inves-
tigation to be made into the matter. Information, under section 19, if the Commission is of the opinion that (2) The Director General shall, on receipt of direction under sub-section (1), submit a report on his findings within such period as may be specified by the Commission. (3) Where on receipt of a complaint under clause (a) of sub-section (1) of section 19, the Commission is of the opinion that there exists no prima facie case, it shall dismiss the complaint and may pass such orders as it deems fit, including imposition of costs, if necessary. (4) The Commission shall forward a copy of the report referred to in sub-section (2) to the parties concerned or to the Central Government or the State Government or the statutory authority, as the case may be. (5) If the report of the Director General relates on a complaint and such report recommends that there is no contravention of any of the provisions of this Act, the complainant shall be given an opportunity to rebut the findings of the Director General. (6) If, after hearing the complainant, the Commission agrees with the recommendation of the Director General, it shall dismiss the complaint. (7) If, after hearing the complainant, the Commission is of the opinion that further inquiry is called for, it shall direct the complainant to proceed with the complaint. (8) If the report of the Director General relates on a reference made under sub-section (1) and such report recommends that there is no contravention of the provisions of this Act, the Commission shall invite comments of the Central Government or the State Government or the statutory authority, as the case may be, on such report and on receipt of such comments, the Commission shall return the reference if there is no prima facie case or proceed with the reference as a complaint if there is a prima facie case. (9) If the report of the Director General referred to in sub-section (2) recommends that there is contravention of any of the provisions of this Act, and the Commission is of the opinion that further inquiry is called for, it shall inquire into such contravention in accordance with the provisions of this Act. 27. Orders by Commission after inquiry into agreements or abuse of dominant position.- Where after inquiry the Commission finds that any agreement referred to in section 3 or action of an enterprise in a dominant position, is in contravention of section 3 or section 4, as the case may be, it may pass all or any of the following orders, namely:—(a) direct any enterprise or association of enterprises or person or association of persons, as the case may be, involved in such agreement, or abuse of dominant position, to discontinue and not to re-enter such agreement or discontinue such abuse of dominant position, as the case may be; (b) impose such penalty, as it may deem fit which shall be not more than ten per cent. of the average of the turnover for the last three preceding financial years, upon each of such person or enterprises which are parties to such agreements or abuse: Provided that in case any agreement referred to in section 3 has been entered into by any cartel, the Commission shall impose upon each
producer, seller, distributor, trader or service provider included in that cartel, a penalty equivalent to three times of the amount of profits made out of such agreement by the cartel or ten per cent. of the average of the turnover of the cartel for the last preceding three financial years, whichever is higher; (c) award compensation to parties in accordance with the provisions contained in section 34; (d) direct that the agreements shall stand modified to the extent and in the manner as may be specified in the order by the Commission; (e) direct the enterprises concerned to abide by such other orders as the Commission may pass and comply with the directions, including payment of costs, if any; (f) recommend to the Central Government for the division of an enterprise enjoying dominant position; (g) pass such other order as it may deem fit. 28. Division of enterprise enjoying dominant position.- (1) The Central Government, on recommendation under clause (f) of section 27, may, notwithstanding anything contained in any other law for the time being in force, by order in writing, direct division of an enterprise enjoying dominant position to ensure that such enterprise does not abuse its dominant position. (2) In particular, and without prejudice to the generality of the foregoing powers, the order referred to in sub-section (1) may provide for all or any of the following matters, namely:-(a) the transfer or vesting of property, rights, liabilities or obligations; (b) the adjustment of contracts either by discharge or reduction of any liability or obligation or otherwise; (c) the creation, allotment, surrender or cancellation of any shares, stocks or securities; (d) the payment of compensation to any person who suffered any loss due to dominant position of such enterprise; (e) the formation or winding up of an enterprise or the amendment of the memorandum of association or articles of association or any other instruments regulating the business of any enterprise; (f) the extent to which, and the circumstances in which, provisions of the order affecting an enterprise may be altered by the enterprise and the registration thereof; (g) any other matter which may be necessary to give effect to the division of the enterprise. (3) Notwithstanding anything contained in any other law for the time being in force or in any contract or in any memorandum or articles of association, an officer of a company who ceases to hold office as such in consequence of the division of an enterprise shall not be entitled to claim any compensation for such cesser. 29. Procedure for investigation of combinations.- (1) Where the Commission is of the opinion that a combination is likely to cause, or has caused an appreciable adverse effect on competition within the relevant market in India, it shall issue a notice to how cause to the parties to combination calling upon them to respond within thirty days of the receipt of the notice, as to why investigation in respect of such combination should not be conducted. (2) The Commission, if it is prima facie of the opinion that the combination has, or is likely to have, an appreciable adverse effect on competition, it shall, within
seven working days from the date of receipt of the response of the parties to the combination, direct the parties to the said combination to publish details of the combination within ten working days of such direction, in such manner, as it thinks appropriate, for bringing the combination to the knowledge or information of the public and persons affected or likely to be affected by such combination. (3) The Commission may invite any person or member of the public, affected or likely to be affected by the said combination, to file his written objections, if any, before the Commission within fifteen working days from the date on which the details of the combination were published under sub-section (2). (4) The Commission may, within fifteen working days from the expiry of the period specified in sub-section (3), call for such additional or other information as it may deem fit from the parties to the said combination. (5) The additional or other information called for by the Commission shall be furnished by the parties referred to in sub-section (4) within fifteen days from the expiry of the period specified in sub-section (4). (6) After receipt of all information and within a period of forty-five working days from the expiry of the period specified in sub-section (5), the Commission shall proceed to deal with the case in accordance with the provisions contained in section 31.

30. Inquiry into disclosures under sub-section (2) of section 6.- Where any person or enterprise has given a notice under sub-section (2) of section 6, the Commission shall inquire—(a) whether the disclosure made in the notice is correct; (b) whether the combination has, or is likely to have, an appreciable adverse effect on competition. 31. Orders of Commission on certain combinations.- (1) Where the Commission is of the opinion that any combination does not, or is not likely to, have an appreciable adverse effect on competition, it shall, by order, approve that combination including the combination in respect of which a notice has been given under sub-section (2) of section 6. (2) Where the Commission is of the opinion that the combination has, or is likely to have, an appreciable adverse effect on competition, it shall direct that the combination shall not take effect. (3) Where the Commission is of the opinion that the combination has, or is likely to have, an appreciable adverse effect on competition but such adverse effect can be eliminated by suitable modification to such combination, it may propose appropriate modification to the combination, to the parties to such combination. (4) The parties, who accept the modification proposed by the Commission under sub-section (3), shall carry out such modification within the period specified by the Commission. (5) If the parties to the combination, who have accepted the modification under sub-section (4), fail to carry out the modification within the period specified by the Commission, such combination shall be deemed to have an appreciable adverse effect on competition and the Commission shall deal with such combination in accordance with the provisions of this Act. (6) If the parties to the combination do not accept the modification
proposed by the Commission under sub-section (3), such parties may, within thirty working days of the modification proposed by the Commission, submit amendment to the modification proposed by the Commission under that sub-section. (7) If the Commission agrees with the amendment submitted by the parties under sub-section (6), it shall, by order, approve the combination. (8) If the Commission does not accept the amendment submitted under sub-section (6), the parties shall be allowed a further period of thirty working days within which such parties shall accept the modification proposed by the Commission under sub-section (3). (9) If the parties fail to accept the modification proposed by the Commission within thirty working days referred to in sub-section (6) or within a further period of thirty working days referred to in sub-section (8), the combination shall be deemed to have an appreciable adverse effect on competition and be dealt with in accordance with the provisions of this Act. (10) Where the Commission has directed under sub-section (2) that the combination shall not take effect or the combination is deemed to have an appreciable adverse effect on competition under sub-section (9), then, without prejudice to any penalty which may be imposed or any prosecution which may be initiated under this Act, the Commission may order that—(a) the acquisition referred to in clause (a) of section 5; or (b) the acquiring of control referred to in clause (b) of section 5; or (c) the merger or amalgamation referred to in clause (c) of section 5, shall not be given effect to: Provided that the Commission may, if it considers appropriate, frame a scheme to implement its order under this sub-section. (11) If the Commission does not, on the expiry of a period of ninety working days from the date of publication referred to in sub-section (2) of section 29, pass an order or issue direction in accordance with the provisions of sub-section (1) or sub-section (2) or sub-section (7), the combination shall be deemed to have been approved by the Commission. Explanation.—For the purposes of determining the period of ninety working days specified in this sub-section, the period of thirty working days specified in sub-section (6) and a further period of thirty working days specified in sub-section (8) shall be excluded. (12) Where any extension of time is sought by the parties to the combination, the period of ninety working days shall be reckoned after deducting the extended time granted at the request of the parties. (13) Where the Commission has ordered a combination to be void, the acquisition or acquiring of control or merger or amalgamation referred to in section 5, shall be dealt with by the authorities under any other law for the time being in force as if such acquisition or acquiring of control or merger or amalgamation had not taken place and the parties to the combination shall be dealt with accordingly. (14) Nothing contained in this Chapter shall affect any proceeding initiated or which may be initiated under any other law for the time being in force.
32. Acts taking place outside India but having an effect on competition in India.- The Commission shall, notwithstanding that,- (a) an agreement referred to in section 3 has been entered into outside India; or (b) any party to such agreement is outside India; or (c) any enterprise abusing the dominant position is outside India; or (d) a combination has taken place outside India; or (e) any party to combination is outside India; or (f) any other matter or practice or action arising out of such agreement or dominant position or combination is outside India, have power to inquire into such agreement or abuse of dominant position or combination if such agreement or dominant position or combination has, or is likely to have, an appreciable adverse effect on competition in the relevant market in India. 33. Power to grant interim relief.- (1) Where during an inquiry before the Commission, it is proved to the satisfaction of the Commission, by affidavit or otherwise, that an act in contravention of sub-section (1) of section 3 or sub-section (1) of section 4 or section 6 has been committed and continues to be committed or that such act is about to be committed, the Commission may, by order, grant a temporary injunction restraining any party from carrying on such act until the conclusion of such inquiry or until further orders, without giving notice to the opposite party, where it deems it necessary. (2) Where during the inquiry before the Commission it is proved to the satisfaction of the Commission by affidavit or otherwise that import of any goods is likely to contravene sub-section (1) of section 3 or sub-section (1) of section 4 or section 6, it may, by order, grant a temporary injunction restraining any party from importing such goods until the conclusion of such inquiry or until further orders, without giving notice to the opposite party, where it deems it necessary and a copy of such order granting temporary injunction shall be sent to the concerned authorities. (3) The provisions of rules 2A to 5 (both inclusive) of Order XXXIX of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908) shall, as far as may be, apply to a temporary injunction issued by the Commission under this Act, as they apply to temporary injunction issued by a civil court, and any reference in any such rule to a suit shall be construed as a reference to any inquiry before the Commission. 34. Power to award compensation.- (1) Without prejudice to any other provisions contained in this Act, any person may make an application to the Commission for an order for the recovery of compensation from any enterprise for any loss or damage shown to have been suffered, by such person as a result of any contravention of the provisions of Chapter II, having been committed by such enterprise. (2) The Commission may, after an inquiry made into the allegations mentioned in the application made under sub-section (1), pass an order directing the enterprise to make payment to the applicant, of the amount determined by it as realisable from the enterprise as compensation for the loss or damage caused to the applicant as a result of any contravention
of the provisions of Chapter II having been committed by such enterprise. (3) Where any loss or damage referred to in sub-section (1) is caused to numerous persons having the same interest, one or more of such persons may, with the permission of the Commission, make an application under that sub-section for and on behalf of, o for the benefit of, the persons so interested, and thereupon, the provisions of rule 8 of Order 1 of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908), shall apply subject to the modification that every reference therein to a suit or decree shall be construed as a reference to the application before the Commission and the order of the Commission thereon. 35. Appearance before Commission.- A complainant or defendant or the Director General may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of his or its officers to present his or its case before the Commission. Explanation.- For the purposes of this section,- (a) “chartered accountant” means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 (38 of 1949) and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act; (c) “cost accountant” means a cost accountant as defined in clause (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959 (23 of 1959) and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act; (d) “legal practitioner” means an advocate, vakil or an attorney of any High Court, and includes a pleader in practice. 36. Power of Commission to regulate its own procedure.- (1) The Commission 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 made by the Central Government, the Commission shall have powers to regulate its own procedure including the places at which they shall have their sittings, duration of oral hearings when granted, and times of its inquiry. (2) The Commission 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) issuing commissions for the examination of witnesses or documents; (e) 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 doc-
370 The Competition Act, 2002

(2) Any proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 and for the purposes of section 196 of the Indian Penal Code (45 of 1860) and the Commission 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).

(3) The Commission may call upon such experts, from the fields of economics, commerce, accountancy, international trade or from any other discipline as it deems necessary, to assist the Commission in the conduct of any inquiry or proceeding before it.

(4) The Commission may direct any person—
   (a) to produce before the Director General or the Registrar or an officer authorised by it, such books, accounts or other documents in the custody or under the control of such person so directed as may be specified or described in the direction, being documents relating to any trade, the examination of which may be required for the purposes of this Act; (b) to furnish to the Director General or the Registrar or any officer authorised by it, as respects the trade or such other information as may be in his possession in relation to the trade carried on by such person, as may be required for the purposes of this Act.

(5) The Commission may direct any person—
   (a) to produce before the Director General or the Registrar or an officer authorised by it, such books, accounts or other documents in the custody or under the control of such person so directed as may be specified or described in the direction, being documents relating to any trade, the examination of which may be required for the purposes of this Act; (b) to furnish to the Director General or the Registrar or any officer authorised by it, as respects the trade or such other information as may be in his possession in relation to the trade carried on by such person, as may be required for the purposes of this Act.

(6) If the Commission is of the opinion that any agreement referred to in section 3 or abuse of dominant position referred to in section 4 or the combination referred to in section 5 has caused or is likely to cause an appreciable adverse effect on competition in the relevant market in India and it is necessary to protect, without further delay, the interests of consumers and other market participants in India, it may conduct an inquiry or adjudicate upon any matter under this Act after giving a reasonable oral hearing to the parties concerned.

37. Review of orders of Commission.—Any person aggrieved by an order of the Commission from which an appeal is allowed by this Act but no appeal has been preferred, may, within thirty days from the date of the order, apply to the Commission for review of its order and the Commission may make such order thereon as it thinks fit: Provided that the Commission may entertain a review application after the expiry of the said period of thirty days, if it is satisfied that the applicant was prevented by sufficient cause from preferring the application in time: Provided further that no order shall be modified or set aside without giving an opportunity of being heard to the person in whose favour the order is given and the Director General where he was a party to the proceedings.

38. Rectification of orders.—(1) With a view to rectifying any mistake apparent from the record, the Commission may amend any order passed by it under the provisions of this Act.

(2) Subject to the other provisions of this Act, the Commission may make—
   (a) an amendment under sub-section (1) of its own motion; (b) an amendment for rectifying any such mistake which has been brought to its notice by any
party to the order. Explanation.- For the removal of doubts, it is hereby declared that the Commission shall not, while rectifying any mistake apparent from record, amend substantive part of its order passed under the provisions of this Act. 39. Execution of orders of Commission.- Every order passed by the Commission under this Act shall be enforced by the Commission in the same manner as if it were a decree or order made by a High Court or the principal civil court in a suit pending therein and shall be lawful for the Commission to send, in the event of its inability to execute it, such order to the High Court or the principal civil court, as the case may be, within the local limits of whose jurisdiction,—

(a) in the case of an order against a person referred to in sub-clause (iii) or sub-clause (vi) or sub-clause (vii) of clause (l) of section 2, the registered office or the sole or principal place of business of the person in India or where the person has also a subordinate office, that subordinate office, is situated; (b) in the case of an order against any other person, the place, where the person concerned voluntarily resides or carries on business or personally works for gain, is situated, and thereupon the court to which the order is so sent shall execute the order as if it were a decree or order sent to it for execution. 40. Appeal.- Any person aggrieved by any decision or order of the Commission may file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the Commission to him on one or more of the grounds specified in section 100 of the Code of Civil Procedure, 1908 (5 of 1908): Provided that the Supreme Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days: Provided further that no appeal shall lie against any decision or order of the Commission made with the consent of the parties.

CHAP DUTIES OF DIRECTOR GENERAL

V CHAPTER V DUTIES OF DIRECTOR GENERAL

41. Director- General to investigate contraventions.- (1) The Director General shall, when so directed by the Commission, assist the Commission in investigating into any contravention of the provisions of this Act or any rules or regulations made thereunder. (2) The Director General shall have all the powers as are conferred upon the Commission under sub-section (2) of section 36. (3) Without prejudice to the provisions of sub-section (2), sections 240 and 240A of the Companies Act, 1956 (1 of 1956), so far as may be, shall apply to an investigation made by the Director General or any other person investigating under his authority as they apply to an inspector appointed under that Act.
VI CHAPTER VI
PENALTIES

42. Contravention of orders of Commission.- (1) Without prejudice to the provisions of this Act, if any person contravenes, without any reasonable ground, any order of the Commission, or any condition or restriction subject to which any approval, sanction direction or exemption in relation to any matter has been accorded, given, made or granted under this Act or fails to pay the penalty imposed under this Act, he shall be liable to be detained in civil prison for a term which may extend to one year, unless in the meantime the Commission directs his release and he shall also be liable to a penalty not exceeding rupees ten lakhs. (2) The Commission may, while making an order under this Act, issue such directions to any person or authority, not inconsistent with this Act, as it thinks necessary or desirable, for the proper implementation or execution of the order, and any person who commits breach of, or fails to comply with, any obligation imposed on him under such direction, may be ordered by the Commission to be detained in civil prison for a term not exceeding one year unless in the meantime the Commission directs his release and he shall also be liable to a penalty not exceeding rupees ten lakhs. (2) The Commission may, while making an order under this Act, issue such directions to any person or authority, not inconsistent with this Act, as it thinks necessary or desirable, for the proper implementation or execution of the order, and any person who commits breach of, or fails to comply with, any obligation imposed on him under such direction, may be ordered by the Commission to be detained in civil prison for a term not exceeding one year unless in the meantime the Commission directs his release and he shall also be liable to a penalty not exceeding rupees ten lakhs.

43. Penalty for failure to comply with directions of Commission and Director-General.- If any person fails to comply with a direction given by- (a) the Commission under sub-section (5) of section 36; or (b) the Director General while exercising powers referred to in subsection (2) of section 41, the Commission shall impose on such person a penalty of rupees one lakh for each day during which such failure continues.

44. Penalty for making false statement or omission to furnish material information.- If any person, being a party to a combination, (a) makes a statement which is false in any material particular, or knowing it to be false; or (b) omits to state any material particular knowing it to be material, such person shall be liable to a penalty which shall not be less than rupees fifty lakhs but which may extend to rupees one crore, as may be determined by the Commission. 45. Penalty for offences in relation to furnishing of information.- (1) Without prejudice to the provisions of section 44, if any person, who furnishes or is required to furnish under this Act any particulars, documents or any information, (a) makes any statement or furnishes any document which he knows or has reason to believe to be false in any material particular; or (b) omits to state any material fact knowing it to be material; or (c) wilfully alters, suppresses or destroys any document which is required to be furnished as aforesaid, the Commission shall impose on such person a penalty which may extend to rupees ten lakhs. (2) Without prejudice to the provisions of subsection (1), the Commission may also pass such other order as it deems fit.

46. Power to impose lesser penalty.- The Commission may, if it is satisfied that any producer, seller, distributor, trader or service provider in-
cluded in any cartel, which is alleged to have violated section 3, has made a full and true disclosure in respect of the alleged violations and such disclosure is vital, impose upon such producer, seller, distributor, trader or service provider a lesser penalty as it may deem fit, than leviable under this Act or the rules or the regulations: Provided that lesser penalty shall not be imposed by the Commission in cases where proceedings for the violation of any of the provisions of this Act or the rules or the regulations have been instituted or any investigation has been directed to be made under section 26 before making of such disclosure: Provided further that lesser penalty shall be imposed by the Commission only in respect of a producer, seller, distributor, trader or service provider included in the cartel, who first made the full, true and vital disclosures under this section: Provided also that the Commission may, if it is satisfied that such producer, seller, distributor, trader or service provider included in the cartel had in the course of proceedings not complied with the condition on which the lesser penalty was imposed by the Commission; or (b) had given false evidence; or (c) the disclosure made is not vital, and thereupon such producer, seller, distributor, trader or service provider may be tried for the offence with respect to which the lesser penalty was imposed and shall also be liable to the imposition of penalty to which such person has been liable, had lesser penalty not been imposed.

47. Crediting sums realised by way of penalties to Consolidated Fund of India.- All sums realised by way of penalties under this Act shall be credited to the Consolidated Fund of India. 48. Contravention by companies.- (1) Where a person committing contravention of any of the provisions of this Act or of any rule, regulation, order made or direction issued thereunder is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such contravention. (2) Notwithstanding anything contained in sub-section (1), where a contravention of any of the provisions of this Act or of any rule, regulation, order made or direction issued thereunder has been committed by a company and it is proved that the contravention was 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 that contravention and shall be liable to be proceeded against and punished accordingly. Explanation.- For the purposes of this section, "company" means a body corporate
and includes a firm or other association of individuals; and (b) “director”, in relation to a firm, means a partner in the firm.

VII CHAPTER VII
COMPETITION ADVOCACY

49. Competition advocacy.- (1) In formulating a policy on competition (including review of laws related to competition), the Central Government may make a reference to the Commission for its opinion on possible effect of such policy on competition and on receipt of such a reference, the Commission shall, within sixty days of making such reference, give its opinion to the Central Government, which may thereafter formulate the policy as it deems fit. (2) The opinion given by the Commission under sub-section (1) shall not be binding upon the Central Government in formulating such policy. (3) The Commission shall take suitable measures, as may be prescribed, for the promotion of competition advocacy, creating awareness and imparting training about competition issues.

VIII CHAPTER VIII
FINANCE, ACCOUNTS AND AUDIT

50. Grants by Central Government.- The Central Government may, after due appropriation made by Parliament by law in this behalf, make to the Commission grants of such sums of money as the Government may think fit for being utilised for the purposes of this Act. 51. Constitution of Fund.- (1) There shall be constituted a fund to be called the “Competition Fund” and there shall be credited thereto- (a) all Government grants received by the Commission; (b) the monies received as costs from parties to proceedings before the Commission; (c) the fees received under this Act; (d) the interest accrued on the amounts referred to in clauses (a) to (c). (2) The Fund shall be applied for meeting- (a) the salaries and allowances payable to the Chairperson and other Members and the administrative expenses including the salaries, allowances and pension payable to the Director General, Additional, Joint, Deputy or Assistant Directors General, the Registrar and officers and other employees of the Commission; (b) the other expenses of the Commission in connection with the discharge of its functions and for the purposes of this Act. (3) The Fund shall be administered by a committee of such Members of the Commission as may be determined by the Chairperson. (4) The committee appointed under sub-
section (3) shall spend monies out of the Fund for carrying out the objects for which the Fund has been constituted. 52. Accounts and audit.- (1) The Commission shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India. (2) The accounts of the Commission shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Commission to the Comptroller and Auditor-General of India. Explanation.- For the removal of doubts, it is hereby declared that the orders of the Commission, being matters appealable to the Supreme Court, shall not be subject to audit under this section. (3) The Comptroller and Auditor-General of India and any other person appointed by him in connection with the audit of the accounts of the Commission shall have the same rights, privileges and authority in connection with such audit as the Comptroller an Auditor-General of India generally has, in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Commission. (4) The accounts of the Commission as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded annually to the Central Government and that Government shall cause the same to be laid before each House of Parliament. 53. Furnishing of returns, etc., to Central Government.- (1) The Commission shall furnish to the Central Government at such time and in such form and manner as may be prescribed or as the Central Government may direct, such returns and statements and such particulars in regard to any proposed or existing measures for the promotion of competition advocacy, creating awareness and imparting training about competition issues, as the Central Government may, from time to time, require. (2) The Commission shall prepare once in every year, in such form and at such time as may be prescribed, an annual report giving a true and full account of its activities during the previous year and copies of the report shall be forwarded to the Central Government. (3) A copy of the report received under sub-section (2) shall be laid, as soon as may be after it is received, before each House of Parliament. CHAP MISCELLANEOUS

IX CHAPTER IX MISCELLANEOUS

54. Power to exempt.- The Central Government may, by notification, exempt from the application of this Act, or any provision thereof, and for such period as it may spec-
ify in such notification- (a) any class of enterprises if such exemption is necessary in the interest of security of the State or public interest; (b) any practice or agreement arising out of and in accordance with any obligation assumed by India under any treaty, agreement or convention with any other country or countries; (c) any enterprise which performs a sovereign function on behalf of the Central Government or a State Government: Provided that in case an enterprise is engaged in any activity including the activity relatable to the sovereign functions of the Government, the Central Government may grant exemption only in respect of activity relatable to the sovereign functions. 55. Power of Central Government to issue directions.- (1) Without prejudice to the foregoing provisions of this Act, the Commission shall, in exercise of its powers or the performance of its functions under this Act, be bound by such directions on questions of policy, other than those relating to technical and administrative matters, as the Central Government may give in writing to it from time to time: Provided that the Commission shall, as far as practicable, be given an opportunity to express its views before any direction is given under this sub-section. (2) The decision of the Central Government whether a question is one of policy or not shall be final. 56. Power of Central Government to supersede Commission.- (1) If at any time the Central Government is of the opinion- (a) that on account of circumstances beyond the control of the Commission, it is unable to discharge the functions or perform the duties imposed on it by or under the provisions of this Act; or (b) that the Commission has persistently made default in complying with any direction given by the Central Government under this Act or in the discharge of the functions or performance of the duties imposed on it by or under the provisions of this Act an as a result of such default the financial position of the Commission or the administration of the Commission has suffered; or (c) that circumstances exist which render it necessary in the public interest so to do, the Central Government may, by notification and for reasons to be specified therein, supersede the Commission for such period, not exceeding six months, as may be specified in the notification: Provided that before issuing any such notification, the Central Government shall give a reasonable opportunity to the Commission to make representations against the proposed supersession and shall consider representations, if any, of the Commission. (2) Upon the publication of a notification under sub-section (1) superseding the Commission,- (a) the Chairperson and other Members shall, as from the date of supersession, vacate their offices as such; (b) all the powers, functions and duties which may, by or under the provisions of this Act, be exercised or discharged by or on behalf of the Commission shall, until the Commission is reconstituted under sub-section (3), be exercised and discharged by the Central Government or such authority as the Central Government may spec-
ify in this behalf; (c) all properties owned or controlled by the Commission shall, until the Commission is reconstituted under sub-section (3), vest in the Central Government. (3) On or before the expiration of the period of supersession specified in the notification issued under sub-section (1), the Central Government shall reconstitute the Commission by a fresh appointment of its Chairperson and other Members and in such case any person who had vacated his office under clause (a) of sub-section (2) shall not be deemed to be disqualified for re-appointment. (4) The Central Government shall cause a notification issued under sub-section (1) and a full report of any action taken under this section and the circumstances leading to such action to be laid before each House of Parliament at the earliest. 57. Restriction on disclosure of information.- No information relating to any enterprise, being an information which has been obtained by or on behalf of the Commission for the purposes of this Act, shall, without the previous permission in writing of the enterprise, be disclosed otherwise than in compliance with or for the purposes of this Act or any other law for the time being in force. 58. Members, Director General, Registrar, officers and other employees, etc., of Commission to be public servants.- The Chairperson and other Members and the Director General, Additional, Joint, Deputy or Assistant Directors General and Registrar and officers and other employees of the Commission shall be deemed, while acting or purporting to act in pursuance of any of the provisions of this Act, to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860). 59. Protection of action taken in good faith.- No suit, prosecution or other legal proceedings shall lie against the Central Government or Commission or any officer of the Central Government or the Chairperson or any Member or the Director-General, Additional, Joint, Deputy or Assistant Directors General or Registrar or officers or other employees of the Commission for anything which is in good faith done or intended to be done under this Act or the rules or regulations made thereunder. 60. 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. 61. Exclusion of jurisdiction of civil courts.- No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Commission is empowered by or under this Act to determine and no injunction shall be granted by a court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act. 62. Application of other laws not barred.- The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force. 63. Power to make rules.- (1) The Central Government may, by notification, make rules to carry out the provisions of this Act. (2) In particular, and without prejudice to the generality of the forego-
ing power, such rules may provide for all or any of the following matters, namely:— (a) the manner in which the Chairperson and other Members shall be selected under section 9; (b) the form and manner in which and the authority before whom the oath of office and of secrecy shall be made and subscribed to under sub-section (3) of section 10; (c) the financial and administrative powers which may be vested in the Member Administration under section 13; (d) the salary and the other terms and conditions of service including travelling expenses, house rent allowance and conveyance facilities, sumptuary allowance and medical facilities to be provided to the Chairperson and other Members under sub-section of section 14; (e) the salary, allowances and other terms and conditions of service of the Director General, Additional, Joint, Deputy or Assistant Directors General or such other advisers, consultants or officers under sub-section (3) of section 16; (f) the qualifications for appointment of the Director General, Additional, Joint, Deputy or Assistant Directors General or such other advisers, consultants or officers under sub-section (4) of section 16; (g) the salaries and allowances and other terms and conditions of service of the Registrar and officers and other employees payable, and the number of such officers and employees under sub-section (2) of section 17; (h) for securing any case or matter which requires to be decided by a Bench composed of more than two Members under sub-section (4) of section 23; (i) any other matter in respect of which the Commission shall have power under clause (g) of sub-section (2) of section 36; (j) the promotion of competition advocacy, creating awareness and imparting training about competition issues under sub-section (3) of section 49; (k) the form in which the annual statement of accounts shall be prepared under sub-section (1) of section 52; (l) the time within which and the form and manner in which the Commission may furnish returns, statements and such particulars as the Central Government may require under sub-section (1) of section 53; (m) the form in which and the time within which the annual report shall be prepared under sub-section (2) of section 53; (n) the manner in which the monies transferred to the Central Government shall be dealt with by that Government under the fourth proviso to sub-section (2) of section 66; (o) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be, or may be, made by rules. (3) Every notification issued under sub-section (3) of section 20 and section 54 and every rule made under this Act by the Central Government shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for 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 notification or rule, or both Houses agree that the notification should not be issued or
rule should not be made, the notifica-
tion or 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 preju-
dice to the validity of anything previ-
ously done under that notification or
rule, as the case may be. 64. Power
to make regulations.- (1) The Com-
mission may, by notification, make
regulations consistent with this Act
and the rules made thereunder to
carry out the purposes of this Act.
(2) In particular, and without preju-
dice to the generality of the forego-
ing provisions, such regulations may
provide for all or any of the follow-
ing matters, namely:- (a) the cost of
production to be determined under
clause (b) of the Explanation to sec-
tion 4; (b) the form of notice as may
be specified and the fee which may
be determined under sub-section (2)
of section 6; (c) the form in which de-
tails of the acquisition shall be filed
under sub-section (5) of section 6;
(d) the fee which may be determined
under clause (a) of sub-section (1)
of section 19; (e) any other matter in
respect of which provision is to be, or
may be, made by regulations. (3) Ev-
ery regulation made under this Act
shall be laid, as soon as may be af-
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 sess ons,
and if, before the expiry of the ses-
sion immediately following the ses-
sion or the successive sessions afore-
said, both Houses agree in making
any modification in the regulation, or
both Houses agree that the regula-
tion should not be made, the regulat
on 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 va-
lidity of anything previously done un-
der that regulation. 65. Power
to remove difficulties.- (1) If any diffi-
culty 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 s may appear
to it to be necessary for removing
the difficulty: Provided that no such
order shall be made under this sec-
tion after the expiry of a period of
two years from the commencement
of this Act. (2) Every order made
under this section shall be laid, as
soon as may be after it is made, be-
fore each House of Parliament. 66.
Repeal and saving.- (1) The Monop-
olies and Restrictive Trade Practices
Act, 1969 (54 of 1969) is hereby re-
pealed and the Monopolies and Re-
strictive Trade Practices Commission
established under sub-section (1)
of section 5 of the said Act (here-
inafter referred to as the repealed Act)
shall stand dissolved. (2) On the
dissolution of the Monopolies and
Restrictive Trade Practices Commis-
sion, the person appointed as the
Chairman of the Monopolies and Re-
strictive Trade Practices Commission
and every other person appointed
as Member and Director General of
Investigation and Registration, Ad-
ditional, Joint, Deputy, or Assistant
Directors General of Investigation
and Registration and any officer and other employee of that Commission and holding office as such immediately before such dissolution shall vacate their respective offices and such Chairman and other Members shall be entitled to claim compensation not exceeding three months’ pay and allowances for the premature termination of term of their office or of any contract of service: Provided that the Director General of Investigation and Registration, Additional, Joint, Deputy or Assistant Directors General of Investigation and Registration or any officer or other employee who has been, immediately before the dissolution of the Monopolies and Restrictive Trade Practices Commission appointed on deputation basis to the Monopolies and Restrictive Trade Practices Commission, shall, on such dissolution, stand reverted to his parent cadre, Ministry or Department, as the case may be: Provided further that the Director General of Investigation and Registration, Additional, Joint, Deputy or Assistant Directors General of Investigation and Registration or any officer or other employee who has been, immediately before the dissolution of the Monopolies and Restrictive Trade Practices Commission, employed on regular basis by the Monopolies and Restrictive Trade Practices Commission, shall become, on and from such dissolution, the officer and employee, respectively, of the Central Government with the same rights and privileges as to pension, gratuity and other like matters as would have been admissible to him if the rights in relation to such Monopolies and Restrictive Trade Practices Commission had not been continue to do so unless and until his employment in the Central Government is duly terminated or until his remuneration, terms and conditions of employment are duly altered by that Government: transferred to, and vested in, the Central Government and shall Provided also that notwithstanding anything contained in the Industrial Disputes Act, 1947 (14 of 1947), or in any other law for the time being in force, the transfer of the services of any Director General of Investigation and Registration, Additional, Joint, Deputy or Assistant Directors General of Investigation and Registration or any officer or other employee, employed in the Monopolies and Restrictive Trade Practices Commission, to the Central Government shall not entitle such Director General of Investigation and Registration, Additional, Joint, Deputy or Assistant Directors General of Investigation and Registration or any officer or other employee, employed in the Monopolies and Restrictive Trade Practices Commission, to the Central Government shall not entitle such Director General of Investigation and Registration, Additional, Joint, Deputy or Assistant Directors General of Investigation and Registration or any officer or other employee any compensation under this Act or any other law for the time being in force and no such claim shall be entertained by any court, tribunal or other authority: Provided also that where the Monopolies and Restrictive Trade Practices Commission has established a provident fund, superannuation, welfare or other fund for the benefit of the Director General of Investigation and Registration, Additional, Joint, Deputy or Assistant Directors General of Investigation and Registration or the officers and other employees employed in the Monopolies and Restrictive Trade Practices Commis-

The Competition Act, 2002
sion, the monies relatable to the officers and other employees whose services have been transferred by or under this Act to the Central Government shall, out of the monies standing, on the dissolution of the Monopolies and Restrictive Trade Practices Commission to the credit of such provident fund, superannuation, welfare or other fund, stand transferred to, and vest in, the Central Government and such monies which stand so transferred shall be dealt with by the said Government in such manner as may be prescribed. (3) All cases pertaining to monopolistic trade practices or restrictive trade practices pending before the Monopolies and Restrictive Trade Practices Commission on or before the commencement of this Act, including such cases, in which any unfair trade practice has also been alleged, shall, on such commencement, stand transferred to the Competition Commission of India and shall be adjudicated by that Commission in accordance with the provisions of the repealed Act as if that Act had not been repealed. (4) Subject to the provisions of sub-section (3), all cases pertaining to unfair trade practices other than those referred to in clause (x) of sub-section (1) of section 36A of the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969) and pending before the Monopolies and Restrictive Trade Practices Commission on or before the commencement of this Act shall, on such commencement, stand transferred to the Competition Commission of India and the Competition Commission of India shall dispose of such cases as if they were cases filed under that Act. (5) All cases pertaining to unfair trade practices referred to in clause (x) of sub-section (1) of section 36A of the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969) and pending before the Monopolies and Restrictive Trade Practices Commission on or before the commencement of this Act shall, on such commencement, stand transferred to the Competition Commission of India, and the Competition Commission of India shall dispose of such cases as if they were cases filed under that Act. (6) All investigations or proceedings, other than those relating to unfair trade practices, pending before the Director General of Investigation and Registration on or before the commencement of this Act shall, on such commencement, stand transferred to the Competition Commission of India, and the Competition Commission of India may conduct or order for conduct of such investigation or proceedings in the manner as it deems fit. (7) All investigations or proceedings, relating to unfair trade practices, other than those referred to in clause (x) of sub-section (1) of section 36A of the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969) and
pending before the Director General of Investigation and Registration on or before the commencement of this Act shall, on such commencement, stand transferred to the National Commission constituted under the Consumer Protection Act, 1986 (68 of 1986) and the National Commission may conduct or order for conduct of such investigation or proceedings in the manner as it deems fit.

(8) All investigations or proceedings relating to unfair trade practices referred to in clause (x) of sub-section (1) of section 36A of the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969), and pending before the Director General of Investigation and Registration on or before the commencement of this Act shall, on such commencement, stand transferred to the Competition Commission of India and the Competition Commission of India may conduct or order for conduct of such investigation in the manner as it deems fit.

(9) Save as otherwise provided under sub-sections (3) to (8), all cases or proceedings pending before the Monopolies and Restrictive Trade Practices Commission shall abate.

(10) The mention of the particular matters referred to in sub-sections (3) to (8) 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. — K. N. CHATURVEDI, Additional Secy. to the Govt. of India.
Chapter 31

The Right To Information Act, 2005

THE RIGHT TO INFORMATION ACT, 2005

NO. 22 OF 2005 [ 15th June, 2005.]

An Act to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and State Information Commissions and for matters connected therewith or incidental thereto.

WHEREAS the Constitution of India has established democratic Republic;

AND WHEREAS democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed;

AND WHEREAS revelation of information in actual practice is likely to conflict with other public interests including efficient operations of the Governments, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information;

AND WHEREAS it is necessary to harmonise these conflicting interests while preserving the paramountcy of the democratic ideal;

NOW, THEREFORE, it is expedient to provide for furnishing certain information to citizens who desire to have it.

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

CHAPTER I

PRELIMINARY
I CHAPTER I PRELIMINARY

1. Short title, extent and commencement.- (1) This Act may be called the Right to Information Act, 2005. (2) It extends to the whole of India except the State of Jammu and Kashmir. (3) The provisions of sub-section (1) of section 4, sub-sections (1) and (2) of section 5, sections 12, 13, 15, 16, 24, 27 and 28 shall come into force at once, and the remaining provisions of this Act shall come into force on the one hundred and twentieth day of its enactment. 2. Definitions.- In this Act, unless the context otherwise requires,- (a) “appropriate Government” means in relation to a public authority which is established, constituted, owned, controlled or substantially financed by funds provided directly or indirectly- (i) by the Central Government or the Union territory administration, the Central Government; (ii) by the State Government, the State Government; (b) “Central Information Commission” means the Central Information Commission constituted under sub-section (1) of section 12; (c) “Central Public Information Officer” means the Central Public Information Officer designated under sub-section (1) and includes a Central Assistant Public Information Officer designated as such under sub-section (2) of section 5; (d) “Chief Information Commissioner” and “Information Commissioner” mean the Chief Information Commissioner and Information Commissioner appointed under sub-section (3) of section 12; (e) “competent authority” means- (i) the Speaker in the case of the House of the People or the Legislative Assembly of a State or a Union territory having such Assembly and the Chairman in the case of the Council of States or Legislative Council of a State; (ii) the Chief Justice of India in the case of the Supreme Court; (iii) the Chief Justice of the High Court in the case of a High Court; (iv) the President or the Governor, as the case may be, in the case of other authorities established or constituted by or under the Constitution; (v) the administrator appointed under article 239 of the Constitution; (f) “information” means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force; (g) “prescribed” means prescribed by rules made under this Act by the appropriate Government or the competent authority, as the case may be; (h) “public authority” means any authority or body or institution of self-government established or constituted- (a) by or under the Constitution; (b) by any other law made by Parliament; (c) by any other law made by State Legislature; (d) by notification issued or order made by the appropriate Government, and includes any- (i) body owned, controlled or substantially
financed; (ii) non-Government organisation substantially financed, directly or indirectly by funds provided by the appropriate Government; (i) “record” includes- (a) any document, manuscript and file; (b) any microfilm, microfiche and facsimile copy of a document; (c) any reproduction of image or images embodied in such microfilm (whether enlarged or not); and (d) any other material produced by a computer or any other device; (j) “right to information” means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to- (i) inspection of work, documents, records; (ii) taking notes, extracts or certified copies of documents or records; (iii) taking certified samples of material; (iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device; (k) “State Information Commission” means the State Information Commission constituted under sub-section (1) of section 15; (l) “State Chief Information Commissioner” and “State Information Commissioner” mean the State Chief Information Commissioner and the State Information Commissioner appointed under subsection (3) of section 15; (m) “State Public Information Officer” means the State Public Information Officer designated under sub-section (1) and includes a State Assistant Public Information Officer designated as such under sub-section (2) of section 5; (n) “third party” means a person other than the citizen making a request for information and includes a public authority.

II CHAPTER II RIGHT TO INFORMATION AND OBLIGATIONS OF PUBLIC AUTHORITIES

CHAPTER II RIGHT TO INFORMATION AND OBLIGATIONS OF PUBLIC AUTHORITIES

3. Right to information.- Subject to the provisions of this Act, all citizens shall have the right to information. 4. Obligations of public authorities.- (1) Every public authority shall- (a) maintain all its records duly catalogued and indexed in a manner and the form which facilitates the right to information under this Act and ensure that all records that are appropriate to be computerised are, within a reasonable time and subject to availability of resources, computerised and connected through a network all over the country on different systems so that access to such records is facilitated; (b) publish within one hundred and twenty days from the enactment of this Act,- (i) the particulars of its organisation, functions and duties; (ii) the powers and duties of its officers and employees; (iii) the procedure followed in the decision making process, including channels of supervision and accountability; (iv) the norms set by it for the discharge of its functions; (v)
The Right To Information Act, 2005

the rules, regulations, instructions, manuals and records, held by it or under its control or used by its employees for discharging its functions; (vi) a statement of the categories of documents that are held by it or under its control; (vii) the particulars of any arrangement that exists for consultation with, or representation by, the members of the public in relation to the formulation of its policy or implementation thereof; (viii) a statement of the boards, councils, committees and other bodies consisting of two or more persons constituted as its part or for the purpose of its advice, and as to whether meetings of those boards, councils, committees and other bodies are open to the public, or the minutes of such meetings are accessible for public; (ix) a directory of its officers and employees; (x) the monthly remuneration received by each of its officers and employees, including the system of compensation as provided in its regulations; (xi) the budget allocated to each of its agency, indicating the particulars of all plans, proposed expenditures and reports on disbursements made; (xii) the manner of execution of subsidy programmes, including the amounts allocated and the details of beneficiaries of such programmes; (xiii) particulars of recipients of concessions, permits or authorisations granted by it; (xiv) details in respect of the information, available to or held by it, reduced in an electronic form; (xv) the particulars of facilities available to citizens for obtaining information, including the working hours of a library or reading room, if maintained for public use; (xvi) the names, designations and other particulars of the Public Information Officers; (xvii) such other information as may be prescribed; and thereafter update these publications every year; (c) publish all relevant facts while formulating important policies or announcing the decisions which affect public; (d) provide reasons for its administrative or quasi-judicial decisions to affected persons. (2) It shall be a constant endeavour of every public authority to take steps in accordance with the requirements of clause (b) of sub-section (1) to provide as much information suo motu to the public at regular intervals through various means of communications, including internet, so that the public have minimum resort to the use of this Act to obtain information. (3) For the purposes of sub-section (1), every information shall be disseminated widely and in such form and manner which is easily accessible to the public. (4) All materials shall be disseminated taking into consideration the cost effectiveness, local language and the most effective method of communication in that local area and the information should be easily accessible, to the extent possible in electronic format with the Central Public Information Officer or State Public Information Officer, as the case may be, available free or at such cost of the medium or the print cost price as may be prescribed. Explanation.—For the purposes of sub-sections (3) and (4), “disseminated” means making known or communicated the information to the public through notice boards, newspapers, public an-
nouncements, media broadcasts, the internet or any other means, including inspection of offices of any public authority. 5. Designation of Public Information Officers.- (1) Every public authority shall, within one hundred days of the enactment of this Act, designate as many officers as the Central Public Information Officers or State Public Information Officers, as the case may be, in all administrative units or offices under it as may be necessary to provide information to persons requesting for the information under this Act. (2) Without prejudice to the provisions of sub-section (1), every public authority shall designate an officer, within one hundred days of the enactment of this Act, at each sub-divisional level or other sub- district level as a Central Assistant Public Information Officer or a State Assistant Public Information Officer, as the case may be, to receive the applications for information or appeals under this Act for forwarding the same forthwith to the Central Public Information Officer or the State Public Information Officer or senior officer specified under sub- section (1) of section 19 or the Central Information Commission or the State Information Commission, as the case may be: Provided that where an application for information or appeal is given to a Central Assistant Public Information Officer or a State Assistant Public Information Officer, as the case may be, a period of five days shall be added in computing the period for response specified under sub- section (1) of section 7. (3) Every Central Public Information Officer or State Public Information Officer, as the case may be, shall deal with requests from persons seeking information and render reasonable assistance to the persons seeking such information. (4) The Central Public Information Officer or State Public Information Officer, as the case may be, may seek the assistance of any other officer as he or she considers it necessary for the proper discharge of his or her duties. (5) Any officer, whose assistance has been sought under sub- section (4), shall render all assistance to the Central Public Information Officer or State Public Information Officer, as the case may be, seeking his or her assistance and for the purposes of any contravention of the provisions of this Act, such other officer shall be treated as a Central Public Information Officer or State Public Information Officer, as the case may be. 6. Request for obtaining information.- (1) A person, who desires to obtain any information under this Act for forwarding the same forthwith to the Central Public Information Officer or the State Public Information Officer or senior officer specified under sub- section (1) of section 19 or the Central Information Commission or the State Information Commission, as the case may be: Provided that where an application for information or appeal is given to a Central Assistant Public Information Officer or a State Assistant Public Information Officer, as the case may be, a period of five days shall be added in computing the period for response specified under sub- section (1) of section 7. (3) Every Central Public Information Officer or State Pub-
lic Information Officer, as the case may be, shall render all reasonable assistance to the person making the request orally to reduce the same in writing. (2) An applicant making request for information shall not be required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him. (3) Where an application is made to a public authority requesting for an information,- (i) which is held by another public authority; or (ii) the subject matter of which is more closely connected with the functions of another public authority, the public authority, to which such application is made, shall transfer the application or such part of it as may be appropriate to that other public authority and inform the applicant immediately about such transfer: Provided that the transfer of an application pursuant to this sub-section shall be made as soon as practicable but in no case later than five days from the date of receipt of the application. 7. Disposal of request.- (1) Subject to the proviso to subsection (2) of section 5 or the proviso to sub-section (3) of section 6, the Central Public Information Officer or State Public Information Officer, as the case may be, on receipt of a request under section 6 shall, as expeditiously as possible, and in any case within thirty days of the receipt of the request, either provide the information on payment of such fee as may be prescribed or reject the request for any of the reasons specified in sections 8 and 9: Provided that where the information sought for concerns the life or liberty of a person, the same shall be provided within forty-eight hours of the receipt of the request. (2) If the Central Public Information Officer or State Public Information Officer, as the case may be, fails to give decision on the request for information within the period specified under sub-section (1), the Central Public Information Officer or State Public Information Officer, as the case may be, shall be deemed to have refused the request. (3) Where a decision is taken to provide the information on payment of any further fee representing the cost of providing the information, the Central Public Information Officer or State Public Information Officer, as the case may be, shall send an intimation to the person making the request, giving- (a) the details of further fees representing the cost of providing the information as determined by him, together with the calculations made to arrive at the amount in accordance with fee prescribed under sub-section (1), requesting him to deposit that fees, and the period intervening between the despatch of the said intimation and payment of fees shall be excluded for the purpose of calculating the period of thirty days referred to in that sub-section; (b) information concerning his or her right with respect to review the decision as to the amount of fees charged or the form of access provided, including the particulars of the appellate authority, time limit, process and any other forms. (4) Where access to the record or a part thereof is required to be provided under this Act and the person
to whom access is to be provided is sensorily disabled, the Central Public Information Officer or State Public Information Officer, as the case may be, shall provide assistance to enable access to the information, including providing such assistance as may be appropriate for the inspection. (5) Where access to information is to be provided in the printed or in any electronic format, the applicant shall, subject to the provisions of sub-section (6), pay such fee as may be prescribed: Provided that the fee prescribed under sub-section (1) of section 6 and sub-sections (1) and (5) of section 7 shall be reasonable and no such fee shall be charged from the persons who are of below poverty line as may be determined by the appropriate Government. (6) Notwithstanding anything contained in sub-section (5), the person making request for the information shall be provided the information free of charge where a public authority fails to comply with the time limits specified in sub-section (1). (7) Before taking any decision under sub-section (1), the Central Public Information Officer or State Public Information Officer, as the case may be, shall take into consideration the representation made by a third party under section 11. (8) Where a request has been rejected under sub-section (1), the Central Public Information Officer or State Public Information Officer, as the case may be, shall communicate to the person making the request, (i) the reasons for such rejection; (ii) the period within which an appeal against such rejection may be preferred; and (iii) the particulars of the appellate authority. (9) An information shall ordinarily be provided in the form in which it is sought unless it would disproportionately divert the resources of the public authority or would be detrimental to the safety or preservation of the record in question. 8. Exemption from disclosure of information.- (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen, (a) information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence; (b) information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court; (c) information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature; (d) information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information; (e) information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information; (f) information received in confidence from foreign Government; (g) information, the disclosure of which would endanger the life or physical safety of any person or identify the
The Right To Information Act, 2005

source of information or assistance given in confidence for law enforcement or security purposes; (h) information which would impede the process of investigation or apprehension or prosecution of offenders; (i) cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers: Provided that the decisions of Council of Ministers, the reasons thereof, and the material on the basis of which the decisions were taken shall be made public after the decision has been taken, and the matter is complete, or over: Provided further that those matters which come under the exemptions specified in this section shall not be disclosed; (j) information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information: Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person. (2) Notwithstanding anything in the Official Secrets Act, 1923 (19 of 1923) nor any of the exemptions permissible in accordance with sub-section (1), any information relating to any occurrence, event or matter which has taken place, occurred or happened twenty years before the date on which any request is made under section 6 shall be provided to any person making a request under that section: Provided that where any question arises as to the date from which the said period of twenty years has to be computed, the decision of the Central Government shall be final, subject to the usual appeals provided for in this Act. 9. Grounds for rejection to access in certain cases.- Without prejudice to the provisions of section 8, a Central Public Information Officer or a State Public Information Officer, as the case may be, may reject a request for information where such a request for providing access would involve an infringement of copyright subsisting in a person other than the State. 10. Severability.- (1) Where a request for access to information is rejected on the ground that it is in relation to information which is exempt from disclosure, then, notwithstanding anything contained in this Act, access may be provided to that part of the record which does not contain any information which is exempt from disclosure under this Act and which can reasonably be severed from any part that contains exempt information. (2) Where access is granted to a part of the record under sub-section (1), the Central Public Information Officer or State Public Information Officer, as the case may be, shall give a notice to the applicant, informing- (a) that only part of the record requested, after severance
of the record containing information which is exempt from disclosure, is being provided; (b) the reasons for the decision, including any findings on any material question of fact, referring to the material on which those findings were based; (c) the name and designation of the person giving the decision; (d) the details of the fees calculated by him or her and the amount of fee which the applicant is required to deposit; and (e) his or her rights with respect to review of the decision regarding non-disclosure of part of the information, the amount of fee charged or the form of access provided, including the particulars of the senior officer specified under sub-section (1) of section 19 or the Central Information Commission or the State Information Commission, as the case may be, time limit, process and any other form of access.

11. Third party information.- (1) Where a Central Public Information Officer or a State Public Information Officer, as the case may be, intends to disclose any information or record, or part thereof on a request made under this Act, which relates to or has been supplied by a third party and has been treated as confidential by that third party, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within five days from the receipt of the request, give a written notice to such third party of the request and of the fact that the Central Public Information Officer or State Public Information Officer, as the case may be, intends to disclose the information or record, or part thereof, and invite the third party to make a submission in writing or orally, regarding whether the information should be disclosed, and such submission of the third party shall be kept in view while taking a decision about disclosure of information: Provided that except in the case of trade or commercial secrets protected by law, disclosure may be allowed if the public interest in disclosure outweighs in importance any possible harm or injury to the interests of such third party. (2) Where a notice is served by the Central Public Information Officer or State Public Information Officer, as the case may be, under sub-section (1) to a third party in respect of any information or record or part thereof, the third party shall, within ten days from the date of receipt of such notice, be given the opportunity to make representation against the proposed disclosure. (3) Notwithstanding anything contained in section 7, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within forty days after receipt of the request under section 6, if the third party has been given an opportunity to make representation under sub-section (2), make a decision as to whether or not to disclose the information or record or part thereof and give in writing the notice of his decision to the third party. (4) A notice given under sub-section (3) shall include a statement that the third party to whom the notice is given is entitled to prefer an appeal under section 19 against the decision.
CHAPTER III THE CENTRAL INFORMATION COMMISSION

Constitution of Central Information Commission.- (1) The Central Government shall, by notification in the Official Gazette, constitute a body to be known as the Central Information Commission to exercise the powers conferred on, and to perform the functions assigned to, it under this Act. (2) The Central Information Commission shall consist of-(a) the Chief Information Commissioner; and (b) such number of Central Information Commissioners, not exceeding ten, as may be deemed necessary. (3) The Chief Information Commissioner and Information Commissioners shall be appointed by the President on the recommendation of a committee consisting of-(i) the Prime Minister, who shall be the Chairperson of the committee; (ii) the Leader of Opposition in the Lok Sabha; and (iii) a Union Cabinet Minister to be nominated by the Prime Minister. Explanation.- For the purposes of removal of doubts, it is hereby declared that where the Leader of Opposition in the House of the People has not been recognised as such, the Leader of the single largest group in opposition of the Government in the House of the People shall be deemed to be the Leader of Opposition. (4) The general superintendence, direction and management of the affairs of the Central Information Commission shall vest in the Chief Information Commissioner who shall be assisted by the Information Commissioners and may exercise all such powers and do all such acts and things which may be exercised or done by the Central Information Commission autonomously without being subjected to directions by any other authority under this Act. (5) The Chief Information Commissioner and Information Commissioners shall be persons of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance. (6) The Chief Information Commissioner or an Information Commissioner shall not be a Member of Parliament or Member of the Legislature of any State or Union territory, as the case may be, or hold any other office of profit or connected with any political party or carrying on any business or pursuing any profession. (7) The headquarters of the Central Information Commission shall be at Delhi and the Central Information Commission may, with the previous approval of the Central Government, establish offices at other places in India. 13. Term of office and conditions of service.- (1) The Chief Information Commissioner shall hold office for a term of five years from the date on which he enters upon his office and shall not be eligible for reappointment: Provided that no Chief Information Commissioner shall hold office as such after he has attained the age of sixty-
five years. (2) Every Information Commissioner shall hold office for a term of five years from the date on which he enters upon his office or till he attains the age of sixty-five years, whichever is earlier, and shall not be eligible for reappointment as such Information Commissioner: Provided that every Information Commissioner shall, on vacating his office under this sub-section be eligible for appointment as the Chief Information Commissioner in the manner specified in sub-section (3) of section 12: Provided further that where the Information Commissioner is appointed as the Chief Information Commissioner, his term of office shall not be more than five years in aggregate as the Information Commissioner and the Chief Information Commissioner. (3) The Chief Information Commissioner or an Information Commissioner shall before he enters upon his office make and subscribe before the President or some other person appointed by him in that behalf, an oath or affirmation according to the form set out for the purpose in the First Schedule. (4) The Chief Information Commissioner or an Information Commissioner may, at any time, by writing under his hand addressed to the President, resign from his office: Provided that the Chief Information Commissioner or an Information Commissioner may be removed in the manner specified under section 14. (5) The salaries and allowances payable to and other terms and conditions of service of- (a) the Chief Information Commissioner shall be the same as that of the Chief Election Commissioner; (b) an Information Commissioner shall be the same as that of an Election Commissioner: Provided that if the Chief Information Commissioner or an Information Commissioner, at the time of his appointment is, in receipt of a pension, other than a disability or wound pension, in respect of any previous service under the Government of India or under the Government of a State, his salary in respect of the service as the Chief Information Commissioner or an Information Commissioner shall be reduced by the amount of that pension including any portion of pension which was commuted and pension equivalent of other forms of retirement benefits excluding pension equivalent of retirement gratuity: Provided further that if the Chief Information Commissioner or an Information Commissioner if, at the time of his appointment is, in receipt of retirement benefits in respect of any previous service rendered in a Corporation established by or under any Central Act or State Act or a Government company owned or controlled by the Central Government or the State Government, his salary in respect of the service as the Chief Information Commissioner or an Information Commissioner shall be reduced by the amount of pension equivalent to the retirement benefits: Provided also that the salaries, allowances and other conditions of service of the Chief Information Commissioner and the Information Commissioners shall not be varied to their disadvantage after their appointment. (6) The Central Govern-
The Right To Information Act, 2005

...ment shall provide the Chief Information Commissioner and the Information Commissioners with such officers and employees as may be necessary for the efficient performance of their functions under this Act, and the salaries and allowances payable to and the terms and conditions of service of the officers and other employees appointed for the purpose of this Act shall be such as may be prescribed.

14. Removal of Chief Information Commissioner or Information Commissioner.- (1) Subject to the provisions of sub-section (3), the Chief Information Commissioner or any Information Commissioner shall be removed from his office only by order of the President on the ground of proved misbehaviour or incapacity after the Supreme Court, on a reference made to it by the President, has, on inquiry, reported that the Chief Information Commissioner or any Information Commissioner, as the case may be, ought on such ground be removed. (2) The President may suspend from office, and if deem necessary prohibit also from attending the office during inquiry, the Chief Information Commissioner or Information Commissioner in respect of whom a reference has been made to the Supreme Court under sub-section (1) until the President has passed orders on receipt of the report of the Supreme Court on such reference. (3) Notwithstanding anything contained in sub-section (1), the President may by order remove from office the Chief Information Commissioner or any Information Commissioner if the Chief Information Commissioner or a Information Commissioner, as the case may be,- (a) is adjudged an insolvent; or (b) has been convicted of an offence which, in the opinion of the President, involves moral turpitude; or (c) engages during his term of office in any paid employment outside the duties of his office; or (d) is, in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body; or (e) has acquired such financial or other interest as is likely to affect prejudicially his functions as the Chief Information Commissioner or a Information Commissioner. (4) If the Chief Information Commissioner or a Information Commissioner in any way, concerned or interested in any contract or agreement made by or on behalf of the Government of India or participates in any way in the profit thereof or in any benefit or emolument arising therefrom otherwise than as a member and in common with the other members of an incorporated company, he shall, for the purposes of sub-section (1), be deemed to be guilty of misbehaviour.

IV CHAPTER IV

THE STATE INFORMATION COMMISSION

CHAPTER IV THE STATE INFORMATION COMMISSION

15. Constitution of State Information Commission.- (1) Every State Government shall, by notification in the Official Gazette, constitute a body to be known as the........ (name of the State) Information Commission.
CHAPTER IV THE STATE INFORMATION COMMISSION

395

The State Information Commission has been established under Article 35-F to exercise the powers conferred on, and to perform the functions assigned to, it under this Act. (2) The State Information Commission shall consist of- (a) the State Chief Information Commissioner, and (b) such number of State Information Commissioners, not exceeding ten, as may be deemed necessary. (3) The State Chief Information Commissioner and the State Information Commissioners shall be appointed by the Governor on the recommendation of a committee consisting of- (i) the Chief Minister, who shall be the Chairperson of the committee; (ii) the Leader of Opposition in the Legislative Assembly; and (iii) a Cabinet Minister to be nominated by the Chief Minister. Explanation.- For the purposes of removal of doubts, it is hereby declared that where the Leader of Opposition in the Legislative Assembly has not been recognised as such, the Leader of the single largest group in opposition of the Government in the Legislative Assembly shall be deemed to be the Leader of Opposition. (4) The general superintendence, direction and management of the affairs of the State Information Commission shall vest in the State Chief Information Commissioner who shall be assisted by the State Information Commissioners and may exercise all such powers and do all such acts and things which may be exercised or done by the State Information Commission autonomously without being subjected to directions by any other authority under this Act. (5) The State Chief Information Commissioner and the State Information Commissioners shall be persons of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance. (6) The State Chief Information Commissioner or a State Information Commissioner shall not be a Member of Parliament or Member of the Legislature of any State or Union territory, as the case may be, or hold any other office of profit or connected with any political party or carrying on any business or pursuing any profession. (7) The headquarters of the State Information Commission shall be at such place in the State as the State Government may, by notification in the Official Gazette, specify and the State Information Commission may, with the previous approval of the State Government, establish offices at other places in the State. 16. Term of office and conditions of service.- (1) The State Chief Information Commissioner shall hold office for a term of five years from the date on which he enters upon his office and shall not be eligible for reappointment: Provided that no State Chief Information Commissioner shall hold office as such after he has attained the age of sixty-five years. (2) Every State Information Commissioner shall hold office for a term of five years from the date on which he enters upon his office or till he attains the age of sixty-five years, whichever is earlier, and shall not be eligible for reappointment as such State Information Commissioner: Provided that every State Information Commissioner shall, on vacating his office,
office under this sub-section, be eligible for appointment as the State Chief Information Commissioner in the manner specified in sub-section (3) of section 15: Provided further that where the State Information Commissioner is appointed as the State Chief Information Commissioner, his term of office shall not be more than five years in aggregate as the State Information Commissioner and the State Chief Information Commissioner. (3) The State Chief Information Commissioner or a State Information Commissioner, shall before he enters upon his office make and subscribe before the Governor or some other person appointed by him in that behalf, an oath or affirmation according to the form set out for the purpose in the First Schedule. (4) The State Chief Information Commissioner or a State Information Commissioner may, at any time, by writing under his hand addressed to the Governor, resign from his office: Provided that the State Chief Information Commissioner or a State Information Commissioner may be removed in the manner specified under section 17. (5) The salaries and allowances payable to and other terms and conditions of service of- (a) the State Chief Information Commissioner shall be the same as that of an Election Commissioner; (b) the State Information Commissioner shall be the same as that of the Chief Secretary to the State Government: Provided that if the State Chief Information Commissioner or a State Information Commissioner, at the time of his appointment is, in receipt of a pension, other than a disability or wound pension, in respect of any previous service under the Government of India or under the Government of a State, his salary in respect of the service as the State Chief Information Commissioner or a State Information Commissioner shall be reduced by the amount of that pension including any portion of pension which was commuted and pension equivalent of other forms of retirement benefits excluding pension equivalent of retirement gratuity: Provided further that where the State Chief Information Commissioner or a State Information Commissioner if, at the time of his appointment is, in receipt of retirement benefits in respect of any previous service rendered in a Corporation established by or under any Central Act or State Act or a Government company owned or controlled by the Central Government or the State Government, his salary in respect of the service as the State Chief Information Commissioner or the State Information Commissioner shall be reduced by the amount of pension equivalent to the retirement benefits: Provided also that the salaries, allowances and other conditions of service of the State Chief Information Commissioner and the State Information Commissioners shall not be varied to their disadvantage after their appointment. (6) The State Government shall provide the State Chief Information Commissioner and the State Information Commissioners with such officers and employees as may be necessary for the efficient performance of their functions under this Act, and the salaries
and allowances payable to and the terms and conditions of service of the officers and other employees appointed for the purpose of this Act shall be such as may be prescribed.

17. Removal of State Chief Information Commissioner or State Information Commissioner.- (1) Subject to the provisions of sub-section (3), the State Chief Information Commissioner or a State Information Commissioner shall be removed from his office only by order of the Governor on the ground of proved misbehaviour or incapacity after the Supreme Court, on a reference made to it by the Governor, has on inquiry, reported that the State Chief Information Commissioner or a State Information Commissioner, as the case may be, ought on such ground be removed. (2) The Governor may suspend from office, and if deem necessary prohibit also from attending the office during inquiry, the State Chief Information Commissioner or a State Information Commissioner in respect of whom a reference has been made to the Supreme Court under sub-section (1) until the Governor has passed orders on receipt of the report of the Supreme Court on such reference. (3) Notwithstanding anything contained in sub-section (1), the Governor may by order remove from office the State Chief Information Commissioner or a State Information Commissioner if a State Chief Information Commissioner or a State Information Commissioner, as the case may be,- (a) is adjudged an insolvent; or (b) has been convicted of an offence which, in the opinion of the Governor, involves moral turpitude; or (c) engages during his term of office in any paid employment outside the duties of his office; or (d) is, in the opinion of the Governor, unfit to continue in office by reason of infirmity of mind or body; or (e) has acquired such financial or other interest as is likely to affect prejudicially his functions as the State Chief Information Commissioner or a State Information Commissioner. (4) If the State Chief Information Commissioner or a State Information Commissioner in any way, concerned or interested in any contract or agreement made by or on behalf of the Government of the State or participates in any way in the profit thereof or in any benefit or emoluments arising therefrom otherwise than as a member and in common with the other members of an incorporated company, he shall, for the purposes of sub-section (1), be deemed to be guilty of misbehaviour.

V CHAPTER V POWERS AND FUNCTIONS OF THE INFORMATION COMMISSIONS, APPEAL AND PENALTIES
the duty of the Central Information Commission or State Information Commission, as the case may be, to receive and inquire into a complaint from any person. (a) who has been unable to submit a request to a Central Public Information Officer or State Public Information Officer, as the case may be, has refused to accept his or her application for information or appeal under this Act for forwarding the same to the Central Public Information Officer or State Public Information Officer or senior officer specified in sub-section (1) of section 19 or the Central Information Commission or the State Information Commission, as the case may be; (b) who has been refused access to any information requested under this Act; (c) who has not been given a response to a request for information or access to information within the time limit specified under this Act; (d) who has been required to pay an amount of fee which he or she considers unreasonable; (e) who believes that he or she has been given incomplete, misleading or false information under this Act; and (f) in respect of any other matter relating to requesting or obtaining access to records under this Act. (2) Where the Central Information Commission or State Information Commission, as the case may be, is satisfied that there are reasonable grounds to inquire into the matter, it may initiate an inquiry in respect thereof. (3) The Central Information Commission or State Information Commission, as the case may be, shall, while inquiring into any matter under this section, have the same 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 compel them to give oral or written evidence on oath and to produce the documents or things; (b) requiring the discovery and inspection of documents; (c) receiving evidence on affidavit; (d) requisitioning any public record or copies thereof from any court or office; (e) issuing summons for examination of witnesses or documents; and (f) any other matter which may be prescribed. (4) Notwithstanding anything inconsistent contained in any other Act of Parliament or State Legislature, as the case may be, the Central Information Commission or the State Information Commission, as the case may be, may, during the inquiry of any complaint under this Act, examine any record to which this Act applies which is under the control of the public authority, and no such record may be withheld from it on any grounds. 19. Appeal.— (1) Any person who, does not receive a decision within the time specified in sub- section (1) or clause (a) of sub-section (3) of section 7, or is aggrieved by a decision of the Central Public Information Officer or State Public Information Officer, as the case may be, may within thirty days from the expiry of such period
or from the receipt of such a decision prefer an appeal to such officer who is senior in rank to the Central Public Information Officer or State Public Information Officer as the case may be, in each public authority: Provided that such officer may admit the appeal after the expiry of the period of thirty days if he or she is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time. (2) Where an appeal is preferred against an order made by a Central Public Information Officer or a State Public Information Officer, as the case may be, under section 11 to disclose third party information, the appeal by the concerned third party shall be made within thirty days from the date of the order. (3) A second appeal against the decision under subsection (1) shall lie within ninety days from the date on which the decision should have been made or was actually received, with the Central Information Commission or the State Information Commission: Provided that the Central Information Commission or the State Information Commission, as the case may be, may admit the appeal after the expiry of the period of ninety days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time. (4) If the decision of the Central Public Information Officer or State Public Information Officer, as the case may be, against which an appeal is preferred relates to information of a third party, the Central Information Commission or State Information Commission, as the case may be, shall give a reasonable opportunity of being heard to that third party. (5) In any appeal proceedings, the onus to prove that a denial of a request was justified shall be on the Central Public Information Officer or State Public Information Officer, as the case may be, who denied the request. (6) An appeal under subsection (1) or subsection (2) shall be disposed of within thirty days of the receipt of the appeal or within such extended period not exceeding a total of forty-five days from the date of filing thereof, as the case may be, for reasons to be recorded in writing. (7) The decision of the Central Information Commission or State Information Commission, as the case may be, shall be binding. (8) In its decision, the Central Information Commission or State Information Commission, as the case may be, has the power to—
(a) require the public authority to take any such steps as may be necessary to secure compliance with the provisions of this Act, including—(i) by providing access to information, if so requested, in a particular form; (ii) by appointing a Central Public Information Officer or State Public Information Officer, as the case may be; (iii) by publishing certain information or categories of information; (iv) by making necessary changes to its practices in relation to the maintenance, management and destruction of records; (v) by enhancing the provision of training on the right to information for its officials; (vi) by providing it with an annual report in compliance with clause (b) of subsection (1) of section 4; (b) require the public authority to compensate the complainant for any loss or other
detriment suffered; (c) impose any of the penalties provided under this Act; (d) reject the application. (9) The Central Information Commission or State Information Commission, as the case may be, shall give notice of its decision, including any right of appeal, to the complainant and the public authority. (10) The Central Information Commission or State Information Commission, as the case may be, shall decide the appeal in accordance with such procedure as may be prescribed. 20. Penalties.- (1) Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has, without any reasonable cause, refused to receive an application for information or has not furnished information within the time specified under sub-section (1) of section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall impose a penalty of two hundred and fifty rupees each day till application is received or information is furnished, so however, the total amount of such penalty shall not exceed twenty-five thousand rupees: Provided that the Central Public Information Officer or the State Public Information Officer, as the case may be, shall be given a reasonable opportunity of being heard before any penalty is imposed on him: Provided further that the burden of proving that he acted reasonably and diligently shall be on the Central Public Information Officer or the State Public Information Officer, as the case may be. (2) Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has, without any reasonable cause and persistently, failed to receive an application for information or has not furnished information within the time specified under sub-section (1) of section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall recommend for disciplinary action against the Central Public Information Officer or the State Public Information Officer, as the case may be, under the service rules applicable to him.

VI CHAPTER VI MISCELLANEOUS

CHAPTER VI MISCELLANEOUS 21. Protection of action taken in good faith.- No suit, prosecution or other legal proceeding shall lie against any person for anything
which is in good faith done or intended to be done under this Act or any rule made thereunder. 22. Act to have overriding effect.- The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923 (19 of 1923), and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act. 23. Bar of jurisdiction of courts.- No court shall entertain any suit, application or other proceeding in respect of any order made under this Act and no such order shall be called in question otherwise than by way of an appeal under this Act. 24. Act not to apply in certain organizations.- (1) Nothing contained in this Act shall apply to the intelligence and security organisations specified in the Second Schedule, being organisations established by the Central Government or any information furnished by such organisations to that Government: Provided that the information pertaining to the allegations of corruption and human rights violations shall not be excluded under this subsection: Provided further that in the case of information sought for is in respect of allegations of violation of human rights, the information shall only be provided after the approval of the Central Information Commission and, notwithstanding anything contained in section 7, such information shall be provided within forty-five days from the date of the receipt of request. (2) The Central Government may, by notification in the Official Gazette, amend the Schedule by including therein any other intelligence or security organisation established by that Government or omitting therefrom any organisation already specified therein and on the publication of such notification, such organisation shall be deemed to be included in or, as the case may be, omitted from the Schedule. (3) Every notification issued under subsection (2) shall be laid before each House of Parliament. (4) Nothing contained in this Act shall apply to such intelligence and security organisation being organisations established by the State Government, as that Government may, from time to time, by notification in the Official Gazette, specify: Provided that the information pertaining to the allegations of corruption and human rights violations shall not be excluded under this subsection: Provided further that in the case of information sought for is in respect of allegations of violation of human rights, the information shall only be provided after the approval of the State Information Commission and, notwithstanding anything contained in section 7, such information shall be provided within forty-five days from the date of the receipt of request. (5) Every notification issued under subsection (4) shall be laid before the State Legislature. 25. Monitoring and reporting.- (1) The Central Information Commission or State Information Commission, as the case may be, shall, as soon as practicable after the end of each year, prepare a report on the implementation of the provisions of this Act during that year and forward a copy thereof to the appropri-
The Right To Information Act, 2005

(2) Each Ministry or Department shall, in relation to the public authorities within their jurisdiction, collect and provide such information to the Central Information Commission or State Information Commission, as the case may be, as is required to prepare the report under this section and comply with the requirements concerning the furnishing of that information and keeping of records for the purposes of this section. (3) Each report shall state in respect of the year to which the report relates:-

(a) the number of requests made to each public authority;
(b) the number of decisions where applicants were not entitled to access to the documents pursuant to the requests, the provisions of this Act under which these decisions were made and the number of times such provisions were invoked;
(c) the number of appeals referred to the Central Information Commission or State Information Commission, as the case may be, to the nature of the appeals and the outcome of the appeals;
(d) particulars of any disciplinary action taken against any officer in respect of the administration of this Act;
(e) the amount of charges collected by each public authority under this Act;
(f) any facts which indicate an effort by the public authorities to administer and implement the spirit and intention of this Act;
(g) recommendations for reform, including recommendations in respect of the particular public authorities, for the development, improvement, modernisation, reform or amendment to this Act or other legislation or common law or any other matter relevant for operationalising the right to access information.

(4) The Central Government or the State Government, as the case may be, may, as soon as practicable after the end of each year, cause a copy of the report of the Central Information Commission or the State Information Commission, as the case may be, referred to in subsection (1) to be laid before each House of Parliament or, as the case may be, before each House of the State Legislature, where there are two Houses, and where there is one House of the State Legislature before that House.

(5) If it appears to the Central Information Commission or State Information Commission, as the case may be, that the practice of a public authority in relation to the exercise of its functions under this Act does not conform with the provisions or spirit of this Act, it may give to the authority a recommendation specifying the steps which ought in its opinion to be taken for promoting such conformity.

26. Appropriate Government to prepare programmes.- (1) The appropriate Government may, to the extent of availability of financial and other resources,-

(a) develop and organise educational programmes to advance the understanding of the public, in particular of disadvantaged communities as to how to exercise the rights contemplated under this Act;
(b) encourage public authorities to participate in the development and organisation of programmes referred to in clause (a) and to undertake such programmes themselves;
(c) promote timely and effective dissemination of accurate information by public au-
(d) train Central Public Information Officers or State Public Information Officers, as the case may be, of public authorities and produce relevant training materials for use by the public authorities themselves.

(2) The appropriate Government shall, within eighteen months from the commencement of this Act, compile in its official language a guide containing such information, in an easily comprehensible form and manner, as may reasonably be required by a person who wishes to exercise any right specified in this Act. (3) The appropriate Government shall, if necessary, update and publish the guidelines referred to in sub-section (2) at regular intervals which shall, in particular and without prejudice to the generality of sub-section (2), include-- (a) the objects of this Act; (b) the postal and street address, the phone and fax number and, if available, electronic mail address of the Central Public Information Officer or State Public Information Officer, as the case may be, of every public authority appointed under sub-section (1) of section 5; (c) the manner and the form in which request for access to an information shall be made to a Central Public Information Officer or State Public Information Officer, as the case may be; (d) the assistance available from and the duties of the Central Public Information Officer or State Public Information Officer, as the case may be, of a public authority under this Act; (e) the assistance available from the Central Information Commission or State Information Commission, as the case may be; (f) all remedies in law available regarding an act or failure to act in respect of a right or duty conferred or imposed by this Act including the manner of filing an appeal to the Commission; (g) the provisions providing for the voluntary disclosure of categories of records in accordance with section 4; (h) the notices regarding fees to be paid in relation to requests for access to an information; and (i) any additional regulations or circulars made or issued in relation to obtaining access to an information in accordance with this Act. (4) The appropriate Government must, if necessary, update and publish the guidelines at regular intervals.

27. Power to make rules by appropriate Government.-- (1) The appropriate Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act. (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 cost of the medium or print cost price of the materials to be disseminated under sub-section (4) of section 4; (b) the fee payable under sub-section (1) of section 6; (c) the fee payable under sub-sections (1) and (5) of section 7; (d) the salaries and allowances payable to and the terms and conditions of service of the officers and other employees under sub-section (6) of section 13 and sub-section (6) of section 16; (e) the procedure to be adopted by the Central Information Commission or State Information Commission, as the case may be, in deciding the appeals un-
under sub-section (10) of section 19; and (f) any other matter which is required to be, or may be, prescribed.

28. Power to make rules by competent authority.- (1) The competent authority may, by notification in the Official Gazette, make rules to carry out the provisions of this Act. (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 cost of the medium or print cost price of the materials to be disseminated under sub-section (4) of section 4; (ii) the fee payable under sub-section (1) of section 6; (iii) the fee payable under sub-section (1) of section 7; and (iv) any other matter which is required to be, or may be, prescribed.

29. Laying of rules.- (1) Every rule made by the Central Government 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. (2) Every rule made under this Act by a State Government shall be laid, as soon as may be after it is notified, before the State Legislature.

30. 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 removal of the difficulty: Provided that no such order shall be made after the expiry of a period of two years from the date of the commencement of this Act. (2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.


The Right To Information Act, 2005

THE FIRST SCHEDULE
FORM OF OATH OR AFFIRMATION TO BE MADE BY THE CHIEF INFORMATION COMMISSIONER THE INFORMATION COMMISSIONER THE STATE CHIEF INFORMATION COMMISSIONER THE STATE INFORMATION COMMISSIONER THE FIRST SCHEDULE [See sections 13 (3) and 16 (3)] FORM OF OATH OR AFFIRMATION TO BE MADE BY THE CHIEF INFORMATION COMMISSIONER THE INFORMATION COMMISSIONER THE STATE CHIEF INFORMATION COMMISSIONER THE STATE INFORMATION COMMISSIONER THE STATE INFORMATION COMMISSIONER*. I,........................, having been appointed Chief Information Commissioner Information Commissioner State Chief Information Commissioner State Information Commissioner swear in the name of God
that I will bear true faith and allegiance to the solemnly affirm Constitution of India as by law established, that I will uphold the sovereignty and integrity of India, that I will duly and faithfully and to the best of my ability, knowledge and judgment perform the duties of my office without fear or favour, affection or ill-will and that I will uphold the Constitution and the laws.”

THE SECOND SCHEDULE INTELLIGENCE AND SECURITY ORGANISATION ESTABLISHED BY THE CENTRAL GOVERNMENT

1. Intelligence Bureau.
2. Research and Analysis Wing of the Cabinet Secretariat.
3. Directorate of Revenue Intelligence.
4. Central Economic Intelligence Bureau.
5. Directorate of Enforcement.
7. Aviation Research Centre.
8. Special Frontier Force.
15. Special Service Bureau
16. Special Branch (CID), Andaman and Nicobar.
17. The Crime Branch- C. I. D.- CB, Dadra and Nagar Haveli.

T. K. VISWANATHAN, Secy. to the Govt. of India.
The Right To Information Act, 2005