

# GLOBAL COLLEGE OF LAW -688

Academic Session 2026-27

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## **01. DRAFTING: GENERAL PRINCIPLES AND RELEVANT SUBSTANTIVE RULES**

### **Meaning of Drafting**

Drafting simply means writing legal documents in a clear and proper way. These documents can be agreements, applications, notices, petitions, or any paper that has legal importance. The main aim of drafting is to express ideas in such a way that there is no confusion and the meaning is easily understood by everyone, including judges, lawyers, and common people.

### **Purpose of Drafting**

The purpose of drafting is to avoid disputes and misunderstandings. When things are written clearly, people know their rights and duties. A well-drafted document helps in protecting the interests of parties and ensures that the document can be enforced in a court of law. In simple words, good drafting prevents future problems.

### **General Principles of Drafting**

#### **i) Clarity and Simplicity**

A draft should always be written in simple and clear language. Complicated words and long sentences should be avoided. The idea is that even a normal person should be able to understand what is written.

#### **ii) Precision and Accuracy**

Every word used in drafting should be exact and accurate. There should be no vague terms like “soon” or “as needed” because such words can create confusion later.

#### **iii) Consistency**

The same words and terms should be used throughout the document. For example, if a person is called “Buyer” in the beginning, the same term should be used everywhere, instead of changing it to “Purchaser” or “Client”.

#### **iv) Proper Structure**

A good draft follows a logical order. It usually starts with introduction and facts, then rights and duties, and finally ends with signatures. Proper headings and paragraphs make it easy to read.

#### **v) Avoid Ambiguity**

The language should not have double meaning. Each sentence should convey only one clear idea.

#### **vi) Brevity**

The draft should be short and to the point, but not at the cost of clarity. Unnecessary repetition should be avoided.

#### **vii) Knowledge of Law**

A person drafting legal documents must have basic knowledge of law, otherwise the document may become invalid or weak.

## **Structure of a Legal Draft**

A properly drafted document usually contains:

- Title of the document
- Introduction or preface
- Facts or background
- Rights and duties of parties
- Terms and conditions
- Conclusion and signatures

This structure helps in presenting the information in an organized manner.

## **Relevant Substantive Rules**

Drafting is not just about writing—it must follow the law of the land. Some important laws that guide drafting are:

### **Contract Law – Indian Contract Act, 1872**

While drafting agreements, it is important that there is free consent, lawful consideration, and competent parties. If these conditions are not fulfilled, the contract may become invalid.

### **Property Law – Transfer of Property Act, 1882**

In property-related drafting, details like ownership, description of property, and conditions of transfer must be written clearly.

### **Civil Procedure – Code of Civil Procedure, 1908**

In civil cases, drafting of plaint or written statement should contain only material facts, not evidence. It should be clear and concise.

### **Criminal Procedure – Code of Criminal Procedure, 1973**

In criminal matters, drafting should include clear facts of the offence and relevant legal sections.

### **Evidence Law – Indian Evidence Act, 1872**

Only relevant and admissible facts should be included in drafting. Irrelevant information should be avoided.

### **IN Constitutional Law – Constitution of India**

While drafting writ petitions, it must be shown that a legal or fundamental right has been violated.

## **Common Mistakes in Drafting**

Some common mistakes include:

- Using unclear or vague language
- Repeating the same points unnecessarily
- Using incorrect legal provisions
- Poor arrangement of content
- Lack of clarity in rights and duties

Such mistakes can weaken the document and create legal problems.

## **CIVIL PLEADINGS**

All civil pleadings in India are governed by the Code of Civil Procedure, 1908 (CPC). The CPC lays down the rules, structure, and requirements for drafting and filing pleadings. The general rules of pleadings are provided under Order VI CPC, which apply to all types of pleadings.

### **A. PLAINT**

#### **Meaning and Importance of Complaint**

A complaint is the document by which a civil case starts. In simple words, it is a written complaint filed by the plaintiff in a court of law explaining the dispute and asking for relief. It is the foundation of a civil suit because the entire case is built upon what is written in the complaint.

As per Section 26 of the Code of Civil Procedure, 1908, every suit is instituted by presenting a complaint. This means without a complaint, a civil case cannot begin. Therefore, the drafting of a complaint is very important, as any mistake at this stage can affect the whole case.

#### **Object and Purpose of Complaint**

The main purpose of a complaint is to inform the court and the opposite party about the exact nature of the dispute. It clearly tells:

- What has happened
- What legal right has been violated
- What relief the plaintiff is seeking

A properly drafted complaint helps the court identify the issues quickly and ensures that the defendant gets a fair opportunity to respond.

## **Essential Contents of Complaint (Order VII Rule 1 CPC)**

The contents of a complaint are specifically provided under Order VII Rule 1 of the Code of Civil Procedure, 1908.

A complaint must contain the following:

First, the name of the court where the suit is filed must be clearly mentioned. This ensures that the case is filed before the proper authority.

Second, the details of the parties must be given, including names, addresses, and descriptions. This helps in identifying the persons involved in the dispute.

Third, the complaint must state the facts of the case. These facts should be written in a clear and chronological manner so that the court can easily understand what happened.

Fourth, the complaint must mention the cause of action, which means the reason why the plaintiff is approaching the court. It should also mention when and where the cause of action arose.

Fifth, the complaint must show that the court has jurisdiction to hear the case, whether territorial or pecuniary.

Sixth, the complaint must clearly state the relief claimed, such as money, injunction, or specific performance.

Lastly, it must include the valuation of the suit and court fees.

## **Material Facts Only (Order VI Rule 2 CPC)**

According to Order VI Rule 2 of the Code of Civil Procedure, 1908, a complaint must contain only material facts and not evidence.

This means the plaintiff should only state the important facts necessary to prove the case, and not include detailed proof or documents at this stage. The purpose is to keep the pleadings clear and focused.

## **Cause of Action**

The cause of action is one of the most important parts of a complaint. It refers to the set of facts that give the plaintiff the right to file a case.

The complaint must clearly show that:

- A legal right exists
- That right has been violated
- The plaintiff is entitled to relief

If the complaint does not disclose a cause of action, it can be rejected by the court.

## **Jurisdiction of the Court**

The plaintiff must explain why the particular court has the authority to hear the case. This is known as jurisdiction, which can be:

- Territorial (location of cause of action)
- Pecuniary (value of the suit)
- Subject-matter jurisdiction

If the court does not have jurisdiction, the case cannot proceed.

## **Relief Claimed**

The plaintiff must clearly mention what they want from the court. This is called the relief. It may include:

- Recovery of money
- Permanent or temporary injunction
- Declaration of rights
- Specific performance of contract

The court generally grants relief based on what is claimed in the plaintiff.

## **Signing and Verification (Order VI Rules 14 & 15 CPC)**

The plaintiff must be signed by the plaintiff or their advocate as per Order VI Rule 14 of the CPC. It must also be verified under Order VI Rule 15, which means the plaintiff declares that the facts stated are true to their knowledge and belief.

Verification is important because it adds authenticity and responsibility to the statements made in the plaintiff.

## **Rejection of Plaintiff (Order VII Rule 11 CPC)**

The court has the power to reject a plaintiff under Order VII Rule 11 of the Code of Civil Procedure, 1908 in certain situations.

A plaintiff may be rejected if:

- It does not disclose a cause of action
- It is undervalued and not corrected
- Proper court fee is not paid
- The suit is barred by law

Rejection of plaint means the case does not proceed further.

### **Amendment of Plaint (Order VI Rule 17 CPC)**

Sometimes, mistakes or changes are required in the plaint. Under Order VI Rule 17 CPC, the court may allow the plaintiff to amend the plaint.

However, such amendments are allowed only if they are necessary for deciding the real issues and do not cause injustice to the other party.

### **Importance of Proper Drafting**

A well-drafted plaint is very important because:

- It forms the basis of the case
- It helps the court understand the dispute
- It avoids unnecessary confusion and delay
- It strengthens the plaintiff's position

Poor drafting may lead to rejection or weakening of the case.

## **B. WRITTEN STATEMENT**

### **Meaning and Importance of Written Statement**

A written statement is the reply given by the defendant to the plaint filed by the plaintiff. In simple words, it is the defendant's side of the story presented before the court in writing. It explains whether the defendant agrees or disagrees with the allegations made in the plaint and on what grounds.

The concept of written statement is governed by Order VIII of the Code of Civil Procedure, 1908. It is a very important document because it completes the stage of pleadings and helps the court understand both sides of the case clearly.

### **Purpose of Written Statement**

The main purpose of a written statement is to:

- Answer the allegations made in the plaint
- Present the defense of the defendant
- Inform the court about the defendant's version of facts

It ensures that the defendant gets a fair opportunity to defend themselves and that the case proceeds in a balanced manner.

### **Time Limit for Filing (Order VIII Rule 1 CPC)**

Under Order VIII Rule 1 of the Code of Civil Procedure, 1908, the defendant must file the written statement within 30 days from the date of service of summons.

However, the court may allow an extension up to 90 days (and in exceptional cases even beyond, as interpreted by courts). This time limit is important to ensure that the case proceeds without unnecessary delay.

### **Specific Denial of Allegations (Order VIII Rules 3, 4 & 5 CPC)**

One of the most important rules is that the defendant must specifically deny the allegations made in the plaint.

- Order VIII Rule 3 requires specific denial of each allegation
- Order VIII Rule 4 states that denial should not be evasive
- Order VIII Rule 5 provides that if a fact is not denied, it may be treated as admitted

In simple terms, the defendant cannot just say “I deny everything.” They must clearly state which facts are true, which are false, and which are not known. Otherwise, the court may assume those facts to be admitted.

### **Material Facts Only (Order VI Rule 2 CPC)**

Like a plaint, a written statement must also follow Order VI Rule 2 of the Code of Civil Procedure, 1908, which requires that only material facts should be stated.

This means the defendant should present only important facts necessary for their defense, not detailed evidence. The aim is to keep the pleadings clear and focused.

### **New Facts and Special Defenses (Order VIII Rule 2 CPC)**

Under Order VIII Rule 2 CPC, the defendant can raise new facts and special defenses in the written statement.

These may include:

- Limitation (delay in filing suit)
- Fraud, misrepresentation, or illegality
- Lack of jurisdiction
- Payment or discharge of liability

Such defenses must be clearly stated; otherwise, the defendant may not be allowed to raise them later.

### **Set-off and Counterclaim (Order VIII Rules 6 & 6A CPC)**

The defendant can also claim relief against the plaintiff in the same case.

- Set-off (Order VIII Rule 6): When the defendant claims that the plaintiff owes them money, it can be adjusted against the plaintiff's claim.
- Counterclaim (Order VIII Rule 6A): The defendant can file a claim against the plaintiff, which is treated like a cross-suit.

These provisions help in resolving all disputes between the parties in one proceeding.

### **Structure and Contents of Written Statement**

A written statement should be properly structured. It generally includes:

- Details of the court and parties
- Para-wise reply to the plaint
- Admissions and denials
- Additional facts and defenses
- Legal objections
- Prayer (if any relief is sought by defendant)

The reply must correspond to each paragraph of the plaint to maintain clarity.

### **Signing and Verification (Order VI Rules 14 & 15 CPC)**

The written statement must be signed by the defendant or their advocate as per Order VI Rule 14. It must also be verified under Order VI Rule 15, confirming that the statements made are true.

Verification ensures responsibility and authenticity of the document.

### **Consequences of Not Filing Written Statement**

If the defendant fails to file a written statement within the prescribed time, the court may proceed ex parte, meaning the case may be decided without hearing the defendant.

In some cases, the court may also pronounce judgment based on the plaint alone. Therefore, filing a written statement on time is very important.

## **Amendment of Written Statement (Order VI Rule 17 CPC)**

The defendant may seek to amend the written statement under Order VI Rule 17 CPC. Courts are generally more liberal in allowing amendments in written statements compared to plaints, especially if it helps in deciding the real issues of the case.

## **Importance of Proper Drafting**

A well-drafted written statement is crucial because:

- It clearly presents the defence
- It prevents unintended admissions
- It strengthens the defendant's position
- It helps the court identify real issues

Poor drafting may result in losing important defences or even losing the case.

## **C. INTERLOCUTORY APPLICATION**

### **Meaning of Interlocutory Applications**

An interlocutory application is a request made to the court during the pendency of a case (i.e., before final judgment) seeking temporary or interim relief. In simple words, it is an application filed to solve urgent issues that arise while the main case is still going on.

These applications are very important because court cases take time, and without temporary relief, one party may suffer serious loss or injustice before the final decision is given.

### **Legal Basis under CPC**

Interlocutory applications are not defined in one single section, but they are governed by various provisions of the Code of Civil Procedure, 1908.

The main provisions include:

- Section 94 CPC – Supplemental proceedings
- Section 151 CPC – Inherent powers of the court
- Various Orders like:
  - Order XXXIX (Temporary Injunctions)
  - Order XL (Receiver)
  - Order XXXVIII (Arrest and Attachment before Judgment)

These provisions give the court power to pass necessary orders to ensure justice during the pendency of a suit.

## **Purpose of Interlocutory Applications**

The main purpose of interlocutory applications is to:

- Protect the rights of parties during the case
- Prevent misuse or abuse of the legal process
- Maintain the status quo (current situation)
- Avoid irreparable harm

In simple terms, they ensure that the case remains fair and meaningful until the final judgment is delivered.

## **Temporary Injunction (Order XXXIX Rules 1 & 2 CPC)**

One of the most common interlocutory applications is for a temporary injunction under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908.

A temporary injunction is an order of the court restraining a party from doing certain acts, such as:

- Selling property
- Causing damage
- Violating rights of another party

The court grants injunction based on three main conditions:

1. Prima facie case (initial strong case)
2. Balance of convenience
3. Irreparable injury

## **Appointment of Receiver (Order XL CPC)**

Under Order XL CPC, the court may appoint a receiver to manage property during the case.

This is done when:

- Property is in dispute
- There is risk of damage or misuse

The receiver acts as a neutral person and manages the property under court supervision.

### **Arrest and Attachment before Judgment (Order XXXVIII CPC)**

Under Order XXXVIII CPC, the court may:

- Arrest the defendant before judgment, or
- Attach property before judgment

These measures are taken when there is a risk that the defendant may:

- Abscond (run away), or
- Dispose of property to avoid liability

This ensures that the final judgment is not defeated.

### **Inherent Powers of Court (Section 151 CPC)**

Under Section 151 of the Code of Civil Procedure, 1908, the court has inherent powers to pass any order necessary for:

- Ends of justice
- Preventing abuse of process

This provision is very important because it allows the court to grant relief even when no specific rule exists.

### **Supplemental Proceedings (Section 94 CPC)**

Section 94 CPC provides for supplemental proceedings, which include:

- Issuing warrants
- Granting injunctions
- Appointing receivers

These powers help the court protect the interests of parties during the case.

### **Procedure for Filing Interlocutory Application**

An interlocutory application is usually filed in the same court where the main suit is pending.

The application must contain:

- Details of the case
- Facts requiring urgent relief
- Grounds for application
- Relief sought

It is generally supported by an affidavit under Order XIX CPC. The court may hear both parties and pass an appropriate order.

### **Nature of Orders**

Orders passed on interlocutory applications are:

- Temporary in nature
- Do not decide the final rights of parties
- Can be modified or vacated later

These orders remain in force until the final judgment or further orders.

### **Appeal against Interlocutory Orders**

Some interlocutory orders are appealable under Order XLIII Rule 1 of the Code of Civil Procedure, 1908.

For example:

- Orders granting or refusing injunction
- Orders appointing receiver

This ensures that parties have a remedy if they are dissatisfied with such orders.

### **Importance of Interlocutory Applications**

Interlocutory applications are very important because:

- They provide immediate relief
- They prevent injustice during delay
- They protect property and rights
- They ensure fair trial

Without such applications, the final judgment may become meaningless.

## **D. ORIGINAL PETITION**

Meaning of Original Petition

An Original Petition (O.P.) is a legal document filed directly before a court to initiate certain types of proceedings. In simple words, it is similar to a plaint, but it is used in special matters where the law provides a different procedure instead of an ordinary civil suit.

Unlike a regular suit (started by a plaint under Section 26 of the CPC), an original petition is used in matters like family disputes, guardianship, matrimonial cases, company matters, or constitutional issues, depending on the law applicable.

### **Legal Basis of Original Petition**

The term “original petition” is not specifically defined in the Code of Civil Procedure, 1908. However, the general principles of pleadings under CPC apply to it.

The main provisions applicable are:

- Section 26 CPC – Institution of suits (general principle)
- Order VI CPC – General rules of pleadings
- Order VII CPC – Principles relating to contents (by analogy)

In addition, original petitions are governed by special laws, such as:

- Hindu Marriage Act, 1955 (for divorce, restitution, etc.)
- Guardians and Wards Act, 1890 (for guardianship matters)
- Other special statutes depending on the subject

Thus, an original petition follows CPC principles but is mainly controlled by the specific law under which it is filed.

### **Purpose of Original Petition**

The main purpose of an original petition is to provide a direct and simple method to approach the court in special matters without filing a regular civil suit.

It helps in:

- Quick resolution of specific disputes
- Simplified procedure
- Avoiding unnecessary technicalities

For example, in matrimonial matters, instead of filing a plaint, a petition is filed directly before the family court.

### **Types of Matters Filed through Original Petition**

Original petitions are commonly used in:

- Family law matters (divorce, maintenance, custody)
- Guardianship cases

- Succession and probate matters
- Company law proceedings
- Arbitration matters
- Certain constitutional or special tribunal cases

Each type of petition is governed by its own statute, but the drafting style remains similar.

### **Essential Contents of Original Petition**

Although there is no single uniform format in CPC, an original petition generally includes:

First, the title of the court and case must be clearly mentioned.

Second, the details of parties, including names, addresses, and descriptions, must be provided.

Third, the petition must contain facts of the case, written in a clear and chronological manner.

Fourth, it must mention the grounds on which the petition is based. These grounds are based on the relevant law (for example, cruelty in divorce cases).

Fifth, the petition must clearly state the relief sought, such as divorce, custody, declaration, or appointment of guardian.

Lastly, it must include verification and signature, confirming the truth of the statements.

### **Application of General Rules of Pleadings (Order VI CPC)**

Even though original petitions are governed by special laws, the general rules under Order VI of the Code of Civil Procedure, 1908 apply.

According to Order VI Rule 2, only material facts should be stated, not evidence. The petition must be clear, concise, and free from unnecessary details.

The petition must also be signed and verified under Order VI Rules 14 and 15 CPC, ensuring authenticity.

### **Jurisdiction of the Court**

The original petition must clearly state why the court has jurisdiction to hear the matter.

Jurisdiction may depend on:

- Place where cause of action arose
- Residence of parties
- Subject matter of the case

If jurisdiction is not properly established, the petition may be rejected or returned.

### **Supporting Affidavit (Order XIX CPC)**

Original petitions are usually supported by an affidavit under Order XIX of the Code of Civil Procedure, 1908.

The affidavit confirms that the facts stated in the petition are true. It adds credibility and legal value to the petition.

### **Procedure after Filing**

After filing the original petition:

- The court examines the petition
- Notice is issued to the opposite party
- The opposite party files a reply
- The court hears both sides
- Evidence may be recorded
- Final order is passed

The procedure may vary depending on the specific law governing the petition.

### **Difference between Plaint and Original Petition**

A plaint is used to start a regular civil suit under CPC, while an original petition is used in special proceedings under specific laws.

A plaint follows a strict format under Order VII CPC, whereas an original petition follows a flexible format based on the applicable statute. However, both require clear facts, legal grounds, and proper drafting.

### **Importance of Proper Drafting**

A well-drafted original petition is very important because:

- It clearly presents the case
- It helps the court understand the issue quickly
- It avoids delay and confusion
- It increases the chances of success

Poor drafting may lead to rejection or weak presentation of the case

## **E. AFFIDAVIT**

### **Meaning of Affidavit**

An affidavit is a written statement of facts made under oath. In simple words, it is a document where a person declares that the information given by them is true to the best of their knowledge and belief, and they take responsibility for it.

The person who makes the affidavit is called the deponent. Since it is made under oath, it has strong legal value and can be used in court proceedings as evidence or support for a case.

### **Legal Basis of Affidavit**

Affidavits in civil cases are mainly governed by Order XIX of the Code of Civil Procedure, 1908.

- Order XIX Rule 1 allows the court to order that certain facts may be proved by affidavit.
- Order XIX Rule 2 gives the court power to order attendance of a person for cross-examination.
- Order XIX Rule 3 states that affidavits must contain facts within the personal knowledge of the deponent.

Apart from CPC, affidavits are also guided by:

- Indian Evidence Act, 1872 (relevance and admissibility of facts)
- Oaths Act, 1969 (administration of oath)

### **Purpose of Affidavit**

The main purpose of an affidavit is to:

- Present facts in a written form
- Support applications and petitions
- Serve as evidence in certain situations

Affidavits help save time because instead of giving oral evidence in court immediately, facts can be presented in written form. They are widely used in interlocutory applications, writ petitions, and various legal proceedings.

## **Essential Contents of an Affidavit**

An affidavit must contain certain important elements to be valid.

First, it must have a title and heading, showing the name of the court and case.

Second, it should clearly mention the name, age, address, and identity of the deponent.

Third, it must contain facts stated in numbered paragraphs, written in a clear and simple manner.

Fourth, it must include a verification clause, where the deponent states that the facts are true to their knowledge or belief.

Finally, it must be signed by the deponent and attested by an authorized officer.

## **Facts Based on Personal Knowledge (Order XIX Rule 3 CPC)**

According to Order XIX Rule 3 of the Code of Civil Procedure, 1908, an affidavit should contain only those facts which are:

- Within the personal knowledge of the deponent, or
- Based on information believed to be true (with source mentioned)

This means that the deponent cannot include rumors or assumptions. The facts must be genuine and reliable.

## **Attestation of Affidavit**

An affidavit must be sworn or affirmed before an authorized officer, such as:

- Notary Public
- Oath Commissioner
- Magistrate

The officer verifies that the deponent has signed the affidavit voluntarily and understands its contents. Without proper attestation, an affidavit has no legal value.

## **Use of Affidavit in Legal Proceedings**

Affidavits are widely used in courts for different purposes, such as:

- Supporting interlocutory applications
- Filing writ petitions
- Providing evidence in certain cases
- Submitting proof of facts without oral testimony

In many situations, courts rely on affidavits to decide urgent matters quickly.

### **Cross-Examination of Deponent (Order XIX Rule 2 CPC)**

Under Order XIX Rule 2 CPC, the court may order that the person who made the affidavit must appear in court for cross-examination.

This ensures fairness, as the opposite party gets an opportunity to question the truth of the statements made in the affidavit.

### **False Affidavit and Legal Consequences**

Since an affidavit is made under oath, giving false information is a serious offence.

If a person makes a false statement in an affidavit, they may be punished for perjury under the Indian Penal Code, 1860.

Therefore, utmost care must be taken while preparing and signing an affidavit.

### **Difference between Affidavit and Oral Evidence**

An affidavit is a written statement under oath, whereas oral evidence is given in court verbally.

Affidavits are quicker and convenient, but they may be subject to cross-examination if required. Courts use affidavits mainly for preliminary or supporting purposes.

### **Importance of Proper Drafting**

A properly drafted affidavit is important because:

- It strengthens the case
- It provides clear and reliable facts
- It helps the court make quick decisions
- It avoids legal complications

Poorly drafted affidavits may be rejected or may weaken the case.

## **F. EXECUTION PETITION**

An execution petition is filed to enforce a decree passed by a court. The relevant provisions are found under Section 36 to Section 74 and Order XXI CPC.

When a judgment debtor fails to comply with the decree, the decree-holder may apply for execution. The application must contain details of the decree, the relief granted, and the mode of execution sought.

Order XXI provides various methods of execution, such as attachment and sale of property, arrest and detention, or appointment of a receiver.

Execution proceedings ensure that the court's decision is effectively implemented.

### **G. MEMORANDUM OF APPEAL**

A memorandum of appeal is filed to challenge the decision of a lower court. It is governed by Section 96 (first appeal), Section 100 (second appeal), and Order XLI CPC.

As per Order XLI Rule 1, every appeal shall be preferred in the form of a memorandum signed by the appellant. It must clearly state the grounds of appeal, without unnecessary arguments or evidence.

The appellate court examines the case based on these grounds and may confirm, modify, or reverse the judgment.

Proper drafting of the memorandum of appeal is essential because it defines the scope of the appeal.

### **H. MEMORANDUM OF REVISION**

A revision petition is governed by Section 115 CPC. It allows a higher court to correct errors made by a subordinate court.

The scope of revision is limited. The court interferes only when the lower court has exercised jurisdiction not vested in it, failed to exercise jurisdiction, or acted illegally or with material irregularity.

Unlike an appeal, revision does not involve re-examination of all facts but focuses on legal correctness.

### **I. PETITION UNDER ARTICLES 226 AND 32**

Petitions under Article 32 of the Constitution of India and Article 226 of the Constitution of India are constitutional remedies available to individuals when their rights are violated. These provisions empower the Supreme Court and High Courts to issue special orders called writs to protect the rights of citizens. They play a crucial role in maintaining the rule of law and ensuring that government authorities act within their legal limits.

Article 32 provides a fundamental right to move the Supreme Court directly for enforcement of fundamental rights guaranteed under Part III of the Constitution. This means that if any fundamental right, such as the right to life or freedom, is violated, a person can approach the Supreme Court without going to lower courts first. The importance of Article 32 is very high, as it itself is a guaranteed right, and the Supreme Court cannot refuse to entertain such a petition when a genuine violation is shown.

On the other hand, Article 226 gives power to the High Courts to issue writs not only for the enforcement of fundamental rights but also for other legal rights. Therefore, the scope of Article 226 is wider than Article 32. However, unlike Article 32, the power under Article 226 is

discretionary, which means the High Court may refuse to grant relief in certain situations, such as when an alternative remedy is available or when the petition lacks merit.

The courts under these Articles have the authority to issue five important types of writs. The writ of Habeas Corpus is used to secure the release of a person who is illegally detained. Mandamus is issued to direct a public authority to perform its legal duty. Certiorari is used to quash an order passed by a lower court or tribunal when it acts without jurisdiction or in violation of law. Prohibition is issued to prevent a lower court from continuing proceedings beyond its powers. Quo Warranto is used to question the legality of a person holding a public office.

A petition under these Articles can be filed when there is a violation of fundamental rights, illegal action by government authorities, excess or lack of jurisdiction, or violation of principles of natural justice. The petitioner must clearly show how their rights have been affected and why the intervention of the court is necessary. These petitions are generally filed against the State or public authorities and not against private individuals, except in certain exceptional cases.

Initially, only the person whose rights were violated could file such petitions. However, with the development of Public Interest Litigation (PIL), even a third person can approach the court on behalf of those who are unable to do so themselves, such as poor or disadvantaged groups. This has made access to justice easier and more effective.

The procedure for filing such petitions involves drafting a proper petition stating the facts, the violation of rights, and the relief sought. It must be supported by an affidavit verifying the facts. The petition is then filed in the appropriate court, and the court may issue notice to the opposite party. After hearing both sides, the court may grant appropriate relief or dismiss the petition.

There are important differences between Articles 32 and 226. Article 32 is itself a fundamental right and is limited to the enforcement of fundamental rights only, whereas Article 226 is a constitutional power of High Courts and covers both fundamental and legal rights. Article 32 is generally mandatory in nature, while Article 226 is discretionary. Also, Article 226 is limited by territorial jurisdiction, whereas Article 32 applies throughout India.

Despite their importance, these remedies have certain limitations. Courts may refuse relief in cases of delay, availability of alternative remedies, or where the matter involves disputed facts requiring detailed evidence. Additionally, these petitions are not usually entertained for purely private disputes.

In conclusion, petitions under Articles 226 and 32 are essential tools for protecting the rights of individuals and ensuring accountability of public authorities. They strengthen democracy by providing direct access to higher courts and ensuring that justice is delivered effectively and promptly.

## **CRIMINAL PLEADINGS**

Criminal pleadings are formal written documents used in criminal proceedings to present facts, seek relief, or challenge decisions. Under the Bharatiya Nagarik Suraksha Sanhita, 2023, which replaces the earlier CrPC, the procedure of criminal law has been modernized while keeping the basic structure intact. These pleadings ensure that the accused, victim, and State all get a fair opportunity to present their case before the court.

## **A. COMPLAINT**

A complaint is one of the basic ways to initiate criminal proceedings. Under section 2(h) of the BNSS, a complaint means any allegation made orally or in writing to a Magistrate that a person has committed an offence, but it does not include a police report. This distinction is important because complaints are usually filed directly before a Magistrate when the police have not registered an FIR or in cases of non-cognizable offences.

A complaint must clearly state the facts of the offence, including when, where, and how the offence was committed. It should also mention the name of the accused, if known, and the harm caused to the complainant. The language should be simple, clear, and free from unnecessary details. The purpose is to enable the Magistrate to understand whether a prima facie case exists.

After receiving the complaint, the Magistrate may examine the complainant and witnesses on oath. If the Magistrate finds sufficient grounds, process is issued against the accused in the form of summons or warrant. If not satisfied, the complaint may be dismissed. In some cases, the Magistrate may order investigation by the police.

Thus, a complaint acts as the foundation of criminal proceedings in many cases and must be drafted carefully to ensure that justice is properly initiated.

## **B. CRIMINAL MISCELLANEOUS PETITION**

A criminal miscellaneous petition is not a complete trial proceeding but an application filed during or before criminal proceedings to seek specific relief from the court. Under the BNSS framework, such petitions are generally filed before High Courts or Sessions Courts for various purposes.

These petitions may include requests such as quashing of FIR, cancellation of proceedings, transfer of cases, compounding of offences, or seeking directions from the court. They are often based on the inherent powers of the court, which allow the court to pass orders to prevent abuse of process and to secure the ends of justice.

A criminal miscellaneous petition must clearly explain the background of the case, the legal issues involved, and the specific relief sought. It is usually supported by an affidavit verifying the facts. The court carefully examines whether the petition is genuine and whether granting relief would serve justice.

Such petitions are very important because they provide flexibility in the criminal justice system and help in resolving issues quickly without waiting for a full trial.

## **C. BAIL APPLICATION**

A bail application is a request made by an accused person seeking release from custody during the pendency of the case. Under the Bharatiya Nagarik Suraksha Sanhita, 2023, provisions relating to bail continue to follow the principle that bail is the rule and jail is the exception, especially in less serious offences.

There are different types of bail. Regular bail under section 480 BNSS is applied for after arrest. Anticipatory bail under section 482 BNSS is sought before arrest when a person fears that they may be arrested for a non-bailable offence. Interim bail is a temporary bail granted for a short period until the final decision on bail is made.

While deciding a bail application, the court considers several factors such as the seriousness of the offence, the nature of evidence, the possibility of the accused fleeing from justice, and the chances of influencing witnesses. The application must clearly state the facts of the case, grounds for bail, and assurance that the accused will cooperate with the investigation.

A properly drafted bail application increases the chances of securing release and protects the liberty of the accused while ensuring that justice is not obstructed.

#### **D. MEMORANDUM OF APPEAL AND REVISION**

A memorandum of appeal is filed when a party is dissatisfied with the judgment of a criminal court and wants a higher court to review the decision. Under the Bharatiya Nagarik Suraksha Sanhita, 2023, appeals can be filed against convictions, acquittals, or sentences.

Section 415 appeals from convictions

Section 419 appeals from acquittals

The memorandum must clearly state the grounds of appeal, which are the reasons why the judgment is incorrect. These grounds may relate to errors in law, improper appreciation of evidence, or procedural irregularities. The appellate court examines the case and may confirm, modify, or set aside the judgment.

A revision petition, on the other hand, is filed to correct serious legal or jurisdictional errors made by a lower court. The scope of revision is narrower than that of appeal. The revisional court does not conduct a full re-examination of evidence but checks whether the lower court acted within its powers and followed proper procedure.

Both appeal and revision act as safeguards against judicial errors and ensure that justice is properly administered. Proper drafting of these documents is very important because it determines how effectively the higher court understands the issues.

#### **CONVEYANCING:**

##### **a.) SALE DEED**

##### **Meaning of Sale Deed**

A sale deed is a legal document through which ownership of property is transferred from one person (called the seller) to another (called the buyer) in exchange for a price. In simple words, it is the final proof that the property has been sold and ownership has legally changed.

A sale deed is very important because without it, the buyer cannot claim full legal ownership over the property.

## **Legal Basis of Sale Deed**

The law relating to sale of immovable property is governed by Section 54 of the Transfer of Property Act, 1882.

According to Section 54:

- A sale is a transfer of ownership in exchange for a price paid or promised.
- In case of tangible immovable property of value more than ₹100, the sale must be made by a registered instrument.

Registration of the sale deed is compulsory under the Registration Act, 1908.

## **Essential Elements of a Valid Sale**

For a sale deed to be valid, certain essential elements must be present:

First, there must be two parties—a seller and a buyer who are legally competent to contract.

Second, there must be a transfer of ownership, not just possession.

Third, there must be a price, which may be paid immediately, partly paid, or promised.

Fourth, the property must be clearly identified and transferable.

If any of these elements are missing, the sale may not be valid in law.

## **Importance of Registration**

Registration is a very important step in a sale deed.

Under the Registration Act, 1908, a sale deed must be registered with the Sub-Registrar of the area where the property is situated.

If the sale deed is not registered:

- It has no legal value
- Ownership does not legally transfer
- It cannot be used as evidence in court

Thus, registration gives authenticity and legal recognition to the transaction.

## **Structure and Contents of a Sale Deed**

A sale deed must be drafted properly and usually contains the following parts:

First, the title and date of the document are mentioned.

Second, details of the seller and buyer (names, addresses, identity) are clearly stated.

Third, the recitals explain the background of the transaction.

Fourth, the main clause describes the transfer of property, including full details such as location, boundaries, and description.

Fifth, the sale consideration (price) is mentioned, along with how and when it is paid.

Sixth, the deed includes rights and obligations of both parties.

Finally, it ends with signatures of parties and witnesses.

### **Rights and Duties of Seller (Section 55 TPA)**

Under Section 55 of the Transfer of Property Act, 1882, the seller has certain duties and rights.

Duties of the seller include:

- Disclosing material defects in the property
- Producing title documents
- Giving possession to the buyer
- Answering questions about the property

The seller also has the right to receive the agreed price.

### **Rights and Duties of Buyer (Section 55 TPA)**

The buyer also has certain responsibilities and rights under Section 55 TPA.

Duties of the buyer include:

- Paying the agreed price
- Bearing certain expenses like stamp duty (usually)

The buyer has the right to:

- Get proper title and possession
- Enjoy the property peacefully after purchase

### **Delivery of Possession**

Transfer of ownership is usually followed by delivery of possession. This means the buyer is given control over the property.

Though ownership passes through the sale deed, possession ensures that the buyer can actually use and enjoy the property.

## **Stamp Duty and Registration Charges**

A sale deed must be executed on proper stamp paper as per the Stamp Laws of the State.

Stamp duty and registration charges must be paid, otherwise:

- The document may not be registered
- It may not be admissible in evidence

These charges vary from state to state.

## **Difference between Agreement to Sell and Sale Deed**

An agreement to sell is only a promise to transfer property in future, whereas a sale deed actually transfers ownership.

A sale deed creates legal ownership immediately, while an agreement to sell does not.

## **Importance of the Sale Deed**

A sale deed is very important because:

- It is legal proof of ownership
- It protects the buyer from future disputes
- It ensures the lawful transfer of property
- It can be used in court as evidence

Without a proper sale deed, property transactions may become invalid or disputed.

## **b.) MORTGAGE DEED**

### **Meaning of Mortgage and Mortgage Deed**

A mortgage is a legal arrangement where a person borrows money by keeping their property as security. The borrower is called the mortgagor, and the lender is called the mortgagee. The document that records this transaction is called a mortgage deed.

In simple words, a mortgage deed is a written document showing that the borrower has given an interest in their property to the lender until the loan is repaid. If the borrower fails to repay, the lender can use the property to recover the money.

## **Legal Basis of Mortgage**

The law relating to mortgages is governed by the Transfer of Property Act, 1882.

According to Section 58 of the Act, a mortgage is defined as the transfer of an interest in specific immovable property for the purpose of securing:

- Payment of a loan
- Future debt
- Performance of an obligation

This means ownership is not fully transferred, only a limited right is created in favor of the lender.

## **Essential Elements of a Valid Mortgage**

For a mortgage to be valid, certain elements must be present.

First, there must be two parties—the mortgagor (borrower) and mortgagee (lender).

Second, there must be a loan or obligation, which is secured by the mortgage.

Third, there must be a transfer of interest in immovable property, not full ownership.

Fourth, the property must be clearly identified.

If these elements are missing, the mortgage may not be legally valid.

## **Types of Mortgages (Section 58 TPA)**

The Transfer of Property Act, 1882 recognizes different types of mortgages under Section 58, such as:

- Simple Mortgage – Property is not delivered, but the lender can sell it through court if the borrower defaults.
- Mortgage by Conditional Sale – Sale becomes absolute if loan is not repaid.
- Usufructuary Mortgage – Lender takes possession and enjoys income from the property.
- English Mortgage – Ownership is transferred with a condition to re-transfer after repayment.
- Equitable Mortgage (Mortgage by Deposit of Title Deeds) – Created by depositing title documents without a formal deed.
- Anomalous Mortgage – Any mortgage not falling in above categories.

## **Form and Registration of Mortgage Deed**

A mortgage deed must generally be in writing and registered.

According to Section 59 of the Transfer of Property Act, 1882, when the principal amount is ₹100 or more, the mortgage must be:

- Made by a registered instrument, and
- Signed by the mortgagor and attested by at least two witnesses

Registration is compulsory under the Registration Act, 1908. Without registration, the mortgage deed is not valid in law (except in equitable mortgage cases).

## **Contents of a Mortgage Deed**

A properly drafted mortgage deed generally includes:

- Details of parties (mortgagor and mortgagee)
- Description of property being mortgaged
- Amount of loan and terms of repayment
- Rate of interest
- Rights and liabilities of both parties
- Conditions in case of default
- Clause regarding redemption

The document must be clear and detailed to avoid disputes.

## **Rights of Mortgagor (Borrower)**

Under the Transfer of Property Act, 1882, the mortgagor has important rights.

The most important is the right of redemption under Section 60, which means the borrower has the right to get back their property after repaying the loan.

Other rights include:

- Right to transfer property (subject to mortgage)
- Right to inspect documents
- Right to redeem at any time before foreclosure

## **Rights of Mortgagee (Lender)**

The mortgagee also has certain rights.

These include:

- Right to recover the loan amount
- Right to sell the property (in certain types of mortgage)
- Right to foreclose the mortgage
- Right to possession (in usufructuary mortgage)

These rights help the lender secure their money.

## **Doctrine of Redemption**

The right of redemption is a very important principle in mortgage law.

It means that once a mortgage, always a mortgage. The borrower cannot be permanently deprived of their property. Even if there is a clause restricting redemption, it is generally considered invalid.

This doctrine protects the borrower from unfair terms.

## **Foreclosure and Sale**

If the borrower fails to repay the loan, the lender may:

- Foreclose the mortgage (end the borrower's right), or
- Sell the property to recover the loan

These actions are usually taken through court, depending on the type of mortgage.

## **Difference between Mortgage and Sale**

In a sale, ownership is completely transferred.

In a mortgage, only a limited interest is transferred as security.

After repayment, the borrower regains full rights to the property.

## **Importance of Mortgage Deed**

A mortgage deed is important because:

- It secures the loan
- Protects the lender's interest

- Defines rights and duties clearly
- Helps avoid future disputes

Without a proper mortgage deed, the lender may have difficulty recovering the money.

### **c.) LEASE DEED**

#### **Meaning of Lease**

A lease is a legal arrangement where the owner of a property (lessor) gives another person (lessee) the right to use and enjoy the property for a specific time in return for payment (called rent).

The law relating to leases is governed by Section 105 of the Transfer of Property Act, 1882, which defines a lease as a transfer of a right to enjoy immovable property for a certain time, in consideration of a price paid or promised.

In simple words, a lease does not transfer ownership—it only gives the right to use the property.

#### **Parties to a Lease (Lessor and Lessee)**

A valid lease must involve two parties:

- The lessor, who is the owner and gives the property on lease
- The lessee, who takes the property on lease and pays rent

Both parties must be legally competent to enter into a contract. If either party is not competent (for example, a minor), the lease may not be valid.

#### **Subject Matter of Lease (Property)**

The lease must relate to immovable property, such as land, house, or building.

The property must be clearly described in the lease deed, including location, boundaries, and details. If the property is not properly identified, the lease may create confusion and disputes.

#### **Transfer of Right to Enjoy Property**

A key element of a lease is that it involves transfer of the right to enjoy the property, not ownership.

This means the lessee can use the property for the agreed purpose (like residence or business), but the ownership remains with the lessor.

## **Duration or Term of Lease**

Every lease must have a definite period, such as 11 months, 1 year, or more.

If the period is not clearly mentioned, it may create legal issues. The duration can be fixed or periodic (like month-to-month lease). This is also recognized under Section 106 of the Transfer of Property Act, 1882, which deals with duration in absence of a contract.

## **Consideration (Rent or Premium)**

A lease must involve consideration, usually in the form of rent.

The rent may be:

- Paid regularly (monthly or yearly), or
- Paid in advance (premium)

Without consideration, the lease may not be valid. The amount, mode, and timing of payment must be clearly mentioned in the lease deed.

## **Registration of Lease Deed**

Registration of a lease deed is governed by Section 107 of the Transfer of Property Act, 1882 and the Registration Act, 1908.

- If the lease is for more than one year, it must be registered
- If it is for less than one year, it may be oral or written

Without registration (where required), the lease may not be legally enforceable.

## **Delivery of Possession**

For a valid lease, the lessee must be given possession of the property.

Possession allows the lessee to actually use and enjoy the property. Without possession, the lease remains incomplete.

## **Rights and Duties of Lessor and Lessee (Section 108 TPA)**

The rights and duties of both parties are provided under Section 108 of the Transfer of Property Act, 1882.

### **Duties of Lessor:**

- To give possession of the property
- To disclose material defects

- To allow peaceful enjoyment

#### **Duties of Lessee:**

- To pay rent regularly
- To take care of the property
- To use the property for agreed purpose
- To return possession after lease ends

These rules ensure a fair relationship between both parties.

#### **Termination of Lease (Section 111 TPA)**

A lease can end in several ways under Section 111 of the Transfer of Property Act, 1882, such as:

- Expiry of time
- Mutual agreement
- Non-payment of rent
- Breach of conditions
- Notice by either party

Proper termination is important to avoid legal disputes.

#### **Essential Clauses in Lease Deed**

A well-drafted lease deed usually includes:

- Details of parties
- Description of property
- Duration of lease
- Rent and payment terms
- Rights and duties of parties
- Conditions for termination
- Renewal clause (if any)

These clauses help in avoiding confusion and disputes.

## **Importance of Lease Deed**

A lease deed is important because:

- It gives legal protection to both parties
- It clearly defines rights and obligations
- It helps avoid misunderstandings
- It can be used as evidence in court

Without a proper lease deed, disputes may arise regarding rent, possession, or duration.

## **d.) GIFT DEED**

### **Meaning of Gift**

A gift means transferring property voluntarily and without any payment from one person (donor) to another (donee). It must be made out of love, affection, or goodwill, and not for money.

The law of gift is governed by Section 122 of the Transfer of Property Act, 1882, which defines a gift as transfer of existing movable or immovable property made voluntarily and without consideration.

### **Parties to Gift (Donor and Donee)**

A valid gift must have two parties:

- The donor (person giving the property)
- The donee (person receiving the property)

The donor must be competent to contract, and the donee must accept the gift.

### **Voluntary Nature**

A gift must be made voluntarily, without force, fraud, or undue influence. If the gift is made under pressure, it becomes invalid.

### **No Consideration**

A gift must be made without any consideration (payment). If money or benefit is involved, it is not a gift but a sale or another transaction.

### **Existing Property Only**

A gift can be made only of existing property, not future property. This is also part of Section 122 of the Transfer of Property Act, 1882.

### **Acceptance of Gift (Section 122 TPA)**

The gift must be accepted by the donee during the lifetime of the donor. If the donee does not accept it, the gift is not valid.

### **Registration of Gift (Section 123 TPA)**

According to Section 123 of the Transfer of Property Act, 1882, a gift of immovable property must be:

- Made through a written document (gift deed)
- Signed by the donor
- Attested by at least two witnesses
- Registered under the Registration Act, 1908

Without registration, the gift is not valid.

### **Delivery of Possession**

In many cases, possession of property is given to the donee after the gift. This shows that ownership has actually transferred.

### **Revocation of Gift (Section 126 TPA)**

A gift can be revoked (cancelled) only in certain situations under Section 126 of the Transfer of Property Act, 1882, such as:

- By mutual agreement
- On happening of a specified condition

Otherwise, a gift is generally irrevocable.

## **e.) PROMISSORY NOTE**

### **Meaning of Promissory Note**

A promissory note is a written promise to pay money by one person to another.

It is defined under Section 4 of the Negotiable Instruments Act, 1881 as an instrument in writing containing an unconditional undertaking, signed by the maker, to pay a certain sum of money to a certain person or bearer.

### **Written Document**

A promissory note must always be in writing. It can be handwritten, typed, or printed, but oral promises are not valid.

### **Unconditional Promise to Pay**

There must be a clear and unconditional promise to pay money.

If the payment depends on any condition, it will not be a valid promissory note.

### **Definite Amount**

The amount to be paid must be certain and specific. It should not be vague or uncertain.

### **Parties (Maker and Payee)**

There must be two parties:

- Maker – person who promises to pay
- Payee – person who will receive the money

Both must be clearly identified.

### **Signature of Maker**

The promissory note must be signed by the maker. Without signature, it is not valid.

### **Payable in Money Only**

The payment must be made only in money, not in goods or services.

### **Certain Person**

The payment must be made to a specific person or bearer. The payee must be identifiable.

### **Proper Stamping**

The promissory note must be properly stamped as per the applicable Stamp Law. Without stamp, it may not be admissible in evidence

## **Time of Payment**

The time of payment may be:

- On demand, or
- After a fixed period

It must be clearly mentioned or understood.

## **f.) POWER OF ATTORNEY**

### **Meaning of Power of Attorney**

A Power of Attorney (POA) is a legal document through which one person gives authority to another person to act on their behalf in legal, financial, or property matters.

The person who gives authority is called the principal, and the person who receives authority is called the agent or attorney.

### **Legal Basis**

Power of Attorney is mainly governed by the Powers of Attorney Act, 1882.

It is also supported by general principles of agency under the Indian Contract Act, 1872.

### **Types of Power of Attorney**

There are mainly two types:

- General Power of Attorney (GPA) – gives wide powers to the agent to handle multiple matters like property, banking, etc.
- Special Power of Attorney (SPA) – gives authority for a specific act, like selling a particular property or signing a document.

### **Essential Elements of POA**

For a valid Power of Attorney:

- It must be in writing
- It must clearly mention the powers given
- It must be signed by the principal
- The principal must be competent (major, sound mind)

## **Registration of Power of Attorney**

Registration is governed by the Registration Act, 1908.

- For general purposes, registration is not always compulsory
- But for property transactions, registration is usually required

Registered POA has stronger legal value.

## **Duties of Agent**

The agent must:

- Act honestly and in good faith
- Follow instructions of the principal
- Not misuse the authority

If the agent misuses power, they can be held legally liable.

## **Revocation of POA**

A Power of Attorney can be cancelled (revoked) by the principal at any time, unless it is irrevocable.

It can also end due to:

- Death of principal or agent
- Completion of purpose
- Expiry of time

## **Importance of Power of Attorney**

POA is important because:

- It allows work to be done when the principal is absent
- It helps in managing property and financial matters
- It provides legal authority to the agent

## **g.) Will**

### **Meaning of Will**

A Will is a legal document through which a person declares how their property will be distributed after their death.

The person who makes the will is called the testator, and the person who receives the property is called the beneficiary.

### **Legal Basis**

A Will is governed by the Indian Succession Act, 1925.

It deals with rules regarding making, execution, and validity of wills.

### **Essential Elements of a Valid Will**

For a will to be valid:

- It must be made by a competent person (major and of sound mind)
- It must be made voluntarily, without force or fraud
- It must be in writing (except in certain special cases)
- It must clearly show the intention of the testator

### **Signature and Attestation (Section 63)**

As per Section 63 of the Indian Succession Act, 1925:

- The will must be signed by the testator
- It must be attested by at least two witnesses
- Witnesses must see the testator signing the will

Without proper attestation, the will is not valid.

### **No Consideration Required**

A will is made without any consideration (payment). It is based on the free wish of the testator.

### **Revocation of Will**

A will can be revoked (cancelled) by the testator at any time before death.

It can be revoked by:

- Making a new will
- Destroying the old will
- Marriage (in some cases)

## **Registration of Will**

Registration is not compulsory under the Registration Act, 1908, but it is advisable.

A registered will has stronger proof and less chance of dispute.

## **Operation of Will**

A will becomes effective only after the death of the testator.

Till then, it has no legal effect and can be changed anytime.

## **Importance of Will**

A will is important because:

- It ensures proper distribution of property
- It avoids family disputes
- It gives legal clarity after death

## **h.) AGREEMENT**

### **Meaning of Agreement**

An agreement is a mutual understanding between two or more persons about something to be done or not done. In simple words, it is when one person makes a promise and the other accepts it.

As per Section 2(e) of the Indian Contract Act, 1872, an agreement is every promise and every set of promises forming consideration for each other.

### **Agreement vs Contract**

Not all agreements are contracts. Only those agreements which are legally enforceable become contracts.

According to Section 2(h) of the Indian Contract Act, 1872, a contract is an agreement enforceable by law.

So,

Agreement + Legal Enforceability = Contract

## **Essential Elements of a Valid Agreement (Section 10)**

Under Section 10 of the Indian Contract Act, 1872, an agreement becomes valid when it has:

- Offer and Acceptance
- Free consent (no force, fraud, or mistake)
- Lawful consideration (something of value)
- Competent parties (major, sound mind)
- Lawful object
- Not expressly declared void

### **Offer and Acceptance**

One party must make an offer, and the other must accept it.

The acceptance must be clear, unconditional, and communicated properly. Without acceptance, there is no agreement.

### **Free Consent (Sections 13–19)**

Consent must be free and genuine.

Under the Indian Contract Act, 1872, consent is not free if it is caused by:

- Coercion
- Undue influence
- Fraud
- Misrepresentation
- Mistake

If consent is not free, the agreement may become voidable.

### **Consideration (Section 2(d))**

Consideration means something in return.

It can be money, service, or any benefit. Without consideration, an agreement is generally not valid (with few exceptions).

### **Competency of Parties (Section 11)**

The parties must be:

- Major (18+)
- Of sound mind
- Not disqualified by law

Agreements with minors are generally void.

### **Lawful Object**

The purpose of the agreement must be legal.

If the object is illegal, immoral, or against public policy, the agreement becomes void.

### **Types of Agreements**

Agreements can be of different types:

- Valid Agreement – legally enforceable
- Void Agreement – not enforceable by law
- Voidable Agreement – enforceable at the option of one party
- Illegal Agreement – prohibited by law

### **Importance of Agreement**

Agreements are important because:

- They define rights and duties of parties
- They prevent disputes
- They provide legal protection
- They form the basis of contracts