

# AMENDMENTS IN COMPANY LAW & OTHER LAWS / BUSINESS LAWS - APPLICABLE TO NOV 2020 ATTEMPT

**(SAME MATERIAL WILL APPLY FOR THE STUDENTS OF IPCC & CA INTER)**



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Dear Students,

All latest amendments applicable to Nov 2020 attempt are included in this material. Students are advised to pay special attention on all such areas. All such amendments are not included in 40<sup>th</sup> as well 41<sup>st</sup> edition of our materials.

For the convenience of students, we have included the amendments applicable to Nov 2019 attempt, in this material itself. Such content is provided as italics. All such amendments are not included in 40<sup>th</sup> as well 41<sup>st</sup> edition of our materials. It is recommended for all students to thoroughly prepare these amendments also. We have included the amendments applicable to Nov 2020 by highlighting with Grey Color.

In the same material we have included the amendments applicable to Old & New Syllabus students.

## CORPORATE LAWS (FOR OLD & NEW SYLLABUS)

### 1. PRELIMINARY

#### 1. Financial Year [Section 2(41)]:

*The CG may, on an application made by the company or body corporate in prescribed form and manner, allow any period as its financial year, whether or not that period is a year, if the following conditions are satisfied:*

- The company or body corporate is a holding or a subsidiary or an associate to a company incorporated outside India and*
- Company is required to follow a different financial year for consolidation of its accounts outside India.*

**Note:**

1. Previously application is made to NCLT but now application is to be filed with C.G.
2. Any application pending before the Tribunal as on the date of commencement of the Companies (Amendment) Ordinance, 2018, (02<sup>nd</sup> November 2018) shall be disposed of by the Tribunal (**NCLT**) in accordance with the provisions applicable to it before such commencement.

**2. CLASSES OF COMPANIES****1. SUBSIDIARY COMPANY OR SUBSIDIARY [Sec. 2(87)]:**

**Old Provision:** It is a company in which the holding company (i) controls the composition of BOD; or (ii) exercises or controls more than half of the total share capital either at its own or together with one or more of its subsidiary companies.

**New Provision:** It is a company in which the holding company (i) controls the composition of BOD; or (ii) exercises or controls more than half of the total voting powers either at its own or together with one or more of its subsidiary companies.”

However, such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.

**Impact:** Definition of Total Share Capital as per rule 2(1) (r) of Companies (Specification of Definitions Details) Rules, 2014 has been omitted.

**2. ASSOCIATE COMPANY [Sec. 2(6)]:**

**Old Provision:** “Significant Influence” means control of at least 20% of total share capital, or of business decisions under an agreement.

**New Provision:**

- a) “Significant influence” means control of at least 20% of total voting power, or control of or participation in business decisions under an agreement.
- b) The expression “joint venture” means a joint arrangement whereby the parties that have joint control of the arrangement have rights to the net assets of the arrangement.

**3. PROMOTION AND INCORPORATION OF COMPANY****1. Incorporation Rules:****Resident in India (Definition):**

- For the purposes of this rule, the term “resident in India” means a person who has stayed in India for a period of not less than 182 days during the immediately preceding financial year.
- For the purposes of this rule, while counting the number of days of stay of a director in India for the financial year 2018-2019, any period of stay between 01.01.2018 till the date of notification of this rule shall also be counted

**2. SECTION 10A: COMMENCEMENT OF BUSINESS (NEWLY INSERTED)****A. Applicability:** Sec 10A shall apply only if-

- a) The company is incorporated after the commencement of the Companies (Amendment) Act, 2019 and
- b) The company is a company having a share capital

**B. Conditions for commencement of business or exercising borrowing powers:** The company shall not commence any business or exercise any borrowing powers unless the following 2 conditions are satisfied:

- a) **Filing of declaration with respect to payment of money for shares subscribed by subscribers to MOA:**
  - A declaration shall be filed by a director with the ROC that every subscriber to the MOA has paid the value of shares agreed to be taken by him.
  - The declaration shall be filed within a period of 180 days of the date of incorporation of the company.

- The declaration shall be in such form (**Form INC-20A**) and verified by a CA or CMA or CS in practise in prescribed manner.
- In case of a company pursuing objects requiring registration or approval from any sectoral regulators such as the RBI, SEBI, etc., then the registration or approval, as the case may be from such regulator shall also be obtained and attached with the declaration

**b) Filing of verification of Registered Office:** The company shall file with the ROC a verification of its registered office as provided in u/s 12(2).

**C. Default:** If any default is made in complying with the requirements of this section,

Person Liable	Punishment
Company	Rs.50,000
Officer in Default	Rs.1,000 for each day during which such default continues but not exceeding an amount of Rs.1,00,000.

**D. Power of ROC to remove the name of the Company:** The ROC may initiate action for the removal of the name of the company from the Companies under Chapter XVIII, if-

- The declaration is not filed with the ROC within a period of **180 days** of the date of incorporation of the company and
- the ROC has reasonable cause to believe that the company is not carrying on any business or operations,

**3. SECTION 12: (REGISTERED OFFICE):** (A new sub-section (9) is inserted)

**Power of ROC to make physical verification of registered office:**

- If the ROC has reasonable cause to believe that the company is not carrying on any business or operations then he may cause a physical verification of the registered office of the company in prescribed manner.
- If it is found that the company does not have a registered office capable of receiving and acknowledging all communications and notices sent at such office, the ROC may initiate action for the removal of the name of the company from the register of companies under Chapter XVIII.

**4. Conversion of a Public Company into a Private Company - Alteration of AOA (Proviso to Section 14):**

Until the approval of **CG** is obtained, the alteration of AOA (the effect of conversion of a public company into a private company) shall not have any effect.

**Note:**

- Previously application is made to NCLT but now application is to be filed with C.G.
- Any application pending before the Tribunal as on the date of commencement of the Companies (Amendment) Act, 2019, (02<sup>nd</sup> November 2018) shall be disposed of by the Tribunal (**NCLT**) in accordance with the provisions applicable to it before such commencement.

**5. Rule 8 is substituted with Rule 8, 8A & 8B:**

**Rule 8. Names which resemble too nearly with name of existing company:**

- A name applied for, shall be deemed to resemble too nearly with the name of an existing company, if, and only if, after comparing the name applied for with the name of an existing company by disregarding the matters set out in sub-rule (2), the names are same.
- The following matters are to be disregarded while comparing the names under sub-rule (1):-
  - the words like Private, Pvt, Pvt., (P), OPC Pvt. Ltd., IFSC Limited, IFSC Pvt. Limited, Producer Limited, Limited, Unlimited, Ltd, Ltd., LLP, Limited Liability Partnership, company, and company, & co, & co., co., co, corporation, corp, corpn, corp or group;

- ii) the plural or singular form of words in one or both names<sup>1</sup>;
- iii) type and case of letters, spacing between letters, punctuation marks and special characters used in one or both names<sup>2</sup>;
- iv) use of different tenses in one or both names<sup>3</sup>
- v) use of different phonetic spellings including use of misspelled words of an expression<sup>4</sup>;
- vi) use of host name such as 'www' or a domain extension such as 'net', 'org', 'dot' or 'com' in one or both names<sup>5</sup>;
- vii) the order of words in the names<sup>6</sup>
- viii) use of the definite or indefinite article in one or both names<sup>7</sup>
- ix) a slight variation in the spelling of the two names including a grammatical variation thereof<sup>8</sup>;
- x) complete translation or transliteration, and not part thereof, of an existing name, in Hindi or in English<sup>9</sup>;
- xi) addition of the name of a place to an existing name, which does not contain the name of any place<sup>10</sup>;
- xii) addition, deletion, or modification of numerals or expressions denoting numerals in an existing name, unless the numeral represents any brand<sup>11</sup>;

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1. **Examples:**

- i) Green Technology Ltd. is same as Greens Technology Ltd. and Green Technologies Ltd.
- ii) Pratap Technology Ltd. is same as Prataps Technology Ltd. and Prataps Technologies Ltd.
- iii) SM Computers Ltd. is not same as SMS Computers Ltd.

2. **Examples:**

- i) ABC Ltd. is same as A.B.C. Ltd. and A B C Ltd.
- ii) Teamwork Ltd. is same as Teamwork Ltd. and Team-Work Ltd.

3. **Examples:**

- i) Ascend Solutions Ltd. is same as Ascended Solutions Ltd. and Ascending Solutions Ltd.
- ii) Speak English Solutions Limited is same as Spoken English Solutions Limited.

4. **Examples:**

- i) Chemtech Ltd. is same as Chemtec Ltd., Chemtek Ltd., Cemtech Ltd., Cemtek Ltd., Kemtech Ltd., and Kemtek Ltd.
- ii) Bee Kay Ltd is same as BK Ltd, Be Kay Ltd., B Kay Ltd., Bee K Ltd., B.K. Ltd. and Beee Kay Ltd.

5. **Examples:**

- i) Ultra Solutions Ltd. is same as Ultrasolutions.com Ltd.
- ii) Supreme Ultra Solutions Ltd. is not the same as Ultrasolutions.com Ltd.

6. **Examples:**

- i) Ravi Builders and Contractors Ltd. is same as Ravi Contractors and Builders Ltd.
- ii) Ravi Builders and Contractors Limited is not the same as Ravi Shankar Builders and Contractors Limited.

7. **Examples:**

- i) Congenial Tours Ltd. is same as A Congenial Tours Ltd. and The Congenial Tours Ltd.
- ii) Isha Industries Limited is not the same as Anisha Industries Limited.

8. **Examples:**

- i) Color Technologies Ltd. is same as Colour Technologies Ltd.
- ii) Disc Solutions Ltd. is same as Disk Solutions Ltd. but it is not same as Disco Solutions Ltd.

9. **Examples:**

- i) National Electricity Corporation Ltd. is same as Rashtriya Vidyut Nigam Ltd.
- ii) Hike Construction Ltd. is not the same as Hike Nirman Ltd.

10. **Examples:**

- i) If Salvage Technologies Ltd. is an existing name, it is same as Salvage Technologies Delhi Ltd and Salvage Delhi Technologies Ltd.
- ii) Retro Pharmaceuticals Ranchi Ltd. is not the same as Retro Pharmaceuticals Chennai Ltd.

11. **Examples:**

- i) Thunder Services Ltd is same as Thunder11 Services Ltd and One Thunder Services Ltd
- ii) Style Garments11 Ltd. is same as Style Garments Ltd and Style12 Garments Ltd.
- iii) One 11 Power Equipment Ltd is not the same as One Power Equipment Ltd, if One 11 represents a brand:

**Note:** If no objection has been provided by an existing company by way of a Board resolution then clauses (f) to (h) and clauses (k) and (l) shall not be disregarded while comparing the names.

### **Rule 8A. Undesirable names**

#### **a) The name shall be considered undesirable, if-**

- i) It is prohibited under the provisions of section 3 of the Emblems and Names (Prevention and Improper Use) Act, 1950 (12 of 1950), unless a previous permission has been obtained under that Act;
- ii) Save as provided in section 35 of the Trade Marks Act, 1999 (47 of 1999), the name includes a trade mark registered under the Trade Marks Act, 1999 and the rules framed thereunder in the same class of goods or services in which the activity of the company is being carried out or is proposed to be carried out, unless the consent of the owner, of the trade mark, as the case may be, has been obtained and produced by the promoters;
- iii) It includes any word or words which are offensive to any section of the people;
- iv) The proposed name is identical with or too nearly resembles the name of a limited liability partnership:

**Note:** The provisions of rule 8 shall apply *mutatis mutandis* while determining whether a proposed name is too nearly resembles the name of a limited liability partnership;

- v) The proposed name is identical with or too nearly resembles with a name which is for the time being reserved in accordance with rule 9:

**Note:** the provisions of rule 8 shall apply *mutatis mutandis* while determining whether a proposed name is too nearly resembling with a reserved name;

- vi) The company's main business is financing, leasing, chit fund, investments, securities or combination thereof, but the proposed name is not indicative of such related financial activities, viz., Chit Fund or Investment or Loan, etc.;
- vii) The company's name is indicative of activities financing, leasing, chit fund, investments, securities or combination thereof, but the company's main business is not related to such activities;
- viii) It resembles closely the popular or abbreviated description of an existing company or limited liability partnership;
- ix) The proposed name is identical with or too nearly resembles the name of a company or limited liability partnership incorporated outside India and reserved by such company or limited liability partnership with the Registrar:

#### **Note:**

- If a foreign company is incorporating its subsidiary company in India, then the original name of the holding company as it is may be allowed with the addition of word India or name of any Indian State or city, if otherwise available.
  - Rule 8 shall apply *mutatis mutandis* while determining whether a proposed name is too nearly resembling the name of a company or limited liability partnership incorporated outside India;
- x) any part of the proposed name includes the words indicative of a separate type of business constitution or legal person or any connotation thereof e.g. co-operative, sehkari, trust, LLP, partnership, society, proprietor, HUF, firm, Inc., PLC, GmbH, SA, PTE, Sdn, AG, etc.;

*Explanation.- For the purposes of this clause, it is hereby clarified that the name including phrase 'Electoral Trust' may be allowed for registration of companies to be formed under section 8 of the Act, in accordance with the Electoral Trusts Scheme, 2013 notified by the Central Board of Direct Taxes (CBDT):*

**Note:** Name application is accompanied with an affidavit to the effect that the name to be obtained shall be only for the purpose of registration of companies under the said Electoral Trust Scheme as notified by the Central Board of Direct Taxes;

- xi) The proposed name contains the words 'British India';
- xii) The proposed name implies association or connection with an embassy or consulate of a foreign government;
- xiii) The proposed name includes or implies association or connection with or patronage of a national hero or any person held in high esteem or important personages who occupied or are occupying important positions in the Government;
- xiv) The proposed name is identical to the name of a company dissolved as a result of liquidation proceeding and a period of two years has not elapsed from the date of such dissolution:

**Note:** If the proposed name is identical with the name of a company which is struck off in pursuance of action under section 248 of the Act or under section 560 of the Companies Act, 1956 (1 of 1956) then the same shall not be allowed before the expiry of twenty years from the date of publication in the Official Gazette being so struck off;

- xv) It is identical with the name of a limited liability partnership in liquidation or the name of a limited liability partnership which is struck off up to a period of five years;
- xvi) The proposed name include words such as 'Insurance', 'Bank', 'Stock Exchange', 'Venture Capital', 'Asset Management', 'Nidhi', 'Mutual Fund', etc., unless a declaration is submitted by the applicant that the requirements mandated by the respective regulator, such as IRDA, RBI, SEBI, MCA, etc. have been complied with by the applicant;
- xvii) The proposed name includes the word "State", in case the company is not a Government company;
- xviii) The proposed name is containing only the name of a continent, country, State, city such as Asia limited, Germany Limited, Haryana Limited or Mysore Limited;
- xix) Use of descriptive names, where the name merely consists of commonly used words to describe an activity. *Explanation.—for the purposes of this clause,-*
  - The term "commonly used words" refers to use of generic expressions which may be used by any other company to describe its trade;
  - While determining whether a name is descriptive or not, the objects of the proposed company or the order of words appearing in a name shall not be relevant;
  - The name shall not be deemed to be descriptive where "commonly used words" are used in addition to other words in the name<sup>12</sup>;
- xx) The proposed name includes name of any foreign country or any city in a foreign country, the same shall be allowed if the applicant produces any proof of significance of business relations with such foreign country like memorandum of understanding with a company of such country:

**Note:** The name combining the name of a foreign country with the use of India like India Japan or Japan India shall be allowed if, there is a government to government participation or patronage and no company shall be incorporated using the name of an enemy country.

*Explanation- For the purposes of this clause, 'enemy country' means so declared by the Government of India from time to time.*

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#### 12. Examples:

- i) The names Silk Manufacturers Private Limited and Manufacturers Silk Ltd. are descriptive names as they merely describe an activity which may also be carried out by any other company and the order of the words is not relevant while determining a descriptive name.
- ii) The names Computer World Ltd., Food Star Ltd., Tour Hub Ltd or House of Chocolate Ltd are not descriptive as the names do not merely consist of commonly used words.
- iii) The names Technical Vista Ltd or Vista Technical are not descriptive as the names do not merely consist of commonly used words and the order of the words is not relevant while determining whether a name is descriptive.
- iv) The name Drinking Water Plant Ltd. is a descriptive name, even if the object of the company is not related to making drinking water plant as it consists of commonly used words and objects of the proposed company is not relevant while determining whether a name is descriptive.
- v) The name Silk Wise Manufacturers Private Limited is not descriptive as it contains words other than commonly used words.

- xxi) The proposed name of a section 8 company under the Act does not include the words Foundation, Forum, Association, Federation, Chambers, Confederation, Council, Electoral Trust and the like, etc.
- xxii) The proposed name of a Nidhi company under the Act does not have the last words "Nidhi Limited" as a part of its name.
- xxiii) The proposed name has been released from the register of companies upon change of name of a company and three years have not elapsed since the date of change unless a specific direction has been received from the competent authority in the course of compromise, arrangement or amalgamation.

**b) Declaration:**

- i) The applicant shall declare in affirmative or negative (to affirm or deny) whether he is using or has been using in the last 5 years,
  - the name applied for incorporation of company or LLP in any other business constitution like Sole proprietor or Partnership or any other incorporated or unincorporated entity and
  - if, yes details thereof and No Objection Certificate from other partners and associates for use of such name by the proposed Company or LLP, as the case may be,
- ii) The applicant shall also declare as to whether such other business shall be taken over by the proposed company or LLP or not.

**Rule 8B. Word or expression which can be used only after obtaining previous approval of Central Government**

In terms of section 4(3)(b), the following words and combinations thereof shall not be used in the name of a company in English or any of the languages depicting the same meaning unless the previous approval of the Central Government has been obtained for the use of any such word or expression:

- |                            |  |   |
|----------------------------|--|---|
| a. Board;                  | m. Khadi and Village Industries Corporation; | w. Statute or Statutory;  |
| b. Commission;             | n. Financial Corporation and the like;       | x. Court or Judiciary;  |
| c. Authority;              | o. Municipal;                                | y. Governor;  |
| d. Undertaking;            | p. Panchayat;                                | z. the use of word Scheme with the name of Government (s), State, India, Bharat or any Government authority or in any manner resembling with the schemes launched by Central, State or local Governments and authorities; and |
| e. National;               | q. Development Authority;                    | aa. Bureau.   |
| f. Union;                  | r. Prime Minister or Chief Minister;         |   |
| g. Central;                | s. Minister;                                 |   |
| h. Federal;                | t. Nation;                                   |   |
| i. Republic;               | u. Forest corporation;                       |   |
| j. President;              | v. Development Scheme;                       |   |
| k. Rashtrapati;            |  |   |
| l. Small Scale Industries; |  |   |

**4. PROSPECTUS**

**1. PRIVATE PLACEMENT:**

**Consequences of contravention:**

*If a company fails to make an offer or accepts monies in contravention of this section, -*

**a) the company, its promoters and directors shall be liable for penalty upto-**

- i) amount raised through private placement; or*
- ii) Rs. 2 crore;*

*Whichever is lower;*

**b) the company shall refund all monies to the subscribers, within 30 days of the order imposing the penalty; and the company shall be liable to pay interest at the rate of 12% per annum to the subscribers**

**2. Matters to be stated in prospectus section (26):****Section 26 (4, 5, 6, 7):****Old Provision:**

- a) The Prospectus shall be filed with ROC for registration, on or before the date of publication i.e. date of prospectus.
- b) The ROC shall not register a prospectus unless the requirements with respect to its registration are complied with and prospectus is accompanied with written consent of all the persons named in it.
- c) On the face of each prospectus, it shall be clearly indicated that a copy of prospectus has been delivered to the ROC, for registration.

**New Provision:**

- a) The Prospectus shall be filed with ROC for **filing**, on or before the date of publication *i.e. date of prospectus*.
- b) Omitted.
- c) On the face of each prospectus, it shall be clearly indicated that a copy of prospectus has been delivered to the ROC, for **filing**.

**3. Public offer of securities to be in dematerialized:**

- a) Every Company making offer and such other class or classes of ~~(public)~~ companies, shall issue the securities only in dematerialized form by complying with the provisions of the depositories act, 1996 and the regulations made thereunder [Sec 29(1)].
- b) In case of other companies (other than a companies mentioned u/s 29(1)) they may convert their securities into dematerialized form or issue its securities in physical form in accordance with the provisions of this act.

**4. CIVIL LIABILITY FOR MIS-STATEMENTS IN PROSPECTUS [SECTION 35]:**

A person who makes any statement on the basis of report of an expert shall not be liable u/s 35, if it is proved that –

- a) The statement made by such person was a correct and fair representation of the statement made by the expert,
- b) The person who made the statement on the basis of the statement made by the expert had reasonable ground to believe and did up to the time of the issue of the prospectus believe, that the expert was competent to make it,
- c) The expert had given his consent, and
- d) The expert had not withdrawn his consent before ~~(the delivery)~~ filing of a copy of the prospectus with the Registrar.

**5. SHARE CAPITAL****1. Prohibition on issue of shares at discount [Section 53]:**

*If any company fails to comply with the provisions of section 53, such company and every officer who is in default shall be liable to a penalty which may extend to an*

- a) **amount equal to the amount raised through the issue of shares at a discount or**
- b) **Rs.5,00,000, whichever is less, and**

*The company shall also be liable to refund all monies received with interest at the **rate of 12%** p.a. from the date of issue of such shares to the persons to whom such shares have been issued.*



2. **Notice to be given to Registrar for Alteration of Share Capital [Section 64]:**

**Consequences of contravention:** The Company and every officer who is in default shall be liable to a penalty of –

**Minimum:** Rs. 1,000 for each day during which such default continues,

**Maximum:** Rs. 5,00,000.

3. **Conditions for the issue of equity shares with differential rights:**

a) **Rule 4, sub rule-1, clause (c) of company (Share capital and Debentures) Rules, 2014:**

**Old Provision:** The shares with differential rights shall not exceed 26% of the total post-issue paid up equity share capital including equity shares with differential rights issued at any point of time;

**New Provision:** The voting power in respect of shares with differential rights of the company shall not exceed 74% of total voting power including voting power in respect of equity shares with differential rights issued at any point of time;”

b) **Rule 4, sub rule-1, clause (d) of company (Share capital and Debentures) Rules, 2014:**

**Old provision:** The Company having consistent track record of distributable profits for the last 3 years;

**New Provision:** The above provision has been omitted.

## 6. MEMBERSHIP

1. **INVESTIGATION OF BENEFICIAL OWNERSHIP OF SHARES IN CERTAIN CASES (Sec 90):**

A. **Duty of Company to identify Significant Beneficial Owners:** Every company shall take necessary steps to identify an individual who is a significant beneficial owner in relation to the company and require him to comply with the provisions of this section.

B. **Application to NCLT for lifting of the restrictions:**

a) The company or the person aggrieved by the order of the Tribunal may make an application to the Tribunal for relaxation or lifting of the restrictions placed by the Tribunal.

b) Such application may be made within a period of 1 year from the date of such order:

c) However, if no such application has been filed within a period of 1 year from the date of the order placing such restrictions, such shares shall be transferred, without any restrictions, to the authority constituted to administer IEPF.

C. **Power of CG to make rules:** CG may make rules for the purposes of this section.

D. **Punishment for failure to make a declaration**

a) If a person who is required to make a declaration under this section, fails to make such declaration, he shall be punishable with –

i) Imprisonment up to 1 year; or

ii) Fine: Minimum fine of Rs. 1 Lakh and a Maximum fine of Rs. 10 Lakh; or

iii) Both

b) If the failure is a continuing one, such person shall be punishable with a further fine up to Rs. 1000 for every day after the first during which the failure continues.

c) A person shall be liable to action u/s 447, if he-

i) Wilfully furnishes any false or incorrect information in the declaration; or

ii) Suppresses any material information of which he is aware.

- E. Punishment for failure to maintain Register, etc.:** If a company fails to maintain register or denies inspection of the register or fails to file a return of significant beneficial owners of the company and changes therein with the ROC or fails to take necessary steps to identify significant beneficial owners, the company and every officer of the company who is in default shall be punishable with fine -
- Minimum fine: Rs.10 lakhs;
  - Maximum fine: Rs.50 lakh (if it is first one) and
  - Maximum fine: Rs. 1,000 per day where the failure is a continuing one.

## 8. REGISTRATION OF CHARGES

1. **CONDONATION OF DELAY FOR NON-FILING WITHIN 30 DAYS (SECTION 77):** If a charge is not registered within 30 days of its creation, the position shall be as follows;

- a) **The charge was created before the commencement of the companies (Amendment) Act, 2019:**

- The company may make an application to the ROC for condonation of delay.
- The ROC may allow the registration of the charge after 30 days of its creation, but within 300 days of creation of charge.
- The company pay such additional fees as may be prescribed.
- If the charge is not registered within 300 days of creation of charge as per points (a), (b) and (c) above, the charge shall be registered within 6 months from the date of commencement of the companies (Amendment) Act, 2019, on payment of such additional fees as may be prescribed.

- b) **The charge was created on or after the commencement of the companies (Amendment) Act, 2019:**

- The company may make an application to the ROC for condonation of delay.
- The ROC may allow the registration of the charge after 30 days of its creation, but within 60 days of creation of charge, on payment of such additional fees by the company as may be prescribed.
- If the charge is not registered within 60 days of such creation, the ROC may, on an application, allow such registration to be made within a further period of 60 days after payment of such advalorem fees as may be prescribed

- c) **Time Limit for Registration of Charges:** The application by Company for allowing registration of charge after 30 days of creation of charge but within the time specified above shall be

- Made in Form No. CHG-1 and Form No. CHG- 9 along with additional fee,
- Supported by a declaration from the company signed by its CS or a director that such belated filing shall not adversely affect the rights of any other intervening creditors of the company.

2. **PUNISHMENT FOR CONTRAVENTION [SECTION 86]:**

- a) **Punishment for the company:** If a company contravenes any provision of the chapter 'registration of charges' then the company shall be punishable with –

- Minimum fine of Rs.1 lakh; and
- Maximum fine of Rs.10 lakh.

- b) **Punishment for every officer in default:** In case of contravention of any provision of the chapter 'Registration of charges', every officer of the company who is in default shall be punishable with –

- imprisonment upto 6 months; or
- minimum fine of Rs.25,000 and maximum fine of Rs.1 lakh; or
- Both.

- c) **Liability for wilful defaults:** If any person wilfully furnishes any false or incorrect information or knowingly suppresses any material information, required to be registered in accordance with the provisions of section 77, he shall be liable for action under section 447.

### 3. **Rectification by CG in Register of Charges [Section 87]:**

a) **Applicability of Sec. 87:** Sec 87 applies if-

- i) There is an omission to give intimation of payment or satisfaction of a charge, to the ROC within the time limit prescribed u/s 82 or 83. or
- ii) There is some omission or misstatement of any particulars in any filing previously made through the ROC with respect to -
- Registration of a charge, or
  - Modification of a charge or
  - Satisfaction of a charge.

b) **Powers of CG:**

- i) CG is empowered to make an order that-
- the time for the giving of intimation of payment or satisfaction shall be extended; and
  - the omission or misstatement of any particulars in any filing previously made to the ROC, with respect to registration, modification or satisfaction of a charge, shall be rectified.
- ii) While passing an order u/s 87, CG may impose such terms and conditions as it may deem just and expedient.

c) **Conditions for exercise of powers by CG:** CG is empowered to make such an order, if-

- i) An application is made to CG by the company or any other interested person; and
- ii) CG is satisfied that omission to give intimation of payment or satisfaction of charge or omission or misstatement of any particulars in any previous filings made to the ROC was –
- accidental or
  - due to inadvertence or
  - some other sufficient cause or
  - it is not of a nature to prejudice the position of creditors or shareholders of the company.

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**Note:** The power to condone u/s 87 is applicable only on 'Satisfaction of charge'. The power to condone 'Creation of charge'; 'Acquiring property subject to charge' and 'Modification of charge' is removed.

### 4. **Rectification in Register of Charges (Rule 12 of Companies (Registration of Charges) Rules, 2014):**

CG may, on an application filed in Form No. CHG-8 in accordance with Sec. 87, -

- a) Direct rectification of the omission or misstatement of any particulars, in any filing, previously recorded with the ROC with respect to any charge or modification thereof, or with respect to any MOA of satisfaction or other entry made in pursuance of section 82 or 83
- b) Direct extension of time for satisfaction of charge, if such filing is not made within period of 300 days from the date payment or satisfaction.

## 9. MANAGEMENT AND ADMINISTRATION

### 1. SEC.110 - POSTAL BALLOT (Newly Inserted):

Any item of business required to be transacted by means of postal ballot, may be transacted at a general meeting by a company which is required to provide the facility to members to vote by electronic means under section 108, in the manner provided in that section.

### 2. ANNUAL RETURN – PENALTY FOR CONTRAVENTION [SECTION 92(5)]:

If a company fails to file its annual return before the expiry of the period specified in this section, such company and its every officer who is in default

- shall be liable to a penalty of Rs. 50,000 and
- in case of continuing failure, with further penalty of Rs. 100 for each day during which such failure continues, subject to a maximum of Rs. 5,00,000.”

### 3. EXPLANATORY STATEMENT TO BE ANNEXED TO NOTICE (SECTION 102):

- Without prejudice to the provisions of sub-section (4), if any default is made in complying with the provisions of this section then
- every promoter, director, manager or other key managerial personnel of the company who is in default shall be liable to a penalty of –
  - i. Rs. 50,000 or
  - ii. 5 times the amount of benefit accruing to the promoter, director, manager or other key managerial personnel or any of his relatives **whichever is higher.”**

### 4. DISCLOSURE OF PROXY IN NOTICE CALLING FOR GENERAL MEETING:

- a) In every notice calling a meeting of a company, there shall appear with reasonable prominence a statement that a member entitled to attend and vote is entitled to appoint a proxy, to attend and vote instead of himself, and that a proxy need not be a member.
- b) If default is made in complying with these provisions, every officer of the company who is in default shall be **liable to a penalty of Rs. 5,000.**

### 5. Resolutions and agreements to be filed [Section 117]: If any company fails to file the resolution or the agreement under sub-section (1) before the expiry of the period specified therein then

Who is Liable	Punishment
such company and	shall be liable to a <b>penalty</b> of <b>Rs. 1,00,000</b> and in case of continuing failure, with further penalty of <b>Rs. 500</b> for each day after the first during which such failure continues, subject to a maximum of <b>Rs. 25,00,000</b>
every officer of the company who is in default including liquidator of the company, if any,	shall be liable to a <b>penalty</b> of <b>Rs. 50,000</b> and in case of continuing failure, with further penalty of <b>Rs. 500</b> for each day after the first during which such failure continues, subject to a maximum of <b>Rs. 5,00,000</b>

### 6. Report on Annual General Meeting (Sec 121): If the company fails to file the report under sub-section (2) before the expiry of the period specified therein then

Who is Liable	Punishment
such company and	<ul style="list-style-type: none"> <li>• shall be liable to a <b>penalty</b> of <b>Rs. 1,00,000</b> and</li> <li>• in case of continuing failure, with further penalty of <b>Rs. 500</b> for each day after the first during which such failure continues, subject to a maximum of <b>Rs. 5,00,000</b></li> </ul>

Every officer of the company who is in default	<ul style="list-style-type: none"> <li>• shall be liable to a <b>penalty of Rs. 25,000</b> and</li> <li>• in case of continuing failure, with further penalty of <b>Rs. 500</b> for each day after the first during which such failure continues, subject to a maximum of <b>Rs. 1,00,000</b></li> </ul>
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**CORPORATE LAWS (FOR NEW SYLLABUS ONLY)**

**10. ACCOUNTS OF COMPANIES**

**1. CONSTITUTION OF NATIONAL FINANCIAL REPORTING AUTHORITY [SEC. 132]:**

- a) **Constitution of NFRA by CG:** CG may, by notification, constitute a NFRA to provide for matters relating to accounting and auditing standards under this Act.
- b) **Constitution (Composition) of NFRA:**
  - i) NFRA shall consist of –
    - a chairperson, and
    - such other members not exceeding 15 consisting of part-time and full-time members as may be prescribed
  - ii) The Chairperson shall be a person of eminence and having expertise in accountancy, auditing, finance or law.
  - iii) The Chairperson shall be appointed by CG.
- c) **Divisions of NFRA:**
  - i) NFRA shall perform its functions through such divisions as may be prescribed.
  - ii) Each division of the NFRA shall be presided over by the Chairperson or a full-time Member authorised by the Chairperson.
  - iii) There shall be an executive body of the NFRA consisting of the Chairperson and full-time Members of such Authority for efficient discharge of its functions.
- d) **Functions of NFRA (Notwithstanding anything contained in any other law for the time being in force):** NFRA shall –
  - i) Make recommendations to CG on the formulation and laying down of accounting and auditing policies and standards for adoption by companies or class of companies or their auditors, as the case may be;
  - ii) Monitor and enforce the compliance with accounting standards and auditing standards in such manner as may be prescribed;
  - iii) Oversee the quality of service of the professions associated with ensuring compliance with such standards, and suggest measures required for improvement in quality of service and such other related matters as may be prescribed; and
  - iv) Perform such other functions relating to clauses (a), (b) and (c) as may be prescribed.
- e) **Terms and Conditions:** The terms and conditions and the manner of appointment of the chairperson and members shall be such as may be prescribed.
- f) **Filing of Declaration by the chairperson and members:** The chairperson and members shall make a declaration to CG in the prescribed form regarding no conflict of interest or lack of independence in respect of his or their appointment.
- g) **Chairperson and Full time members not to be associated with audit firms:** The chairperson and members, who are in full-time employment with NFRA shall not be associated with any audit firm (including related consultancy firms)
  - i) during the course of their appointment and
  - ii) 2 years after ceasing to hold such appointment.

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**h) Powers of NFRA:** (Notwithstanding anything contained in any other law for the time being in force) NFRA shall -

i) have the power to investigate, either suo moto or on a reference made to it by CG, for such class of bodies corporate or persons, in such manner as may be prescribed into the matters of professional or other misconduct committed by any member or firm of chartered accountants, registered under the Chartered Accountants Act, 1949

**Note:** If NFRA has initiated an investigation under this section, no other institute or body shall initiate or continue any proceedings in such matters of misconduct;

ii) 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 -

- discovery and production of books of account and other documents, at such place and at such time as may be specified by NFRA;
- summoning and enforcing the attendance of persons and examining them on oath;
- inspection of any books, registers and other documents of any person referred to in clause (b) at any place;
- issuing commissions for examination of witnesses or documents;

iii) where professional or other misconduct is proved, have the power to make order for - imposing PENALTY of -

In case of	Minimum	Maximum
Individuals	Rs. 1 lakh	5 times of the fees received
Firms	Rs. 5 lakh	10 times of the fees received

iv) Debarring the member or the firm from

- Being appointed as an auditor or internal auditor or undertaking any audit in respect of financial statements or internal audit of the functions and activities of any company or body corporate; or
- Performing any valuation as provided u/s 247,

for a minimum period of 6 months or such higher period not exceeding 10 years as may be determined by the NFRA.

**Note:** The expression 'professional or other misconduct' shall have the same meaning assigned to it u/s 22 of the Chartered Accountants, Act 1949.

i) **Appeals against order of NFRA:** Any person aggrieved by any order of NFRA may prefer an appeal before the Appellate Tribunal (NCLAT) in such manner and on payment of such fee as may be prescribed.

j) **Meetings of NFRA:** NFRA shall meet at such times and places and shall observe such rules of procedure in regard to the transaction of business at its meetings in such manner as may be prescribed.

**k) Secretary and other employees:**

- i) The CG may appoint a secretary and such other employees as it may consider necessary for the efficient performance of functions by the NFRA under this Act.
- ii) The terms and conditions of service of the secretary and employees shall be such as may be prescribed.

l) **Head office of NFRA:** The head office of the NFRA shall be at New Delhi and the NFRA may, meet at such other places in India as it deems fit.

m) **Maintenance of books by NFRA:** The NFRA shall cause to be maintained such books of account and other books in relation to its accounts in such form and in such manner as the CG may, in consultation with the Comptroller and Auditor-General of India prescribe.

- n) **Audit of accounts of NFRA:** The accounts of the NFRA shall be audited by the CAG of India at such intervals as may be specified by him and such accounts as certified by the Comptroller and Auditor-General of India together with the audit report thereon shall be forwarded annually to the CG by the NFRA.
- o) **Annual report on working of NFRA:**
- i) NFRA shall prepare in such form and at such time for each financial year as may be prescribed its annual report giving a full account of its activities during the financial year and forward a copy thereof to the CG and
  - ii) CG shall cause the annual report and the audit report given by the CAG of India to be laid before each House of Parliament.

## 2. **NFRA rules 2018:**

- a) The authority shall have power to monitor and enforce compliance with accounting standards and auditing standards, oversee the quality of service u/s 132(2) or undertake investigation under sub-section (4) of such section of the auditors of the following class of companies and bodies corporate:
- i) Listed Companies (companies whose securities are listed on any stock exchange in India or outside India);
  - ii) Unlisted public companies having –
    - Paid-up capital of not less than Rs. 500 crores (or)
    - Annual turnover of not less than Rs. 1,000 crores (or)
    - In aggregate, outstanding loans, debentures and deposits of not less than Rs. 500 crores as on the 31<sup>st</sup> March of immediately preceding financial year;
  - iii) Insurance companies, Banking companies, Companies engaged in the generation or supply of electricity, companies governed by any special Act for the time being in force or bodies corporate incorporated by an Act in accordance with clauses (b), (c), (d), (e) and (f) of section 1 (4) of the Companies Act, 2013<sup>13</sup>;
  - iv) Any Body corporate or company or person, or any class of bodies corporate or companies or persons, on a reference made to the NFRA by the CG in public interest; and
  - v) A body corporate incorporated or registered outside India, which is a subsidiary or associate company of any company or body corporate incorporated or registered in India as referred to in clauses (a) to (d) above, if the income or net worth of such subsidiary or associate company exceeds 20% of the consolidated income or consolidated net worth of such company or the body corporate, as the case may be, referred to in clauses (a) to (d) above.
- b) Every existing body corporate other than a company governed by these rules, shall inform the NFRA within 30 days of the commencement of NFRA rules, in Form NFRA-1, the particulars of the auditor as on the date of commencement of these rules.
- c) Every Body corporate, other than a company as defined in section 2(20), formed in India and governed under this rule shall, within 15 days of appointment of an auditor u/s 139(1), inform the Authority in Form NFRA-1, the particulars of the appointed such body corporate:

**Note:** A body corporate governed under clause (e) of sub-rule (1) shall provide details of appointment of its auditor in Form NFRA-1.

## 3. **Board Report (Sec.134):** Refer Q.No.15 in Pg. No.: 17.10 after Point c)

“A statement regarding opinion of the Board with regard to integrity, expertise and experience (including the proficiency) of the independent directors appointed during the year”.

13. “Explanation.- For the purpose of this clause, “banking company” includes ‘corresponding new bank’ as defined in clause (d) of section 2 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970) and clause (b) of section 2 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (40 of 1980) and ‘subsidiary bank’ as defined in clause (k) of section 2 of the State Bank of India (Subsidiary Bank) Act, 1959 (38 of 1959).”.

**Explanation:** For the purposes of this clause, the expression “proficiency” means the proficiency of the independent director as ascertained from the online proficiency self-assessment test conducted by the institute notified under sub-section (1) of section 150.

**4. Activities specified under Schedule VII:**

**Clause (viii):** After the words “Prime Minister’s National Relief Fund”, the words “or Prime Minister’s Citizen Assistance and Relief in Emergency Situations Fund (PM CARES Fund)” shall be inserted.

**Clause (ix):**

**Old Provision:** Contributions or funds provided to technology incubators located within academic institutions which are approved by the CG;

**New Provision:** Contribution to incubators funded by CG or SG or any agency or Public Sector Undertaking of CG or SG, and contributions to public funded Universities, Indian Institute of Technology (IITs), National Laboratories and Autonomous Bodies (established under the auspices of Indian Council of Agricultural Research (ICAR), Indian Council of Medical Research (ICMR), Council of Scientific and Industrial Research (CSIR), Department of Atomic Energy (DAE), Defence Research and Development Organisation (DRDO), Department of Science and Technology (DST), Ministry of Electronics and Information Technology engaged in conducting research in science, technology, engineering and medicine aimed at promoting Sustainable Development Goals (SDGs).”

**Clause (xii):** disaster management, including relief, rehabilitation and reconstruction activities. (Newly inserted)

**5. COPY OF FINANCIAL STATEMENT TO BE FILED WITH ROC:** If a company fails to file the copy of the financial statements under section 137(1) or (2), as the case may be, before the expiry of the period specified then –

Who is Punishable	Punishment
Company	shall be liable to a <b>penalty</b> of Rs. 1,000 for every day during which the failure continues but which shall not be more than Rs. 10,00,000
a) MD and CFO of the company, if any, and, b) In the absence of MD and CFO, any other director who is charged by the Board with the responsibility of complying with the provisions of this section, and, c) In the absence of any such director, all the directors of the company,	shall be shall be liable to a <b>penalty</b> of Rs. 1,00,000 and in case of continuing failure, with further penalty of Rs. 100 for each day after the first during which such failure continues, subject to a maximum of Rs. 5,00,000.

**6. PUNISHMENT FOR FRAUD (SEC 447):**

a) When is Sec. 447 attracted: When any person is found guilty of fraud

b) Punishment u/s 447 for frauds

**Greater magnitude:** If any person is found guilty of fraud involving an amount of at least Rs.10 lakh or 1% of the turnover of the company of the company, whichever is lower, he shall be punishable as follows:

<b>Imprisonment</b>	<b>Minimum:</b> a) Fraud involves public interest: 3 years b) Other case: 6 Months <b>Maximum:</b> 10 years
<b>Fine</b>	<b>Minimum:</b> Amount involved in the fraud <b>Maximum:</b> 3 times the Amount involved in the fraud

**Lesser magnitude:** If any person is found guilty of –

i) fraud involving an amount less than Rs. 10 lakh or 1% of the turnover of the company, whichever is lower, and



- ii) *fraud does not involve public interest, any person guilty of such fraud shall be punishable with –*
- *Imprisonment up to 5 years; or*
  - *Fine up to Rs.2 lakh; or*
  - *Both.*
- c) **Other liabilities to remain unaffected:** *The person liable u/s 447 shall continue to be liable for any other liability this Act or any other law for the time being in force (including repayment of any debt).*

## OTHER LAWS IFOR NEW & OLD SYLLABUSI

### 1. THE INDIAN CONTRACT ACT, 1872

**Short title-** This Act may be called the Indian Contract Act, 1872.

**Extent, Commencement-** It extends to the whole of India and it shall come into force on the first day of September, 1872.<sup>14</sup>

Saving- Nothing herein contained shall affect the provisions of any Statute, Act or Regulation not hereby expressly repealed, nor any usage or custom of trade, nor any incident of any contract, not inconsistent with the provisions of this Act.'

### 2. NEGOTIABLE INSTRUMENTS ACT, 1881

#### 1. **Sec 143A: Power of Interim Compensation:**

*Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the Court trying an offence under section 138 may order the drawer of the cheque to pay interim compensation to the complainant—*

- a) *in a summary trial or a summons case, where he pleads not guilty to the accusation made in the complaint; and*
- b) *in any other case, upon framing of charge.*
- c) *The interim compensation under sub-section (1) shall not exceed 20% of the amount of the cheque.*
- d) *The interim compensation shall be paid within 60 days from the date of the order under sub-section (1), or within such further period not exceeding 30 days as may be directed by the Court on sufficient cause being shown by the drawer of the cheque.*
- e) *If the drawer of the cheque is acquitted, the Court shall direct the complainant to repay to the drawer the amount of interim compensation, with interest at the bank rate as published by the Reserve Bank of India, prevalent at the beginning of the relevant financial year, within 60 days from the date of the order, or within such further period not exceeding 30 days as may be directed by the Court on sufficient cause being shown by the complainant.*
- f) *The interim compensation payable under this section may be recovered as if it were a fine under section 421 of the Code of Criminal Procedure, 1973.*
- g) *The amount of fine imposed under section 138 or the amount of compensation awarded under section 357 of the Code of Criminal Procedure, 1973, shall be reduced by the amount paid or recovered as interim compensation under this section.*

#### 2. **Sec 148: Power to order compensation:**

*"148. Power of Appellate Court to order payment pending appeal against conviction.*

14. Amendment via the Jammu and Kashmir Reorganization Act, 2019, dated 9<sup>th</sup> August, 2019. The amendment is effective with effect from 31<sup>st</sup> October, 2019.

As per the Jammu and Kashmir Reorganization Act, 2019, in the Indian Contract Act, 1872, in sub-section (2) of section 1, words, "except the State of Jammu and Kashmir" shall be omitted.

- a) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, in an appeal by the drawer against conviction u/s 138, the Appellate Court may order the appellant to deposit such sum which shall be a minimum of 20% of the fine or compensation awarded by the trial Court:

*Provided that the amount payable under this sub-section shall be in addition to any interim compensation paid by the appellant under section 143A.*

- b) The amount referred to in sub-section (1) shall be deposited within 60 days from the date of the order, or within such further period not exceeding 30 days as may be directed by the Court on sufficient cause being shown by the appellant.

- c) The Appellate Court may direct the release of the amount deposited by the appellant to the complainant at any time during the pendency of the appeal:

*Provided that if the appellant is acquitted, the Court shall direct the complainant to repay to the appellant the amount so released, with interest at the bank rate as published by the Reserve Bank of India, prevalent at the beginning of the relevant financial year, within 60 days from the date of the order, or within such further period not exceeding 30 days as may be directed by the Court on sufficient cause being shown by the complainant."*

### OTHER LAWS (FOR NEW SYLLABUS ONLY)

### 3. THE GENERAL CLAUSES ACT, 1897

Amendment via the Jammu and Kashmir Reorganization Act, 2019, dated 9<sup>th</sup> August, 2019. The amendment is effective with effect from 31<sup>st</sup> October, 2019.

As per the Jammu and Kashmir Reorganization Act, 2019, the General Clauses Act, 1897 has been extended as a whole.

### BUSINESS LAWS (FOR OLD SYLLABUS ONLY)

### 4. PAYMENT OF GRATUITY ACT, 1972

#### 1. Section 2A - Continuous Service:

**Old Provision:** A female employee shall be deemed to be in continuous service, even if she has been on maternity leave. However, the total period of such Maternity leave does not exceed 12 weeks.

**New Provision:** A female employee shall be deemed to be in continuous service, even if she has been on maternity leave. However, the total period of such Maternity leave does not exceed "26 weeks".

#### 2. Section 4:

**Old Provision:** The maximum amount of gratuity payable to an employee shall not exceed 10 lakhs.

**New Provision:** The maximum amount of gratuity payable to an employee shall not exceed 20 Lakhs.

### 5. THE EMPLOYEES PROVIDENT FUND & MISCELLANEOUS PROVISIONS ACT, 1952

#### 1. Section 2(M) - Tribunal:

**Old Provision:** "Tribunal" means the Employees' Provident Funds Appellate Tribunal constituted under section 7D.

**New Provision:** "Tribunal" means the Industrial Tribunal referred to in section 7D.

#### 2. Section 7D:

**Old Provision:** The Central Government may, by notification in the Official Gazette, constitute one or more Appellate Tribunals to be known as the Employees' Provident Funds Appellate Tribunal to exercise the powers and discharge the functions conferred on such Tribunal by this Act and every such Tribunal shall have jurisdiction in respect of establishments situated in such area as may be specified in the notification constituting the Tribunal. A Tribunal shall consist of

one person only to be appointed by the Central Government. A person shall not be qualified for appointment as the Presiding Officer of a Tribunal unless he is, or has been, or is qualified to be a Judge of a High Court; or a District Judge.

**New Provision:** The Industrial Tribunal constituted by the Central Government under sub-section (1) of section 7A of the Industrial Disputes Act, 1947 shall, on and from the commencement of Part XIV of Chapter VI of the Finance Act, 2017, be the Tribunal for the purposes of this Act and the said Tribunal shall exercise the jurisdiction, powers and authority conferred on it by or under this Act."

### 3. **Section 18A - Public Servants:**

**Old Provision:** The Presiding Officer of a Tribunal, its officers and other employees, the Authorities referred to in Section 7A and every inspector shall be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code.

**New Provision:** The authorities referred to in section 7A and every inspector shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code."

**THE END**

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