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COURSE DESIGN AND PREPARATION TEAM

Prof. K. Ravi Sankar
Director, SOMS
IGNOU, New Delhi

Prof. Harpreet Kaur
Professor
National Law University, Delhi

Prof. Anil Kumar Rai
Professor
National Law University, Delhi

Dr. Monika Verma
Associate Professor
Marwari Educational Foundation's Group
Institutions Rajkot, Gujarat

Dr. Sushila
Associate Professor
National Law University, Delhi

Dr. Aprajita Bhatt
Assistant Professor
National Law University, Delhi

Course Editor
Prof. Harpreet Kaur

Prof. Srikrishna Deva Rao
Vice Chancellor
National Law University
Delhi

Prof. C.M. Rao
Principal
Manikchand Pahade Law College
Aurangabad

Prof. Bharti
Professor
National Law University, Delhi

Dr. Arul George Scaria
Associate Professor
National Law University, Delhi

Dr. Rashim Garg
Associate Professor
National Law University, Delhi

Ms. Vidya Subramanian
Independent Law Researcher, Delhi

Course Coordinator
Prof. K. Ravi Sankar

PRINT PRODUCTION

Mr. Tilak Raj
Assistant Registrar
MPDD, IGNOU, New Delhi

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COURSE INTRODUCTION

The occupation of business plays an extremely important role in the economy of any country. The act of engaging in business, which consequently results in the creation of jobs and opportunities, along with the generation of revenues for the economic sector forms a significant part in nation building. The proliferation of business activities calls for a mechanism to regulate its conduct, and law facilitates this purpose. For strong and productive economies, the need to have an adequately enforced system of equally applied law has been increasingly felt. Law has become an important part of any business activity. A certain framework of law is necessary for maximum incentive to entrepreneurs, investors and inventors. Business law has taken an important place because it secures the elements of trust and certainty that are vital to economic transactions amongst strangers.

The scope of business laws is very vast. It takes into its ambit the laws related to all the activities proving indispensable for the successful conduct of the business. The scope of business laws is not restricted to the laws related to companies but it also provides laws for business activities conducted by other forms of business organisations. There are laws to deal with contracts, property, agency, negotiable instruments, sale of goods, bailment, guarantees, intellectual property, etc. In relation to companies, there is multitude of laws such as corporate laws, securities laws, competition law, foreign exchange laws, tax laws, etc. Right from the incorporation of a business entity till it attains finality, numerous laws are provided for every significant act that may be resorted by a business entity throughout its life. Business laws also sub-serve the interests of society at large. Laws dealing with insurance, environmental protection, taxation, etc., are extremely beneficial for the promotion of rights and interests of the general public. Antitrust law, which also forms an important part of business law, keeps a check on market concentration, monopolistic and oligopolistic companies along with the dominance exerted by these companies in the market.

Therefore, understanding the basics of business law are extremely important for the students of business management stream to get a firm grasp on the concepts and gaining deeper knowledge of the subject.

The terms “Business law” and “Business Laws” are used interchangeably used in this material. “Business Law” is a generic or umbrella term which provides legal and regulatory framework for doing business. Business environment in any country is governed by its business laws that are necessary for conducting business transactions and regulate business.

Keeping this in view, the present course MMPC-013 on Business Law has been written. All important legislations and related concepts have been explained to familiarise the students and facilitate their easy understanding. This course has been prepared with following course outline to cover almost all important legislations and nuances of Business Law:

Block 1 : Overview of Business Law

Unit 1 : Introduction to Business Law

Unit 2 : Concepts and Principles

Block 2 : Business Forms and Legislations

Unit 3 : The Partnership Act, 1932

Unit 4 : The Companies Act, 2013

Block 3 : Business Contracts

Unit 5 : General Principles of Contracts

Unit 6 : International Contracts of Sale

Block 4 : Legal and Regulatory Framework for Financing and Investments of Business

Unit 7 : Banking and other Allied Regulations

Unit 8 : Foreign Exchange Management and Related Regulations

Unit 9 : Insolvency and Bankruptcy

Block 5 : Intellectual Property and Data Management

Unit 10 : Intellectual Property Rights

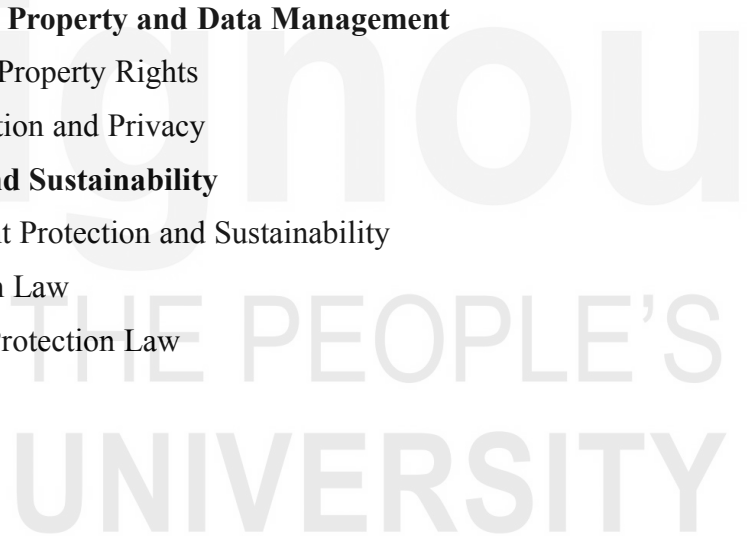
Unit 11 : Data Protection and Privacy

Block 6 : Business and Sustainability

Unit 12 : Environment Protection and Sustainability

Unit 13 : Competition Law

Unit 14 : Consumer Protection Law



BLOCK-1

OVERVIEW OF BUSINESS LAW

Unit 1 : Introduction to Business Law

Unit 2 : Concepts and Principles

UNIT 1 INTRODUCTION TO BUSINESS LAW

Objectives

After studying this unit you should be able to:

- Explain the concept of Business
- Understand the objectives, scope and significance of business law in the present business environment
- Describe the various sources through which business law has evolved

Structure

- 1.1 Introduction
- 1.2 Meaning of Business
- 1.3 Business Environment
- 1.4 Significance of Business Law
- 1.5 Objectives of Business Law
- 1.6 Scope of Business Law
- 1.7 Corporate Restructuring under Business Law
- 1.8 Sources of Business Law
- 1.9 Summary
- 1.10 Self-Assessment Questions
- 1.11 Further Readings/References

1.1 INTRODUCTION

The occupation of business plays an extremely important role in the economy of any country. The act of engaging in business, which consequently results in the creation of jobs and opportunities, along with the generation of revenues for the economic sector, forms a significant part in nation building. The proliferation of business activities calls for a mechanism to regulate its conduct, and law facilitates this purpose. For strong and productive economies, the need to have an adequately enforced system of equally applied law has been increasingly felt. Law has become an important part of any business activity. A certain framework of law is necessary for maximum incentive to entrepreneurs, investors and inventors. Business law has taken an important place because it secures the elements of trust and certainty that are vital to economic transactions amongst strangers. It also includes a study of legal compliances related to any business activity. In this Unit, there will be a discussion on the concept of ‘Business’ and the objectives of ‘Business Law’. The Unit will help in the understanding of the significance of business law in the present business environment and elaborate on the various sources of business law.

The terms “Business law” and “Business Laws” are used interchangeably in the text. “Business Law” is a generic or umbrella term which provides legal and regulatory framework for doing business. Business environment in any country

is governed by its business laws that are necessary for conducting business transactions and regulate business.

Understanding the basics of business law are extremely important for the students of business management stream to get a firm grasp on the concepts and gaining deeper knowledge of the subject. This Unit shall focus on defining the meaning of business, the scope and significance of business law in the current economic scenario, and to acknowledge the different sources of law which contributed in the evolution of business law.

Three concepts establish a necessary framework for the most effective functioning of market in the modern nation- **Law**, the **Rule of Law** and the **Property**.¹ The forces that hold societies together range from custom and religion to law and economic ties. In the modern nation, however, the most significant of the social forces is law because law can glue together diverse peoples of different backgrounds in to very large, organized groups. Law is known by everyone as being intended to tell members of society what they can and cannot do.²

Law:

It is necessary to have preliminary discussion on ‘what is law’ before students are introduced to ‘Business Law’. The term “law” has been defined in many ways. It is not easy to give a precise definition of law. It has been defined as rules of human action.³ A simple definition of law provides that law is a formal social force, is made up of rules which are laid down by the state and are backed by enforcement.⁴

Rule of Law:

Under the Rule of law, laws are made generally and equally applicable. They apply to all members of society and to various groups in the same way. In the words of Secretary General of United Nations, “without confidence based on the rule of law; without trust and transparency- there could be no well-functioning markets.”

“Without the rule of law, major economic institutions such as corporations, banks and trade unions would not function, and the government’s many involvements in the economy- regulatory mechanisms, tax systems, customs structure, monetary policy and the like- would be unfair, inefficient and opaque.”⁵

Property:

The term ‘property’ has two meanings, something that is owned and ownership. It is through the law of property that individuals and business organizations can possess, use and transfer their private resources. The property is a legal fence that keeps others out without your permission. The exclusionary right of property provides a basis for the private market and modern business. Property has been thought of as the central concept underlying Western Legal Systems.⁶ Contract law enables an owner to exchange resources at a future date, tort law compensates owners whose resources are wrongfully harmed by actions of others, criminal law punishes those who harm an owner’s resources in a particular way and the law of business organizations identifies how individuals can own and use private resources in groups. The below mentioned figure indicates the Wheel of Property.⁷

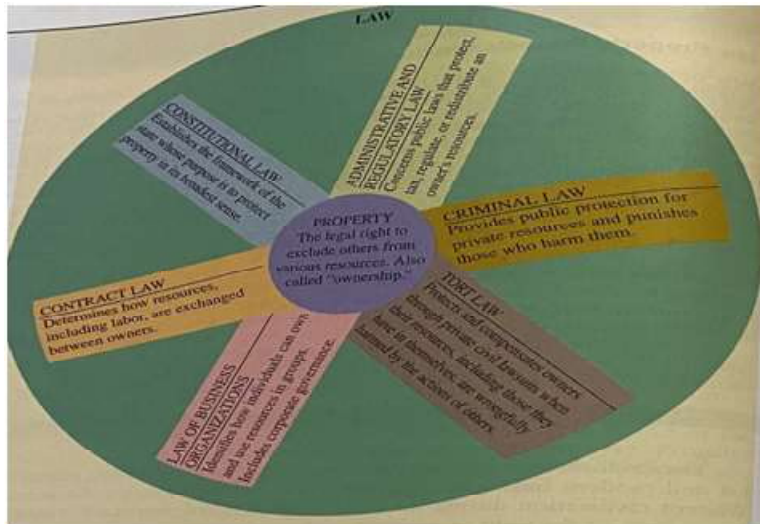


Figure .1.1: Wheel of Property

1.2 MEANING OF BUSINESS

A business can be defined as an enterprise or organization involved in an industrial, mercantile or commercial activity. A business entity may be brought forth for a profit purpose or it can serve non-profit purposes supporting a charitable or a social cause. A business may also be referred to the activities of an individual or a group of individuals engaged in the sale of goods and provision of services with a profit motive.

“The term ‘business’ may be understood as the organised efforts of enterprises to supply consumers with goods and services and to earn profit in the process. Business is a broad term and includes such varied activities as production, promotion, wholesaling, retailing, distribution, transportation, warehousing, financing, insurance, consultancy, and the like.”⁸ L.R. Dickson has defined ‘business’ as a form of activity pursued primarily with the object of earning profit for the benefit of those on whose behalf the activity is conducted.

“Businesses vary in size, as measured by the number of employees or by sales volume etc. But all businesses share one common purpose that is to earn profits. The purposes of business that goes beyond earning profits are -an important institution in society, for the supply of goods and services, creating job opportunities, offering better quality of life, contributing to the economic growth of the country, etc.”⁹

Business law, also commonly known as commercial or mercantile law, is that branch of law that conducts the relationship between the enterprises, companies and individuals engaged in commercial matters. This section of law governs issues in relation to the legal rights, duties and liabilities of the entities engaged in business transactions.

Business Law has attained a significant position in the current era, due to the formidable position held by the business enterprises and corporations in contributing to the economy and by the supply of abundant job positions boosting the employment sector, thereby contributing towards the generation of revenues. “Business law consists of the enforceable rules of conduct that govern commercial relationships. In other words, buyers and sellers interact in market exchanges

within the rules that indicate the boundaries of legal business behavior. Constitutions, legislatures, regulatory bodies, and courts spell out what market participants may or may not legally do. Understanding business law is necessary for future businesspeople because there simply is no market transaction that occurs outside legal guidelines. All contracts, employment decisions, and payments to a supplier are limited and protected by business law. Each of the six functional areas of business - management, production and transportation, marketing, research and development, accounting and finance, and human resource management - sits on a foundation of business law.”¹⁰

Business law is a body of legal rules regulating business activities. Business Law can also be defined as follows:

- 1) “Business law is that portion of the legal system which guarantees an orderly conduct of business affairs and the settlement of legitimate disputes in a just manner.”
- 2) “Business law establishes a set of rules and prescribes conduct that enables us to avoid misunderstandings and injury in our business relationships.”¹¹

1.3 BUSINESS ENVIRONMENT

The business environment consists of all those factors or forces which shape the conduct of business. Such factors may be categorized as internal and external factors. Internal factors included factors within the control of any business. External factors, on the other hand include factors that are beyond the powers or control of any business. Both internal and external factors keep on changing and are dynamic in nature. External factors also include laws, regulations and policies that affect the conduct of business. Figure -1.2 very clearly explains the characteristics of business environment in which businesses operate.

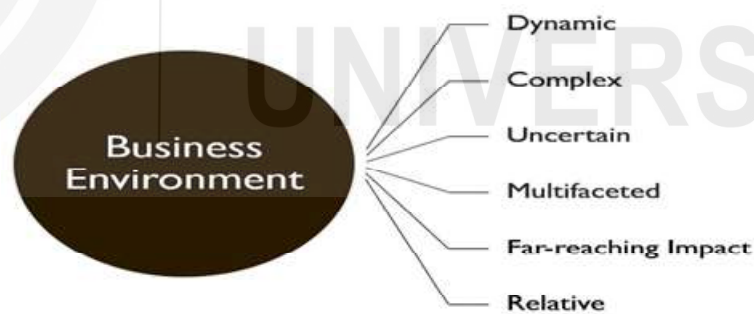


Figure-1.2¹²: Business Environment

1.4 SIGNIFICANCE OF BUSINESS LAW

Business law is that branch of the legal system which promotes an orderly treatment of business affairs, facilitates the regulation of commercial activities in accordance with established practices of law, and provides for settlement of disputes in an amicable manner. It constitutes that part of the legal system which is most fundamental to national wealth creation. It also specifies the rules and the conduct that needs to be adhered to, for the creation of successful business relationships among the government, business entities and the public, and business enterprises inter se. Business law also aids in establishing the environment needed

for responsible and peaceful business dealings not just amongst the different enterprises but also for safeguarding the rights of the employees. Business law also requires understanding and firm grounding of multiple substantive areas of law.

Business law has gained significance due to the changing business environment. Business environment is dynamic in nature and there is a requirement of having adequate laws in place to govern the business organisations functioning in the society.

1.5 OBJECTIVES OF BUSINESS LAW

We enter into contracts every day. Some of these contracts are made consciously, for example, for the purchase or sale of any goods, purchase of a share of a company or a plot of land. Entering into contracts determines the legal rights of each party giving rise to legal obligations as well. People who are engaged in business activities such as business owners enter into a contract on a daily basis to further the business transactions. All business activities include a variety of transactions which give rise to contracts on a daily basis. Some of these contracts are as simple as purchasing goods from a shop thus giving rise to a legal right and legal obligation.

Business law serves a variety of purposes some of which are listed below:

- i) **A comprehensive set of standards established universally:** Business laws are comprehensive and uniform set of standards that are applicable to all business entities. Uniformity in laws helps in maintaining smooth relations between the businesses and its various stakeholders including consumers, suppliers, etc. It provides an environment where the businesses can function smoothly and efficiently as the same rule shall be applicable to all the business organisations falling in a particular category. However, there can be different compliances for different kinds of business organisations depending upon the size, nature of business activity or certain threshold limits.

It also helps in identifying and establishing the rights and liabilities of the various parties interacting with each other. It provides a framework for reducing the harm caused to either party due to fraudulent or unethical activities. Business law also provides for steps that need to be followed while conducting due diligence before engaging with a particular company.

- ii) **Promoting industrial growth:** Business laws not only provide different provisions for compliance for the business but also facilitate industrial growth by protecting and promoting the rights of businesses. Adherence to the rules prescribed by the range of laws falling under the domain of business facilitates businesses to achieve growth and success. Thus, business laws enable; capital formation, promote industrial relations, facilitation of licensing, ease of doing business, financial inclusion, etc. which promote economic growth.

- iii) **Laying down the procedure for the establishment of business:** The laws dealing with business provide the necessary framework required for the commencement of a business corporation along with building of a strong foundation for the business entity to thrive in the market. The formal process provided under the laws also facilitates successful conduct throughout the

life-cycle of the business. For instance, Companies Act, 2013 lays out the steps involved in the incorporation of a company, and provisions related to the Articles of Association and the Memorandum of Association in detail.

iv) Enforcement of Rights: Business laws provide provisions for judicially enforcing the rights of all the parties involved in a business transaction. Thus, the businesses can approach the court to enforce the claims against the debtors or right to a patent or copyright or the right to hold property, etc. Businesses also have a right to defend themselves in case actions are filed by the central, state and local bodies. Thus, businesses have been given the power of initiating legal action in case any legal compliance are breached by any outside party and also allowed to defend themselves against the litigation filed by the government for the various stakeholders. Various provisions aiding in carrying out the enforcement action have been provided in statutes for effective regulation of the business practices.

v) Contributes to the building of healthy business relationships: Laws dealing with business matters are extremely significant in the establishment of secure and effective business relationships amongst the concerned entities as the formation of strong business ties is an absolute must for building a strong economy of a country. For instance, the Partnership Act lists out the rights, duties, and obligations of the partners in a firm for carrying out a successful venture.

Business Law also plays an extremely important role in facilitating Mergers and Acquisitions (M&As) between enterprises looking to collaborate and expand their business. Cross-Border M&As transactions also contribute immensely to the economy of a country by playing a significant role in increasing the revenues generated through the means of Foreign Direct Investment. Cross border M&A occurs between companies situated in two different jurisdictions. If the resulting company is an Indian company, it qualifies as an inbound merger, and if the resulting company is a foreign company, it is christened as an outbound merger.

vi) Reduced possibilities of fraud: A robust and effective business law framework helps in reducing the possibility of fraud as the parties entering into contracts or dealing with each other are well aware of their rights and liabilities which would prevent them in falling prey to the illegal or fraudulent activities by the other party. The laws associated with Business Law also provides for a highly effective enforcement mechanism, which are further lined with stringent measures that could minimize the possibility of perpetuating fraud.

vii) Business laws help maintain equilibrium: Business laws help in bringing about uniformity and maintaining equilibrium as there are set rules which have to be followed by each entity. Different forms of business organisations are regulated by different laws. This helps in the ease of dealing and conducting business as the same standards are followed throughout the country. It helps in making the business transactions easier and smoother across the country.

viii) Ethical conduct: Business laws also help in improving the conduct of the business as the laws have to be followed in letter and spirit. Therefore, the

business organisations have a responsibility of maintaining ethical conduct while functioning in the society. As businesses survive in the society and use its resources, there is a responsibility on the businesses to give back by dealing ethically with all its stakeholders.

For instance, the multi-billion-dollar scam orchestrated by the promoters of Satyam Computer Services, also referred to as “Satyam Scam”, made the regulators across the country re-examine the then-existing corporate governance standards and the fallacies therein. The scam resulted in the violation of multiple provisions of various statutes, such as, Companies Act, 1956 (Sections 209, 233 and 628), Securities (Contract) Regulation Act 1956 (Sections 23A, 23E), SEBI Act (Sections 15HA and 24, and Criminal law. Under the Companies Act, 1956, the resulting violations included failure to maintain proper books of account, penalty for false statements and non-compliance of auditor duties. However, after this incident, sweeping changes were brought forth in the Companies Act, 2013 to combat any unforeseen deviations that may be resorted by the corporate enterprises. The new Companies Act, 2013 mandated at least one-third of the Board to be comprised of Independent Directors, and that they shall not be eligible to receive any stock options and be remunerated only in fee. The new Act also imposed strict norms on any related party transactions along with providing for class action suit options against the company and auditors, for protecting minority shareholders’ interests. It also brought forth provisions clearly defined demarcating the accountability of auditors.

- ix) **Social Responsibility:** Business laws also lay down the criteria for business to function in a society as the business utilize the resources of the society there arises a responsibility of the business to give back to the various stakeholders. This enables social justice and social responsibility in the form of good employment practices, non-discrimination, sustainable utilization of resources, prevention of environmental damage etc. Thus, it prohibits businesses from entering into practices that are harmful to the society at large.
- x) **Laying down law in accordance with the evolving standards:** The business environment is ever-changing and dynamic in nature. The laws have to be enacted taking into account the economic and business environment of the country. These laws not only provide uniformity in business operations but also provide clarity to unforeseen situations. Legislative changes in the form of amendments are made to address the occurrence of unforeseen situations.

An example for this would be the Indian Competition Act, which handles and regulates antitrust issues in the country. The Competition Act, 2002 is concerned with keeping a check on the prevailing anti-competitive acts in the relevant market being governed. The Act encompasses horizontal and vertical agreements, cases related to abuse of dominance, and regulation of combinations. It must be noted that until now Competition Act only focused on price parameters such as unreasonable increase in prices or reduced output in the supply of the goods. However, the advent of digital technology has ushered an era demanding a change in the traditional methods employed to gauge anti-competitive practices. The Indian Competition regulatory authorities have also initiated investigation into degradation of non-price

parameters such as quality, privacy and innovation keeping pace with the changing needs of the society in an era of online platform markets. The Competition Commission of India, which until recently investigated anti-competitive conduct solely based on monetary price increase, has acknowledged the importance of data as a currency in the current business scenario and initiated investigation against data monopolies.

- xi) Providing penalties for violation of laws:** Business law serves an extremely important purpose of enlisting the various penalties that may be employed by the regulatory bodies to ensure that the conduct of business activities conforms to the prescribed standards set by the concerned branch of law. The legislations dealing with the various aspects of the business have provided the penalties that may be incurred by the wrongdoers on contravention of the law and the rules provided therein. For instance, chapter VI under the Competition Act, provides for various penalties for contravention of the orders of the Commission or for non-compliance of the directions of the Director-general or the Commission. Similarly, Chapter VII of the Insolvency and Bankruptcy code (IBC) provides for punishment of offences, penalties for acts including falsification of books of corporate debtor, false representations to creditors and transactions for defrauding creditors, etc.
- xii) Insurance against Risks:** Every business involves inherent risks that may be related to operations of business, movement or transit of goods, and financial risks, etc. Insurance laws provide mechanisms for insuring against such unforeseen circumstances for the business. Directors and officers of the companies can also take D & O insurance policies for protection against future liabilities.

1.6 SCOPE OF BUSINESS LAW

For a better understanding of business laws and the scenario giving rise to their emergence, it is imperative to understand the frame of societal reference which gave birth to this branch of law. Any study of business law must necessarily provide major thrust to the rules framed in relation to business law, because “society has imposed constructive notice of that law.”¹³ Understanding the background sheds light on the reason behind the emergence and the functioning of a particular law and shall aid in making policies that might prove beneficial in the long run.

The scope of business laws is very vast. It takes into its ambit the laws related to all the activities proving indispensable for the successful conduct of the business. The scope of business laws is not restricted to the laws related to companies but it also provides laws for business activities conducted by other forms of business organisations. There are laws to deal with contracts, property, agency, negotiable instruments, sale of goods, bailment, guarantees, intellectual property, etc. In relation to companies, there is multitude of laws such as corporate laws, securities laws, competition law, foreign exchange laws, tax laws, etc. Right from the incorporation of a business entity till it attains finality, numerous laws are provided for every significant act that may be resorted by a business entity throughout its life. There are a range of laws that have been enacted for the proper commencement of business activities, for the required conduct during its life

cycle, with finally laws laying down procedures directing the regulation and culmination of the business activity in question. Business law also aids in raising questions against governmental regulations in case it results in violation of legitimate business practices. The legal consequences of the multifarious business transactions also play a significant role for the accountant of the company in auditing the company's books and in the course of preparing required financial statements. Business laws also subserve the interests of society at large. Laws dealing with insurance, environmental protection, taxation etc., are extremely beneficial for the promotion of rights and interests of the general public. Antitrust law, which also forms an important part of business law, keeps a check on market concentration, monopolistic and oligopolistic companies along with the dominance exerted by these companies in the market.

Government also facilitates business transactions wherever it is required in the best interests of the company. The Government had invited bids for the Air India divestment process, for which the Tata Group and Spice Jet promoters have submitted bids. The Government has decided to offer hundred percent stake in the debt-ridden state-run airline this time. This has been done after Air India had failed to attract any bidder when the government had offered a 76 percent stake in the former three years ago.¹⁴

1.7 CORPORATE RESTRUCTURING UNDER BUSINESS LAW

Corporate restructuring also forms an essential part of the business development. Corporate restructuring is a process whereby a firm looks to enhance its shareholder value. It encompasses a broad range of transactions within its ambit, including within its purview, changing its capital structure through the infusion of high levels of debt to selling-off business lines or making acquisitions by taking over corporations and making internal changes in the organization of the firm. It is an absolute necessity for a company's basic survival or sustenance in the corporate sector to combat multiple competitors in the market looking to dominate¹⁵. There are numerous ways by which a company may look to restructure its business – viz., merger and amalgamation, merger through absorption, merger through consolidation, acquisition, takeovers, divestiture, demerger, joint venture, and buyback of securities, to name a few. There can exist multiple reasons for a company to opt for internal or external restructuring such as, to focus on core competency, for hiving-off assets, eliminating competition, achieving economies of scope and economies of scale, gaining access to R&D and technology knowhow, synergistic effects, diversification and enhancing public perception. These different forms of restructuring are also supervised by different branches of business law, such as Companies Act, FEMA, Taxation laws, SEBI Act to name a few.

One recent example of a company engaging in restructuring, in the form of acquisition as a means to expand could be the case of Ed-tech giant Byju's, which is looking to achieve success in K-12 (Kindergarten to 12th standard) online education. Byju's has already engaged in multiple acquisitions including medical coaching Institute Aakash, Epic games, Great Learning, Scholr, Gradeup, to name a few spending close to \$2 billion for the same in this year. Byju's has recently made its ninth acquisition of the year when it acquired Tynker, a silicon-valley based coding platform for children, for an estimated amount of \$100 million,

also its third acquisition of a US-based company. These slew of acquisitions by the company have been made with a view to obtain a public listing in the US. The phenomenon of M&A is governed by legislations such as, Companies Act, SEBI Act and its Substantial Acquisition of Shares and Takeover (SAST) regulations among others.¹⁶

Most of the current dialogues about corporate governance can also be attributed to discussing a corporation's existence and for whose interests the corporate exists and ultimately serves. Most commonly, the obvious answer is the maximization of wealth for the shareholders of a company. The principle of shareholder wealth focuses on the aspect of cash flows that may not be immediate profit-generating and more of a future outcome. A company aims to amplify the residual profits that remain after all the incidental costs are reduced. Profit generation may not be the only aim of a company, but it may prove to be a significant reason. From a shareholder perspective, in a competitive and flourishing market, anything a company does to enhance share prices is a plus. Moreover, whenever a shareholder does any activities, such as selling, buying, or retaining their shares, it adds to their value.

1.8 SOURCES OF BUSINESS LAW

There are many sources from which the business law evolves. Some of these main sources are:

i) Constitution:

The text of the Constitution along with its interpretation by the Supreme Court from time to time, is considered as the supreme law of the land. All laws and authority flowing from and traceable to the Constitution are recognised as lawful power. The Indian Constitution establishes the fundamental principles and rules by which the individual States are governed. The term constitutional law refers to the general limits and powers of the Central and State governments as stated in written constitutions. The Indian Constitution is the supreme law of the land, and all the laws of the country have their foundation in the Indian Constitution.

The Indian Constitution was drafted with certain objectives that were latent in the text and provided directions to the State to achieve a social order for the upliftment and welfare of the people. Even otherwise, post the 42nd amendment, the Preamble of the Constitution was incorporated with the terms "Socialist" and "Secular", which strengthened the objective to promote social welfare. Article 38 places the responsibility on the State to strive to promote the welfare of the people by achieving a social order, while Article 39 provides for a few principles of policy to be observed by the State. Article 38 and 39, though having been placed in part IV of the Constitution as Directive Principles of State Policy, and cannot be enforced in a Court of Law, prove extremely significant laying down directions for good governance of a State. Especially, it directs the State to frame policies that ensure that the ownership and control of the material resources are adequately distributed, and that the operation of the economic system must not lead to a concentration of wealth to the common detriment. For instance, the Government of India ordered the formation of a committee (Mahalanobis Committee) to assess the income distribution in the society due to the rising monopolistic and

restrictive trade practices that were being observed in the Country. This led to the formation of the Monopolies Inquiry Committee and the report submitted paved the way for the Monopolies and Restrictive Trade Commission Act (MRTP Act). This way, the Constitution of India, specifically Article 39 sowed the seeds for the genesis of competition laws in India.

Article 19 (1) (g) of the Constitution guarantees that all citizens shall have the right to practice any profession, or to carry on occupation, trade or business. The right to carry on a profession, trade or business is not absolute. Reasonable restrictions can be imposed by the state in the exercise of such right. Part XIII of the Constitution deals with Trade, Commerce and Intercourse within the territory of India. Article 301 provides that subject to the other provisions of this Part, trade, commerce and intercourse throughout the territory of India shall be free. Article 302 gives power to the Parliament to impose restrictions. It says that the Parliament may by law impose such restrictions on the freedom of trade, commerce or intercourse between one State and another or within any part of the territory of India as may be required in the public interest.

ii) Statutes:

A Statute can be defined as an act of the legislature in written form. “Legislative actions, called *statutes*, are another important source of law. The assortment of rules and regulations put forth by Legislatures is what we call statutory law.”¹⁷ The Parliament and the State Legislatures have been conferred the primary responsibility to enact laws as per the requirements of the Union and the State respectively. “Legislation is the common source of law. Both Parliament and State assemblies have enacted a number of legislations that cover various aspects of business.”¹⁸

The act of creating laws, also known as legislating, cannot solely be performed by the Parliament, due to the enormous number of legislations required to run a State. The act of legislations can be delegated to subordinate authorities such as executive bodies and individuals, by providing the necessary guidelines, policies and rules that must be resorted to while laying down the law. This area of legislations is also known as delegated or subordinate legislation. The Legislature has come up with various laws to counter the issues cropping up in the business administration in our country.

iii) Cases:

Case laws play an important role in shaping the law and bringing out its relevance as per the prevailing conditions in the society. The interpretation offered by the judges in the form of *ratio decidendi* aids in clarifying the nuances of the law. Judicial decisions, in the form of precedents, are one of the most important sources of law. Case laws, Constitution, legislatures, and administrative agencies encourage certain behavior and prevent other actions. But the boundaries of these laws are seldom self-explanatory. Consequently, law must be interpreted. Case law is the collection of legal interpretations made by judges. An alternative name for case law is common law as common law is a judge made law. Interpretations provided by courts in cases are law unless they are revoked later by new statutory law. Case law is especially significant for businesses because a modern business often operates in multiple legal jurisdictions. Because statutory laws are subject

to interpretation, one court may have interpreted laws one way at one business location, and a second court may interpret a similarly worded statute differently at a second business location. Courts issue judicial decisions that often include interpretations of statutes and administrative regulations. These decisions contain the reasoning the courts use to arrive at their decisions. The reasoning depends heavily on precedent, the use of past decisions to guide future decisions. An earlier decision in a similar fact pattern is a precedent that guides later decisions, thereby providing greater stability and predictability to the law.”¹⁹

iv) Custom:

Custom is one of the most important sources of law. It is possible to detect two basic elements in the make-up of the custom - *material facts*, which is the actual behavior of states founded upon the performance of the state activities and practices; *psychological element*, which is the belief by the state that behaved in a certain way that it was a legal obligation to act that way. There are a number of factors concerning the nature of a particular practice – Duration, repetition, consistency and generality. “A substantial part of business law is customary, notwithstanding advances made in science and technology. This is true both in developed and developing countries. A custom, when accepted by courts and incorporated in judicial interpretations, becomes a law. Many of the business customs or usages have already been adopted and legalized. The Indian Contract Act provides that nothing therein contained, “shall affect any usage or custom of trade.” Similarly, the Negotiable Instruments Act provides that nothing there-in contained “shall affect any local usage relating to instruments in an oriental language.”²⁰

v) Treaties:

Treaties are a source of international business law. They are one of the sources that have been mentioned under Article 38 of the Statute of the International Court of Justice. Treaties are obligatory in nature and are founded upon the customary principle that agreements are binding upon the parties and must be performed in good faith. For many writers, treaties constitute most important source as they require the express consent of the contracting states, they are thus considered superior to custom. The consent to a treaty can be signified by signature, exchange of instruments, ratification or accession by the concerned countries. “The purpose of international laws is to permit countries as much authority as possible over their own international business affairs, while maximizing economic benefits of trade and working relationships with other nations. Since many countries have historically allowed governance by international agreements when conducting global business, there exists an evolving body of international laws that facilitate global trade and commerce.”²¹ “A treaty is similar to a contract in two important ways. Both treaties and contracts are attempts by parties to determine rights and obligations among themselves. In addition, when a party fails to obey a treaty or an international contract, international law imposes liability on that party.”²² Treaties can be *multilateral* – signed amongst many countries, and *bilateral* – existing between two countries.

vi) Government Policies:

The legal power to make laws comes to the government from the Constitution. Laws are framed according to the policies of the government. One can

understand the focus of any government through its policies. For example, when the focus is to promote ease of doing business, the government accordingly brought new legislations and regulated to remove bottlenecks which had increased time consumed in contracts enforcement. Similarly, the economic reforms undertaken, provision of easy financing for MSME sector or women entrepreneurs, bringing new policies like e-commerce policy, etc., are examples of government intervention for regulating the business through policies. Laws are made according to the policies.

1.9 SUMMARY

Understanding the basics of business law are extremely important for the students of business management stream to get a firm grasp on the concepts and gaining deeper knowledge of the subject. This Unit focuses on defining the meaning of business, the scope and significance of business law in the current economic scenario, and to explain the different sources of law which contributed in the evolution of business law.

A business can be defined as an enterprise or organization involved in an industrial, mercantile or commercial activity. A business entity may be brought forth for a profit purpose or it can serve non-profit purposes supporting a charitable or a social cause. A business may also be referred to the activities of an individual or a group of individuals engaged in the sale of goods and provision of services with a profit motive.

Business law is that branch of the legal system which promotes an orderly treatment of business affairs, facilitates the regulation of commercial activities in accordance with established practices of law, and provides for settlement of disputes in an amicable manner. It constitutes that part of the legal system which is most fundamental to national wealth creation. It also specifies the rules and the conduct that needs to be adhered to, for the creation of successful business relationships among the government, business entities and the public, and business enterprises inter se. Business law also aids in establishing the environment needed for responsible and peaceful business dealings not just amongst the different enterprises but also for safeguarding the rights of the employees. Business law also requires understanding and firm grounding of multiple substantive areas of law.

There are many sources from which the business law evolves. Some of these main sources are: Constitution, Statutes, Cases, Custom, Treaties, and Government Policies.

1.9 SELF ASSESSMENT QUESTIONS

- 1) What do you understand by the term “Business”? Elaborate.
- 2) What is the significance of business law in governing the functioning of the business enterprises and companies in the society?
- 3) Explain out the different sources of business law and their significance in the growth of business law.
- 4) Briefly explain the meaning of the term “corporate restructuring”.

- 5) Which Article in the Indian Constitution promotes the idea of framing policies to ensure that the operation of the economic system does not result in the concentration of wealth in the society?

1.10 FURTHER READINGS/REFERENCES

Weblinks:

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- ¹⁶ Chandra R Srikanth, *Byju's buys US-based coding platform Tynker, its 9th acquisition this year*, (Sept., 16, 2021) <https://www.moneycontrol.com/news/business/startup/byjus-buys-us-based-coding-platform-tynker-its-9th->

¹⁷ *Supra* note 3, at 4

¹⁸ *Supra* note 1, at 6

¹⁹ *Supra* note 3, at 5

²⁰ *Supra* note 1, at 6

²¹ Valbrune Miranda and Assis Renee De, BUSINESS LAW 1 ESSENTIALS (OpenStax 2019), <https://openstax.org/books/business-law-i-essentials/pages/1-introduction> (Last Visited on 12/05/2021)

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UNIT 2 CONCEPTS AND PRINCIPLES

Objectives

The objectives of this unit are to:

- Understand important concepts under Business law
- Appreciate various principles under Business law
- Explain the statutes that fall under Business law in India
- Discuss the methods for dispute resolutions including Alternate Dispute Resolution (ADR)

Structure

- 2.1 Introduction
- 2.2 Concepts under Business Law
- 2.3 Principles of Business Law
- 2.4 Statutes under Business Law
- 2.5 Basic Scheme of Litigation- Resolution through Courts
- 2.6 Alternative Dispute Resolution
- 2.7 Summary
- 2.8 Self Assessment Questions
- 2.9 Further Readings/References

2.1 INTRODUCTION

Law has become an important part of any business activity. Business law has taken an important place in the legal study. Business law provides legal and regulatory framework for doing business. It includes study of legal compliances related to any business activity. This Unit will elaborate the concepts that fall under the business law. It will discuss the various principles of business law and the statutes that fall under business laws in India. The Unit also examines the dispute resolution mechanisms for resolving business disputes including the Alternate Dispute Resolution mechanisms.

Business Law incorporates into its ambit the set of laws that directs the process of formation and continuance of business, setting forth the laws which establish the rules that the companies and enterprises follow. “All legitimate businesses need to operate within the framework of the law. It is essential for persons working within the business world to have an understanding of how law works and affects their businesses, for example a contract will only be of value to a business if it is legally enforceable. The law sets down rules for the setting up and administration of certain types of business and governs areas of employment of staff. Although specialist legal advice is usually obtained on specific legal issues, it is essential to understand the core principles of business law.”¹

The enactment of laws and their staunch governance is of utmost importance in a country. “Laws are rules and regulations which govern the activities of persons within a country. They provide necessary rules, and balance the various interests

of different members of the community. Both natural persons (human beings) and legal persons (companies) are bound by laws of the country they reside in. From these laws they can ascertain what they are permitted to do and what they are not permitted to do.”²

2.2 CONCEPTS UNDER BUSINESS LAW

Any business begins with the basic understanding of what has to be done under any particular business and in what form it has to be done. A business may be established for production, manufacturing, provision of service or sale or purchase of products. Every such objective involves a complex set of contracts, transactions and payments. Similarly, in what form business has to be done requires deliberation about the type of business organization through which the business will be conducted. The types of business organizations would begin from sole proprietorship in which an individual carries the business followed by traditional partnerships, limited liability partnerships and incorporation of a company. Doing business in Hindu Undivided Family (HUF) is also prevalent in India in which male members of the family become *coparceners* in the business by birth in the family. The business is conducted by the *Karta* of the family. Therefore, the following concepts become important for any entrepreneur to understand:

- 1) Whether the business involves sale and purchase? If yes, basic concepts relating to contracts of sale should be well known.
- 2) Whether the business involves production or manufacturing? If yes, basic concepts relating to the contracts, intellectual property, product liability, contractual and tortious liability, should be known.
- 3) Whether the business involves formation of a partnership? If yes, depending upon the type of partnership, the process of formation and forthcoming liabilities of all partners should be very well known. In traditional partnerships, registration is not mandatory but has serious consequences in reducing remedies for the partnership against third parties. Partnership deed is advisable to be prepared as such partnerships have unlimited liabilities of partners. Limited Liability Partnerships (LLPs) provide opportunity to enjoy the benefit of partnership with limited liability of partners through incorporation of LLPs.
- 4) Whether the business involves incorporation of a company? If yes, which type of company will be suitable for the business should be understood. Generally, a limited liability company should be constituted for business involving capital and financial risks.

Rights and liabilities of shareholders of companies should be well understood for both private and public limited liability companies.

- 5) Whether the business is capital intensive? If yes, it should be known how the capital would be raised through public issues or borrowing.
- 6) Whether payments are required to be made? Generally, all businesses would require payments to be made to different persons. Basic knowledge about the concepts of negotiable instruments is required.

- 7) Every business involves different types of risks. Concepts relating to the insurance and risk management should be known and accordingly risks should be insured through proper insurance policies.
- 8) Disputes are also part and parcel of doing any business. Concepts relating to the rights, remedies, dispute resolution including alternative dispute resolution mechanisms should be well understood.
- 9) Legal and regulatory compliances should be properly adhered to by all businesses. For example, if business makes profits, how to comply with tax liability, if business involves off shore transactions how the tax liability should be covered becomes important for any business.

2.3 PRINCIPLES OF BUSINESS LAW

- 1) **Law and Morality:** “The Natural Law School of jurisprudence postulates that the law is based on what is “correct.” Natural law philosophers emphasize a moral theory of law—that is, law should be based on morality and ethics. Natural law is “discovered” by humans through the use of reason and choosing between good and evil.”³ “The very efficiency of the legal system depends on the moral attitude towards the notion of legality, since conformity with the law is not, in itself, a legal matter, but a moral obligation. Every law can be, and should be, evaluated from a moral viewpoint. The law cannot and must not regulate every aspect and each moment of our lives. Most often the law tells us how to proceed, but not what we should do.”⁴ Thus, businesses also have moral obligations and the business law acts as a guiding force to fulfill these moral obligations. Morality is achieved by following the law not only in letter but also in spirit.
- 2) **Business Ethics:** Business being part of the society has an assortment of responsibilities. Businesses have a relationship with the other parts of the community such as consumers, workers, vendors, marketers, etc. Businesses owe responsibility towards these parties of the community. The degree of responsibility may vary from business to business or stakeholder to stakeholder. Responsibilities are of diverse nature such as safe working conditions for the employees, good quality products, profit maximization for the shareholders, and sustainable use of the society’s resources. “Ethics is the study and practice of decisions about what is good or right. Ethics guides us when we are wondering what we should be doing in a particular situation. Business ethics is the application of ethics to the special problems and opportunities business people experience. An ethical dilemma is a problem about what a firm should do for which no clear, right decision is available. At the same time the business ethics guides decisions within firms, ethics helps guide the law. Law and business ethics serve as an interactive system—informing and assessing each other. The principles of contract law, for instance, facilitate market exchanges and trade because the parties to an exchange can count on the enforceability of agreements. Legal rules that govern the exchange have been shaped in large part by our sense of commercial ethics.”⁵

“The law dictates how a person *must* behave. Any choice about how a person should behave that is based on a sense of right and wrong is an ethics decision. Laws represent society’s view of basic ethics rules. And most people agree that certain activities such as murder, assault, and fraud are wrong. However,

laws may permit behavior that some feel is wrong, and it may criminalize acts that some feel are right.”⁶ Similar situations arise under business law for example, Factories Act, 1948 permits employment of children above 14 years of age, this may be wrong for some people however, it has been permitted under the law to allow them to earn a living according to the provisions set out in the law.

- 3) **Common Law:** Common law has been a major source of developing business law. Earlier commercial law was not regulated through specific statutes rather the principles of equity and justice were adopted in the common law approach, where precedents acted as a guiding force. Thus, common law still plays a very important role in the evolution and enactment of commercial law. “The term common law has several different meanings. It is usually used to mean the law that is not the result of legislation but is the law created by the decisions of the judges. When common law is given this meaning, it encompasses cases that have used both, or either, equity and common law.”⁷ “English common law was law developed by judges who issued their opinions when deciding cases. The principles announced in these cases became *precedent* for later judges deciding similar cases. The English common law can be divided into cases decided by the *law courts*, *equity courts*, and *merchant courts*.”⁸

“The common law is a beautiful system, containing the wisdom and experiences of ages. Like the people it ruled and protected, it was simple and crude in its infancy and became enlarged, improved, and polished as the nation advanced in civilization, virtue, and intelligence. Adapting itself to the conditions and circumstances of the people and relying upon them for its administration, it necessarily improved as the condition of the people was elevated. The inhabitants of this country always claimed the common law as their birth right, and at an early period established it as the basis of their jurisprudence.”⁹

- 4) **Natural Law:** “The term ‘natural law’ refers to the idea that there are certain ethical laws and principles that are morally right and above the laws devised by humans. This concept suggests that individuals should have the freedom to disobey a law enacted by a majority of people if their individual conscience goes against the law and they believe the law is wrong. The idea that people have basic human rights, for example, is rooted in the concept of natural law.”¹⁰ “The Natural Law School of jurisprudence postulates that the law is based on what is “correct.” Natural law philosophers emphasize a moral theory of law—that is, law should be based on morality and ethics. Natural law is discovered by humans through the use of reason and choosing between good and evil.”¹¹

“The law must have a moral basis. Where do we find the moral basis that would justify a law? Aquinas says that “good is that which all things seek after.” Therefore, the fundamental rule of all laws is that “good is to be done and promoted, and evil is to be avoided.” This sounds appealing, but also vague. Exactly which laws promote good and which do not? Is it better to have a huge corporation dominate a market or many smaller companies competing? Did the huge company get that way by being better than its competitors?”¹²

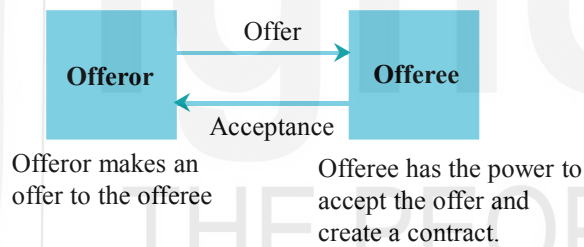
There can be numerous examples of the natural law theory to business laws, as business laws have evolved over time through customs and general usages

which were considered as the rules of the trade. These rules were based on ethical conduct, equity and fairness which has been ingrained in the laws by the law making bodies.

- 5) **Contractual Principles:** Salmon has defined a contract as an agreement that creates and defines obligation between the parties. Section 2(h) of the Indian Contracts Act, 1872 defines the term contract as an agreement enforceable by law. This also means that a contract is fundamentally an agreement having the power to legally bind the parties.

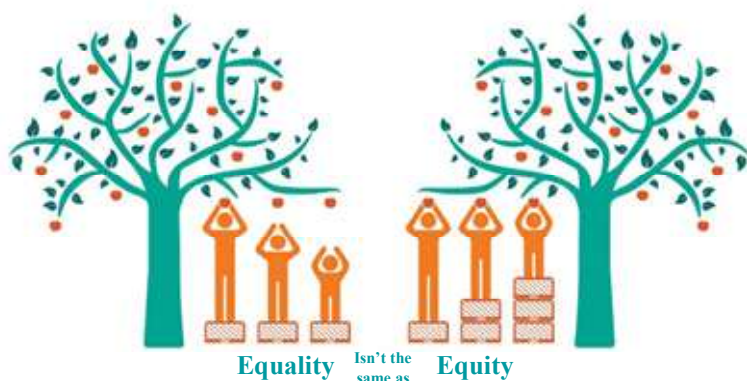
“A contract is an agreement that is enforceable by a court of law or equity. Every contract involves at least two parties. The offer or is the party who makes an offer to enter into a contract. The offeree is the party to whom the offer is made. In making an offer, the offer or promises to do—or to refrain from doing—something. The offeree then has the power to create a contract by accepting the offeror’s offer. A contract is created if the offer is accepted. No contract is created if the offer is not accepted.”¹³

All business laws have an element of contractual relationships which are governed as per the law. The Indian Contracts Act specifies the essentials of a valid contract also stating the various provisions that govern its enforceability. Simple transactions such as purchase of goods and services is a contract which attracts various statutes under the business law.



¹⁴Figure 2.1

- 6) **Equity and Fairness:** Equity and fairness is an important principle of business law. The provisions under business seek to provide equitable treatment to all. There are laws which vary according to the size of the business organization or the nature of business activity thereby differentiating between the business and the laws applicable to them. One such example can be the provisions of Corporate Social Responsibility where the amount of contribution by the companies is divided by thresholds on the basis of turnover, net worth or net profit thereby putting more responsibility on the bigger companies.



¹⁵Figure 2.2

2.4 STATUTES UNDER BUSINESS LAW

There are various enactments brought forth by the legislature which provide guidance for the carrying out business activities, along with their procedure, regulation and enforcement. Some of the legislations are listed below:

1) **INDIAN CONTRACTS ACT, 1872:**

A Contract is an agreement enforceable by law. The formation of Contracts plays an important role in business world and the law of contracts in India is governed by the Indian Contract Act, 1872. This law has its origins in the English common law. The drafting and formation of business contracts plays an extremely important role in paving the way for business entities to establish business relationships. The Contract Act also encompasses provisions related to the laws of agency, bailment, guarantee and indemnity.

2) **SALES OF GOODS ACT, 1930:**

The Sale of Goods Act, 1930, is an enactment to define and amend the law associated with the sale of goods. Earlier falling within the purview of chapter VII of the Indian Contracts Act, the principles of sale of goods came to be regulated under a separate act eventually. This Act performs the function of protecting the rights of buyers and sellers, laying down rules for transfer of ownership of goods, along with creation of remedies for an effective enforcement. The enactment also contains provisions for the principle of *caveat emptor*.

3) **NEGOTIABLE INSTRUMENTS ACT, 1881:**

Financial System encompasses credit as well as cash transactions. All transactions under the wing of finance are either dealt with cash payments or by issuance of negotiable instruments such as; Bills of Exchange, Cheques or Hundies, to name a few. The Negotiable Instruments Act, 1881, is an Act to define and modify the law relating to promissory notes, bills of exchange and cheques. This enactment also ensures that obligations that are assumed by the issuance of cheques as a mode of deferred payment are honoured.

4) **INDIAN PARTNERSHIP ACT, 1932:**

The Partnership Act governs the relation between persons engaged in a business who have decided to share the profits of a business undertaken by all or any one person on behalf of all. Partnership Act is also one amongst the bundle of laws, playing an important role in regulating business relations.

5) **LIMITED LIABILITY PARTNERSHIP ACT, 2008:**

This Act lays down provisions for the creation and regulation of Limited Liability Partnerships (LLPs), and provides the flexibility and dual benefits associated with partnerships and companies. LLP is an alternative corporate body form to conventional partnership firms, where a partner's liabilities are confined to their respective investments in the business. The Limited Liability Partnerships (Amendment) Bill, 2021 was passed by the Lok Sabha on August 09, 2021 and seeks to amend the prior Act. The new Act seeks to introduce certain changes providing for compounding of offences, decriminalizing certain offences and empowering the central government to direct an LLP to change its name on certain grounds.

6) **COMPANIES ACT, 2013:**

Though the legal system facilitates the formation of different business organizations, a company or a corporation is the most preferred vehicle to perform industrial and commercial activities. The Companies Act, 2013 was enacted to consolidate and amend the law associated with companies. The provisions of this Act shall be applicable to every company formed under the present or the previous Act (Companies Act, 1956). This enactment shall also apply to insurance companies, banking companies, companies engaged in the electricity generation, etc. The Act also provides for provisions in reference to corporate social responsibility. Companies Act also lays down the procedure to be followed by the companies willing to go for a restructuring in the form of mergers, amalgamation or demergers.

7) **EMPLOYMENT AND LABOUR LAW:**

Employment law comprises of laws and rules that aid in the enforcement, regulation and governing employer-employee relationships. With a view to consolidate the different legislations dealing with labour employment, industrial disputes, wages and other employment concerned matters, this branch of law which was traditionally governed by contract and numerous other legislations, the Government in 2019, brought forth four bills. They are - The Code of Wages, 2019; The Industrial Relation Code, 2020, The Occupational Safety, Health and Working Conditions Code, 2020; and The Code of Social Security, 2020. Employment and Labour Laws form an important part of the business practices being followed by the companies and enterprises and contributes in maintaining a healthy relationship between the employers and the employees.

8) **TAX LAWS:**

The financial obligations, in the form of taxes, that are levied on income, capital gains, sales, property etc., by the State Government, Central Government and also by local authorities, such as municipality is involuntary in nature. “While direct taxes are levied on taxable income earned by individuals and corporate entities, the burden to deposit taxes is on the assessee themselves. On the other hand, indirect taxes, such as Goods and Services Tax (GST) are levied on the sale and provision of goods and services respectively and the burden to collect and deposit taxes is on the sellers instead of the assessee directly.”¹⁶ The Income Tax Act, 1961 is the legislation dealing with the areas covered under direct taxes.

9) **ANTITRUST LAWS:**

The Competition Act, which came into force in 2002, is an economic legislation for bringing about the economic development in our country. The primary aim of this piece of legislation is to avert practices having anti-competitive effects, for the advancement of competition in the markets, to safeguard the interests of the consumers and to guarantee freedom of trade to the market participants. This legislation is the successor to Monopolies and Restrictive Trade Practices Act, 1961. The Act lays down provisions relating to horizontal and vertical anti-competitive agreements having an adverse effect on competition, abuse of dominance, combinations and their regulation.

The Competition Commission of India (CCI) has also embarked on investigating the conduct of anti-competitive activities by Big-tech enterprises thriving on data. For instance, a recent probe conducted by the CCI has found social-media giant Google guilty of stifling innovation and thwarting competition to exert its dominance in the markets related to search, app library, music among others. The CCI probe also holds that Google has been espousing anti-competitive, unfair and restrictive trade practices by imposing one-sided contracts on devices and app-makers such that its products and apps come pre-installed on the devices garnering highest consumer preferences. The Commission will determine if this amounts to abuse of dominance under the Competition Act.

10) **FINANCE LAWS:**

Finance Laws are entrusted with the regulation of finance after taking into account the various risks that may be encountered amongst the financial players, such as banks, NBFCs, insurance companies etc. The main function of the finance laws is risk minimization, with the various risks being liquidity, management, credit, exchange rate, legal among others. This branch of law also deals with different kinds of consensual security such as mortgage, contractual lien, charge, pledge and perfection of security interest. Law of Finance also encompasses floating and fixed charges along with governing the process of consortium (or syndicate) finance and project finance.

The Reserve Bank of India (RBI) plays an extremely important role in the management and regulation of banks. For instance, last year, the Central Bank gave a go-ahead for the merger of debilitating Lakshmi Vilas Bank with Singapore DBS Bank's Indian subsidiary. This step was taken after many credible revival plans for the bank and safeguarding depositors failed to materialise.

11) **SECURITIES LAW AND REGULATIONS:**

Securities laws and Regulations, also known as Capital Market Laws and Regulations comprise the bunch of laws and rules that oversee the issuance of securities. Securities laws and regulations advise the corporations on the steps that need to be undertaken for offering their investments to the general public. They are extremely vital to the development of the market economy. The Laws associated with Securities may provide regulatory or transactional assistance, which assumes significant role in the conduct of business. In India, the Securities Contracts (Regulation) Act, 1956, governs the issuance of securities. The Securities and Exchange Board of India Act (SEBI) is entrusted the function of regulating the securities market and safeguarding the interests of the investors in securities.

12) **INTERNATIONAL BUSINESS LAW:**

International business involves the sale and purchase of goods across the border. It is the principal determinant for the aspects related to international trade and globalization. The major benefits of international business law transactions include increase in the level of profits, availability of advanced technology and raw materials, to explore avenues beyond domestic markets and for facilitating growth in market share.

13) **FOREIGN EXCHANGE LAWS:**

In India, the foreign exchange regulations are governed by the Foreign Exchange Management Act, 1999 (FEMA). The Reserve Bank of India is entrusted with the responsibility and management of the foreign exchange.

14) **CONSUMER PROTECTION ACT, 2019:**

The Consumer Protection Act, 2019, which replaced the Act of 1986, is intended to protect the interests of the consumers and laying down rules for the settlement of consumers' disputes. This Act also enlists various consumer rights, such as, the right to be protected against the marketing of goods, the right to be informed, the right to be heard, right to consumer awareness, and the right to seek redressal in case of exploitation, to name a few. The recent Act also incorporates provisions related to product liability actions and provides procedure for mediation.

15) **LAW OF ARBITRATION:**

Law of Arbitration plays an important role in resolution and settlement of disputes. The Arbitration and Conciliation Act of 1996, was enacted in order to define the laws in relation to conciliation, and for consolidating and amending the law relating to domestic arbitration, international commercial arbitration along with overseeing the enforcement of arbitral awards.

Arbitration is being considered as an effective means for dispute resolution in addition to the usual court conducted litigation. One of the recent instances of International Arbitration has been the case of US retail giant Amazon against the acquisition of Future Retail by Reliance Industries. The Singapore International Arbitration Centre (SIAC) had begun hearing the case last year, and in the course of proceedings, passed an emergency award supporting the claims of Amazon. The sale between Reliance and the Future Group's assets was thereby stayed. It was the contention of the Reliance Industries and Future Group that the Singapore Arbitration Centre's order was not binding in the South Asian Market. However, the Indian Supreme Court upheld the verdict of Singapore's Emergency Arbitrator (EA) award and was enforceable under Section 17(2) of India's Arbitration Act.¹⁷

16) **INTELLECTUAL PROPERTY LAW:**

Intellectual property is associated with the creations of the mind which are intangible in nature, and includes literary and artistic works, inventions and symbols. Intellectual property rights provide protection to patents, copyright, trademarks, industrial designs, geographical indications, trade secrets and semiconductor integrated circuits layout designs. Intellectual property and technological knowhow are proving immensely significant in the current industrial set-up. IP law can also help provide protection to innovative products, aid in differentiating one business from its rivals, and grant protection from the mutilation or destruction of artistic words. Intellectual property has gained immense significance in the current business environment due to the value it garners for an industry. The role played by intellectual property in contributing to the Research & Development (R&D) of a company is immense, especially at the time of merger or takeover of the company.

It undoubtedly holds true that intellectual property protection has been designed to promote innovation and stimulate creativity and to reward the

innovators for the risks undertaken by them.¹⁸ Intellectual property is a must for investors and scientists to expend time and monetary resources into R&D and in the absence of any incentives, such as the expectation of financial gains in return, no one may be willing to innovate. Intellectual property, in the form of patents and technological knowhow have also taken up an extremely significant role in the current vaccine unavailability crisis, with big pharmaceutical companies unwilling to share the trade secrets with other countries fearing loss of profits.

The following are the legislations governing the law of intellectual property in India:

- The Patents Act, 1970: This Act governs the protection of patentable inventions in India. The Patent protection is offered for a period of 20 years under this Act.
- The Copyright Act, 1957: This Act provides for the consolidation of laws related to Copyright protection by granting protection to literary, dramatic, musical, artistic works, cinematographic works and sound recordings. Under this Act, copyright protection is granted for a period of sixty years plus the life of the author.
- The Trademarks Act, 1999: This Act was enacted to consolidate the law relating to trademarks, providing for registration and protection of trademarks for goods and services and for further preventing use of fraudulent marks. The protection for trademarks lasts for twenty-five years under this legislation.
- The Designs Act, 2000: This Act was enacted to amend the law relating to protection of designs. The protection offered for the designs registered under this Act is for ten years.
- The Semiconductor Integrated Circuits Layout-Design Act, 2000: This Act was enacted to secure protection of semiconductor integrated circuits layout-designs. The duration of registration under this Act is for a period of ten years.

17) INSOLVENCY LAW:

The Insolvency and Bankruptcy Code, was enacted in the year 2016, for addressing issues related to reorganization and insolvency of individuals, partnership firms and corporate persons in minimal time with a view to increase the value of the assets. The code further strives to promote entrepreneurship, availability of credit and to satisfy the interests of all the shareholders.

Corporate insolvency resolution process, under Section 14 of this Act also includes the process of declaring moratorium, which prohibits the performance of acts allowing the institution of suits, continuing the proceedings or following up on pending suits against the corporate debtor. This provision also blocks any act that results in transfer, encumbrance, alienation or disposal of assets by the corporate debtor, and any act seeking foreclosure, recovery or enforcement of security interest made by the corporate debtor with regards to the property in question.

18) COMMERCIAL COURTS ACT, 2015

The Commercial Courts Act was brought forth in 2015, for the creation of Commercial Courts, Commercial Appellate Courts, Commercial Division and Commercial Appellate Division in the High Courts for resolving commercial disputes of specified value. A Commercial Court is empowered to handle complex commercial disputes in a time bound manner. The Act also is also embedded with specialized features such as, pre-institution settlement (offering a mode for a pre-trial conference for settlement), and case management hearing (court providing a timeline before the start of the trial for the entire life-cycle of the suit).

2.5 BASIC SCHEME OF LITIGATION- RESOLUTION THROUGH COURTS

In India, the adjudication of disputes is carried out by the judiciary. The Court system follows a hierarchical structure with the Supreme Court at the apex, being the Union Judiciary. The Supreme Court is empowered to exercise original, appellate and extraordinary jurisdiction. The State Judiciary comprises of High Courts, entrusted with the power to supervise the functioning of all other lower courts and tribunals in the Country, including district courts. The adjudicatory courts are categorized into Civil Courts and Criminal Courts.

India follows an adversarial form of system. A plaintiff is the party bringing a lawsuit before a court of law in pursuance of a legal remedy. A defendant is the party against whom relief is sought in a Civil proceeding. The Code of Civil Procedure, 1908, governs the procedure in relation to civil suits. The code lays down the substantive and procedural aspects in the form of provisions and orders drafted in the code for regulating the proceedings in courts of civil judicature. The orders provide for rules in regards to parties to the suits, framing and institution of suits, the particulars to be present in pleadings, plaints and written statements, pronouncement of judgement or decree, among others. The Code also provides rules regarding the grant of temporary and permanent injunction, and summary procedure.

2.6 ALTERNATIVE DISPUTE RESOLUTION

The path of litigation and use of the court system to resolve the commercial disputes usually takes years to resolve and costs a lot due to the legal fees and expenses. During the process of litigation, the normal business operations are hampered and disrupted. In order to avoid these issues, the businesses usually prefer the mode of settlement without involving the courts. Here the disputes are resolved outside the court judicial system this is often referred to as the Alternative Dispute Resolution (ADR). ADR is being increasingly used to resolve legal problems as it provides many benefits in terms of quick redressal and resolution and are much cheaper than litigation. ADR includes within its scope arbitration, negotiation and mediation.

The active participation by the parties in the negotiations produces satisfying results for both the parties. The flexibility offered by the ADR methods can prove useful in combating the ever-increasing backlog of cases. These also address the delays associated with the onerous procedure of litigation. The sheer volume of

cases, lengthy and time-consuming procedures for appeals and review further aggravate the delays in the finality of proceedings in an adversarial set-up, overwhelming the system. This may also thwart investments as firms looking to invest in the country may be cautious on evaluation of legal and financial risks, that the exit mechanism may be drawn-out pending the resolution of laborious litigation. ADR techniques are gaining popularity due to the flexibility in procedures and the wide range of innovative solutions available at disposal based on the problem at hand, side-stepping the rigidity associated with precedents giving rise to creative ideas.

“The technique of ADR is an effort to design a workable and fair alternative to our traditional judicial system. It is a fast-track system of dispensing justice. These techniques have been developed on scientific lines in USA, UK, France, Canada, China, Japan, South Africa, Australia and Singapore. ADR has emerged as a significant movement in these countries and has not only helped reduce cost and time taken for resolution of disputes, but also in providing a congenial atmosphere and a less formal and less complicated forum for various types of disputes. The advantage of ADR is that it is more flexible and avoids seeking recourse to the courts. In conciliation/mediation, parties are free to withdraw at any stage of time. It has been seen that resolution of disputes is quicker and cheaper through ADR. The parties involved in ADR do not develop strained relations; rather they maintain the continued relationship between themselves.”¹⁹

NEGOTIATION	<p>Past events are dealt with in order to reach future agreements. Non-adversarial method: both sides win. They make compromises and look for and agreement that satisfies common interests. A third party does not intervene. The process is voluntary. The parties are the ones that resolve the situation.</p>
MEDIATION	<p>Try to reach an agreement to improve future relationships. Non-adversarial method: both sides win. They look for mutual understanding and collaborate to reach an agreement that both sides find satisfactory. A third party intervenes; the mediator/s that control the process and help the parties identify and satisfy their interests. This is done among equals. The process is voluntary. The mediator proposes solutions and the parties resolve the situation.</p>
CONCILIATION	<p>This is where past issues are resolved without a commitment for the future. Non-adversarial method; both sides win. Reconciliation is sought after. A third party intervenes and brings both parties together to talk or transmit information between each other. The process is voluntary. The parties resolve the conflict.</p>
ARBITRATION	<p>Post events are discussed and the arbitrator makes a recommendation that the parties can accept or reject. Adversarial method: one side wins and the other side loses. A third party intervenes. This tends to be the person with more authority. The process is voluntary. The two sides present their needs, interests and positions to the arbitrator. The sides are not autonomous when it comes to the result, as the result is imposed by the third party.</p>
TRIAL	<p>The parties lose their power to resolve the conflict. Adversarial method. A neutral third party intervenes the judge dictates the sentence that ends the process and resolves the conflict. The sentence is a mandate so it holds weight, ties and obliges. This is not a voluntary process.</p>

Figure 2.3²⁰

Section 89 of the Civil Procedure Code (CPC), 1908, enlists the different ADR techniques that the Court may refer to after reformulating the terms of possible settlement between the parties, if it appears to the Court that the parties to the dispute may be willing to settle. The court may formulate the terms of settlement of a dispute and after receiving observations of parties refer the terms to arbitration, conciliation, judicial settlement through Lok Adalat or mediation.

2.7 SUMMARY

The diverse set of legislations enacted by the law-making bodies promote effective regulation and promotion of business activities, and aid in designing a framework which encourages smaller enterprises to expand their business offering a level-playing field. Thus, Business laws play a significant role in shaping the economy of the country.

2.8 SELF ASSESSMENT QUESTIONS

- 1) What are the main concepts under Business Law?
- 2) What is the significance of business ethics in the development of business laws?
- 3) What is the provision under the Civil Procedure Code, 1908 which refers to settlement of disputes outside the Court?
- 4) Which Act was previously responsible for governing issues related to the sale of goods?
- 5) Which chapter under the Companies Act, 2013 deals with incorporation of any company?
- 6) In which year did the Goods and Services Tax (GST) Act come into force?
- 7) Which Article under the Indian Constitution governs provisions in relation to tax?
- 8) Which legislation was the predecessor to the Competition Act, 2002?
- 9) What does *Consensus ad idem* under the Indian Contract Act, 1872 mean?
- 10) Which case challenged the Constitutional validity of the Insolvency and Bankruptcy Act, 2016?
- 11) Name the new provisions of the Consumer Protection Act, 2019?

2.9 FURTHER READINGS/ REFERENCES

Weblinks:

- 1) <https://legislative.gov.in/sites/default/files/A1872-09.pdf>
- 2) https://legislative.gov.in/sites/default/files/A1930-3_0.pdf
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- ³ Henry Cheeseman, BUSINESS LAW, 6 (Pearson 2016)
- ⁴ Dan Cramium, *Law and Morality in Modern Business*, Logos Universality Mentality Education Novelty 3(1), 83, (2015)
- ⁵ Kubasek Nancy et. al., DYNAMIC BUSINESS LAW: THE ESSENTIALS 14 (McGraw Hill Education 2016)
- ⁶ Jeffrey F. Beatty, BUSINESS LAW AND THE LEGAL ENVIRONMENT 26 (Cengage Learning Inc. 2019)
- ⁷ *Supra* note 1, at 8
- ⁸ *Supra* note 6, at 9
- ⁹ *Supra* note 6, at 10
- ¹⁰ *Supra* note 8, at 7
- ¹¹ *Supra* not 6, at 6
- ¹² *Supra* note 5, at 13
- ¹³ *Supra* note 6, at 187
- ¹⁴ *Supra* note 6, at 187
- ¹⁵ Community week event, <https://laout.org/community-equity-event/> (Last visited on May 20, 2021).
- ¹⁶ *The tax structure in India is divided into direct and indirect taxes.*<https://www.investindia.gov.in/taxation> (Last visited Sept. 16, 2021).
- ¹⁷ H.R Ranina, *Amazon-Future Group verdict: Indian cos should opt for arbitration in India*, (Aug, 06, 2021)<https://economictimes.indiatimes.com/markets/expert-view/amazon-future-group-verdict-indian-cos-should-opt-for-arbitration-in-india-says-hr-ranina/articleshow/85096749.cms>
- ¹⁸ James Bacchus, *An Unnecessary Proposal: A WTO Waiver of Intellectual Property Rights for COVID-19 Vaccines*, CATO INSTITUTE, (Jun. 01 2021), <https://www.cato.org/publications/free-trade-bulletin/unnecessary-proposal-wto-waiver-intellectual-property-rights-covid>.
- ¹⁹ <http://www.legalservicesindia.com/article/224/ADR-Mechanism-in-India.html> (Last visited on 20/05/2021); Refer also to https://lawcommissionofindia.nic.in/adr_conf/concepts%20med%20rao%201.pdf
- ²⁰ <https://www.ddfsocialelearning.com/alternative-methods-to-resolving-conflict/tabla-mediacion-ingles/> (Last visited on May 20, 2021)

