UNIT 9 LEGAL SYSTEM FOR BUSINESS

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9.0 OBJECTIVES

After studying this unit, the learner shall be able to:

- describe the Legal System in India including mercantile and business law;
- discuss the meaning and types of contracts and identify the essentials of valid contracts;
- explain the meaning, features, and types of the Company;
- describe the incorporation and management of the Company; and
- state the steps in the approval, licensing, and registration of factories.

9.1 INTRODUCTION

The Legal System of Business is a subject of vast dimensions comprising Business Laws, Company Laws, Labour Laws, Taxation Laws, etc. A legal system helps one to focus on how the law evolves and reflects a given society's values and norms and then becomes codified and applied. In the present commercial world, we find commercial transactions taking place every second. These include trading in goods, supply of materials, service contracts, etc. On account of the volume of contracts being done daily, it was proposed to make an enactment that shall bind parties to the agreement and necessitate a smooth flow of commercial transactions. Accordingly, the Indian Contract Act was enacted in the year 1872. The Contract Act is the mother of all the other acts, which have been enacted based on the Contract Act.

In India, the Companies Act enacted in the year 1956 was one of the most important pieces of legislation that empowered the Central Government to regulate the formation registration, financing, functioning, and winding up of Companies. The Act contained the mechanism regarding organizational, financial, managerial, and all the relevant aspects of a company. The Companies Act 1956 however, failed to keep pace with the commercial, business, and technological changes taking place in the commercial world, hence, the Act, 1956 was repealed and a new Companies Act was re-enacted in the year 2013 by enlarging, the sope ambit and coverage of provisions of law. This newly enacted law included a separate section dealing with Corporate Social Responsibility which is popularly known as CSR.

With the growth in commercial and economic transactions, the new medium of exchange apart from money has been evaluated such as bills of exchange, hundi, cheques, bank drafts, and of late the emergence of online business transactions, etc. These documents are substituting money as a medium of exchange. The Negotiable Instrument Act, 1881 with necessary amendments made now and then covered all the above aspects. Most importantly, the dishonor of a cheque for two reasons is made a criminal offense. (s.138 to s.144)

Industrial laws cover a wide range of legal issues such as registration of Trade Union, Industrial Disputes, Social Welfare Measures related to Bonus, Gratuity, Pensions, Payment Minimum wages, and Equal Remuneration, etc. Very recently, all the industrial laws were consolidated and grouped under four major codes.

i) Code on Wages, 2019

ii) Industrial Relations code, 2020

iii) Code on Social Security, 2020

iv) Occupational Safety, Health and Working Conditions code, 2020

India has an exhaustive legal framework governing all aspects of the business. One such important Act is the **Factories Act, 1948** which is

basically designed to protect children and to provide few measures for the health and safety of the workers.

This unit basically aims to explain the important provisions of business laws in brief and also to understand that these laws are the important successful and hassle-free operation of business activities.

9.2 INTRODUCTION TO INDIAN LEGAL SYSTEM

The Indian Legal system is one of the oldest and most vibrant systems in the world. This is formulated keeping in mind the diversity of the country and with due respect to the religion, customs, and business traditions of the people.

9.2.1 Meaning of Legal System

In its widest sense, 'law' is required to conform; if not conformed, sanctions are imposed. When we speak of the law of a State, we use the term 'law' in a special and strict sense. In this sense, the term 'law' is defined in Oxford English Dictionary as "the body of rules whether proceeding from formal enactment or from custom, which a particular State or community recognizes as binding on its subjects or members". These are rules which are recognized and acted on by courts of justice. Law may also be defined as the rule of conduct of persons (both natural and artificial), imposed upon and enforced among the members of a given State.

It has been formulated by custom, agreement, and national interests and is enforced through a set of institutional frameworks. The legal system is critical as it shapes politics, economics, and society in various ways and acts as the best social mediator in the relationship between people and institutions.

The legal system of a country is a part of its social system and as such reflects the social, economic, political, and cultural characteristics of that society.

Therefore, the legal system has to be understood in the context of the socio-cultural milieu in which it operates. "*A legal system consists of certain basic principles and values, a set of operational norms including rights and duties of the citizens spelt out in the laws - central, state and local, institutional structures for the enforcement of those laws and a cadre of legal personnel, endowed with the responsibility of administering the system"*.

9.2.2 Mercantile or Business Law

Business Law may be defined as that branch of law that prescribes a set of rules and regulations for the governance of certain transactions and relations between or among:

i) Business persons/Groups themselves,

ii) Business persons/Groups and their customers, dealers, suppliers, distributors, service providers, etc, and

iii) Business persons/Groups and the state.

In the context of Indian business, some of these transactions and relations concern the following:

i) Regulation of Restrictive and Unfair Trade or Business Practices,

ii) Foreign Exchange Management and Regulation,

iii) Insolvency of business persons/Groups,

iv) Promotion of conciliation, and arbitration for settlement of industrial disputes,

v) Regulation of companies incorporated under the Companies Act, 2013,

vi) Negotiable instruments, (Cheque, Promissory Note and Bill of Exchange)

vii) Patents, Trade Marks Copyrights, Designs, etc.

viii) Actionable claims, factoring and forfeiting,

ix) Import and export regulations/ Foreign Trade Policy regulations,

x) Contracts, sale of goods, guarantee, indemnity, bailment, pledge, charge, mortgage, partnerships, insurance, carriage of goods and freight,

xi) Prevention of food adulteration and regulation of essential commodities,

xii) Regulation of stock exchange and financial securities,

xiii) Regulation and development of Industries/ Institutions,

xiv) Economic offenses,

xv) Conservation of foreign exchange and prevention of smuggling activities,

xvi) Regulation of foreign contributions, foreign capital, etc.

xvii) Excise, import and export duties, tax on income, wealth, etc.

Check Your Progress 9.1

Note: a) Use the space given below for your answers.

b) Check your answer with those given at the end of the unit.

1) What do you understand by the term Law?

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2) What is Mercantile or business law?

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9.3 INDIAN CONTRACT ACT, 1872

Contract means any agreement between two or more parties/persons, which is enforceable under the Law. The Law of the contract regulates the actions of parties to the contract. Contract Act is not exhaustive as it only regulates the freedom of contracting parties for the smooth functioning of commercial transactions. In this unit, we shall study definitions of the various terms as per the Indian Contract Act, 1872. Along with the definitions, the module also covers the different doctrines, which explain the rights between parties to the contract.

9.3.1 What is a Contract?

Section 2 (h) of the Indian Contract Act, 1872 defines a 'contract' as ´an agreement enforceable by law. The agreement should be between or among parties who have the competency to enter into a contract. A person above the age is 18 years with a sound mind is competent to enter into a contract. There must be a consideration (price) and it must be adequate.

Section 2 (e) defines 'agreement' as ´every promise and every set of promises forming consideration for each other.

Section 2 (b) defines promise as ´when the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal when accepted becomes a promise.

The Contract Act is a law of those agreements which create obligations between or among parties to the contract and in the case of breach of a promise by one party to the agreement, the other party has a legal right to seek legal remedy against the other part(y)ies.

9.3.2 Significance

The Contract Act is not limited to any particular field but covers all fields. If we see at the present era of globalization, liberalization, and industrialization, every organization, institute, company, a government concern, private businessman, and all others are engaged in business activities either directly or indirectly.

The salient features of the Contract Act, of 1872 are as under:

- There must be a lawful offer/ proposal made by one person to another party/rest of the world.
- There must be a lawful acceptance by another party/ rest of the world in the same manner as it was proposed.
- There must be valid consideration (price) and it must be adequate i.e. at par with the market price.
- The agreement entered into between parties must be valid and lawful.
- The agreement forming contract must also be valid and lawful.
- The law provided for legal remedies against breach of contract.

Actually, if we say in a literal contrast about the contracts in the present times, the contract is entered into between the two bodies (person, organization, institute, etc) to secure their interest, money, and liability in a contractual obligation. So, the scope ambit, and coverage of the contract can never end but it will go on expanding with the passage of time.

9.3.3 Types of Contract

A. On the basis of validity

1. **Valid contract**: An agreement that has all the essential elements of a contract is called a valid contract. A valid contract is enforceable under the law if the terms and conditions forming part of the agreement are breached or violated.

2. **Void contract** [Section 2(j)]: A void contract is a contract that ceases to be enforceable by law. A contract when originally entered into may be valid and binding on the parties. It may subsequently become void. Many judgments have stated that where any crime has been converted into a "Source of Profit" or if any act to be done under any contract is opposed to "Public Policy" under any contract then that contract itself cannot be enforced under the law/case law.

   Case Law: One Mr. Virender Singh paid Rs.80,000/- to Mr. Lakshmi Narayan and his father to secure a job for his nephew in Haryana Police. However, as per the promise made, the job could not be secured, hence, filed a case for recovery of Rs.80,000/-. It was concluded that the payment of money made by Mr. Virender Singh was not for a lawful purpose and objective, hence, it was not a valid contract but only a void contract.

3. **Voidable contract** [Section 2(i)]: An agreement that is enforceable by law at the option of one or more of the parties thereto, but not at the option of other or others, is a voidable contract. If the essential element of free consent is missing in a contract, the law confers the right on the aggrieved party either to reject the contract or to accept it. However, the contract continues to be good and enforceable unless it is repudiated by the aggrieved party.

4. **Illegal contract**: A contract is illegal if it is forbidden by law; or is of such nature that, if permitted, would defeat the provisions of any law or is fraudulent; or involves or implies injury to a person or property of another, or court regards it as immoral or opposed to public policy. These agreements are punishable by law. These are void-ab-initio.

"All illegal agreements are void agreements but all void agreements are not illegal."

Unenforceable contract: Where a contract is good in substance but because of some technical defect cannot be enforced by law is called an unenforceable contract. These contracts are neither void nor voidable. In short void agreements and illegal agreements are used interchangeably by courts.

B. On the basis of formation

1. **Express contract**: Where the terms of the contract are expressly agreed upon in words (written or spoken) at the time of formation, the contract is said to be an express contract.
2. **Implied contract**: An implied contract is one that is inferred from the acts or conduct of the parties or from the circumstances of the cases. Where a proposal or acceptance is made otherwise than in words, the promise is said to be implied.
3. **Tacit contract**: Tacit contracts are implied contracts in themselves e.g., taking a ticket on the bus during a journey. Cash withdrawn from ATM (Automatic Teller Machine) is one of the best examples of a tacit contract.
4. **Quasi-contract**: A quasi-contract is created by law. Thus, quasi-contracts are strictly not contracts as there is no intention of parties to enter into a contract. It is a legal obligation that is imposed on a party who is required to perform it. A quasi-contract is based on the principle that a person shall not be allowed to enrich himself at the expense of another. For example, a person orders a perishable item online by providing the address for delivery. The delivery is made, but to the wrong address (neighbor) who accepts without denial. Now the neighbor will be made liable to pay the original customer who ordered it under Quasi-contract.

C. On the basis of performance

1. **Executed contract:** An executed contract is one in which both parties have performed their respective obligation.
2. **Executory contract:** An executory contract is one where one or both the parties to the contract have still to perform their obligations in the future. Thus, a contract that is partially performed or wholly unperformed is termed an executory contract.
3. **Unilateral contract:** A unilateral contract is one in which only one party has to perform his obligation at the time of the formation of the contract, the other party has fulfilled his obligation at the time of the contract or before the contract comes into existence. (**Example:** The Bank has the printed loan document prepared by itself. The borrower who intends to avail loan from the bank has no power or authority to seek changes in the loan document even though s/he has the such right in the bilateral agreement. The loan agreement, when signed by the borrower, in fact, is a unilateral agreement prepared by the bank.)
4. **Bilateral contract:** A bilateral contract is one in which the obligation of both parties to the contract is outstanding at the time of the formation of the contract. Bilateral contracts are also known as contracts with executory consideration. Under this contract, all the parties to the agreement have equal rights.

9.3.4 Essentials of a Valid Contract

An agreement enforceable by law is a contract. An agreement in order to be enforceable must have certain essential elements. According to Section 10 - All agreements are contracts if they are made by the free 'consent of the parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void.

Thus, an agreement becomes a valid contract if it has the following elements:

1) Proper and valid offer and its proper and valid acceptance;
2) Intention to create a legal relationship;
3) Free and genuine consent;
4) Capacity of parties to enter into a contract (above 18 years of age with a sound mind);
5) Lawful consideration: It must also be adequate. The price paid or promised to be paid is regarded as consideration;
6) Lawful object (The object should not be contrary to the provisions of law);
7) Agreement not expressly declared void;
8) Certainly and the Possibility of performance; and
9) Legal formalities.

Check Your Progress 9.2

Note: a) Use the space given below for your answers.

b) Check your answer with those given at the end of the unit.

1. What is the Contract Act, 1872?

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2. Explain the contract based on formation.

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3. What are the essentials of a valid contract?

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9.4 COMPANIES ACT, 2013

9.4.1 Introduction

During the British Era, the Companies Act, of 1913 was in force in India. After attaining independence in 1947 followed by the launching of the first five-year plan in the year 1950-51, India came out with Industrial Policy 1956 which recommended the promotion and development of companies across India. To give a broad legal framework to companies, the Indian Companies Act, of 1956 was enacted with the primary purpose and objective to consolidate and amend laws relating to Companies and other associations and also to provide a new basis for the operations of corporate in independent India. The primary focus and objective of the Companies Act, 1956 was to regulate the formation, functioning, and winding up of companies. Due to the passage of time, the law was regularly and substantially amended between 1956-2012. Finally, to keep pace with the growing need for companies to have an equal and level playing field, the Company Act, 1956 was comprehensively revised and a new Companies Act was enacted in the year 2013 by duly repealing the 1956 Act.

The objective of the Companies Act is also to consolidate and amend laws relating to companies. The Act, 2013 is aimed to regulate the (i) incorporation of companies, (ii) responsibility of a company and directors, and (iii) Dissolution of the company, etc.

9.4.2 Company: Meaning and Definition (Act, 2013)

A company means or refers to a company incorporated under the Companies Act, 2013, or under any other earlier laws (Act,1956). A company is a legal entry having a separate form, seal, and perpetual succession.

9.4.3 Important Kinds of Companies

The Companies Act, 2013 has provided for the registration of the following companies:

1. Private Company (s-2 (68))
2. Public Company (s-2 (71))
3. Statutory Company (Eg. LIC, RBI created under respective Acts)
4. Registered Company (e.g. under the Companies Act, 2013)
5. Limited Liability Company
6. Listed Company s.2(52) It refers to a company that has any of its securities listed on any recognized stock exchange
7. Unlimited Liability Company (s.2 (92))
8. Association not for Profit
9. Government Company (S.2 (45))
10. Foreign Company (s.2 (42))
11. Public Financial Institutions (s-2 (72))
12. Unregistered Company (s.3 (75))

9.4.4 Important Definitions Covered under the Act, 2013

Section 2 of the Companies Act, 2013 has defined 95 terms. The following definitions are considered relevant for our learners. The learners who would like to know further details may please refer to the original Companies Act, 2013, published in the "Gazette of India".

1. Accounting Standards (s-2(2))
2. Auditing Standards (s-2(7))
3. Authorised Capital (s.2.8)
4. Banking Company (s.2.4)
5. Company (s.2(20))
6. Financial Institutions (s.2.39)
7. Financial Statement (s.2.40)
8. Foreign Company (s.2(42))
9. Free Reserves (s.2.43)
10. Government Company (s.2.45)
11. Holding Company (s.2(46))
12. Listed Company (2.52)
13. Net Worth (2.67)
14. Official Liquidator (s.2(61))
15. Private Company (s.2(68))
16. Public Company (s.2(71))
17. Registrar of Companies (s.2(74))
18. Registrar (s.2(75))

9.4.5 Coverage of the Act, 2013

The Companies Act, 2013 is a very elaborate spread over 29 chapters. It has 470 sections including VII schedules. The chapter-wise details are listed below:

Chapter 1 : Commencement and Application of the Act (s.1-2)

Chapter 2 : Incorporation of company and matters incidental thereto (s.3 to 22)

Chapter 3 : Prospectus and Allotment of Securities (s.23-

Part (i) Public Offer (s.23 to 41)

Part (ii) Private Placement (s.42)

Chapter 4 : Shame capital and debentures (s.43 to 72)

Chapter 5 : Acceptance of Deposit by Companies (s.73 to 76A)

Chapter 6 : Registration of Companies (s.77 to 87)

Chapter 7 : Management and Administration (s.88 to 122)

Chapter 8 : Declaration and Payment of Dividend (s.123 to 127)

Chapter 9 : Accounts of Companies (s.128 to 138)

Chapter 10 : Audit and Auditors (s.139 to 148)

Chapter 11 : Appointment and Qualifications of Directors (s.149 to 172)

Chapter 12 : Meeting of Board and its powers (s.173 to 195)

Chapter 13 : Appointment and Remuneration of Managerial Personnel (s.196 to 205)

Chapter 14 : Inspection, Inquiry and Investigation (s.206 to 229)

Chapter 15 : Companies, Arrangements and Amalgamative (s.230 to 240)

Chapter 16 : Prevention of Oppression and Mismanagement (s.241 to 246)

Chapter 17 : Registered Values (s.247)

Chapter 18 : Revival names of Companies from the Register Companies (s.248 to 252)

Chapter 19 : Revival and Rehabilitation of sick Companies (s.253 to 270)

Chapter 20 : Winding up (s.270)

Part I By Tribunal (s.271-303)

Part II By Voluntary Winding up (s.304-323)

Part III Provision applicable to every mode of Winding up (s.324-365)

Chapter 21 : Part I: Companies Authorised to Register under the Act (s.366-374)

Part II: Winding up of unregistered Companies (s.375-378)

Chapter 22 : Companies incorporated outside India (s.379 to 393)

Chapter 23 : Government Companies (s.394 to 395)

Chapter 24 : Registration Offices and Fees (s.396 to 404)

Chapter 25 : Companies to furnish information or Statistics (s.405)

Chapter 26 : Nidhis (s.406)

Chapter 27 : National Company Law Tribunal (NCLT) and Appellate Tribunal (NCLAT) (s.407 to 434)

Chapter 28 : Special Courts (s.435 to 470)

Chapter 29 : Schedules I to VII

9.4.6 Important Features of Companies Act, 2013

1. **Introduction of Class Action Suits:** To make shareholders more informed about their rights.
2. **Grant of mere power to shareholders:** To accord approval on various significant transactions.
3. **Empowerment of Women in the Corporate Sector:** With the stipulation of appointment of at least one Director on the Board / for a certain class of companies.

4. **Introduction of Corporate Social Responsibility:** With the stipulation that a certain class of companies spends a certain percentage (amount) of money every year on activities/initiatives reflecting corporate social responsibility.
5. **Introduction of National Company Law Tribunal (NCLT)** and **National Company Law Appellate Tribunal (NCCAT)** to replace the Company Law Board (CLB) and Board of Industrial and Financial Reconstruction (BIFR).
6. Proposal to apply **'Fast Track'** and **simplified procedure** for mergers and amalgamation of certain types of companies after obtaining approval from the Indian Government.
7. **Provision for Cross Border Mergers (both ways)**, a foreign company merging with an Indian Company and vice versa but with prior approval of RBI.
8. **Prohibition on Forward Dealings and Insider Trading:** The Directors and key managerial officials of the company are prohibited from purchasing shares of the company if such person is reasonably expected to have access to sensitive information.
9. **Increase in the number of shareholders:** The Companies Act, 2013 enhanced the number of maximum shareholders in a private company from 50(as per the Act, 1956) to 200.
10. **Imposition of limit or the maximum number of partners/ persons:** The limit imposed on persons/ persons in any association/ partnership may be as per the limit prescribed but it should not exceed 100.
11. **Provision for a new form of Private Company i.e. One person one company:** The Act provided to have only one Director and one Shareholder contrary to the requirement of a minimum of two directors and shareholders in the case of a private company under the old Act, 1956.
12. **Provision for the introduction of Electronic mode:** The Act, 2013 proposed the introduction of E-Governance for various company processes like maintenance and inspection of documents in electronic form, the option of keeping books of accounts in electronic form, the need for placing a financial statement on company's website.
13. **Provision to keep at least one Resident as Director on the Board:** Every company has the duty and responsibility to have at least one Director who has stayed in India for a total period of not exceeding 182 days in the previous calendar year.
14. **Provision for Independent Director:** The listed companies are duty-bound to have at least one-third of the Board as independent Directors. The independent Directors, however, shall not hold the position beyond two years.
15. **Codification of duties of Director:** Under the old Act, 1956 a Director had fiduciary (legal or ethical relationship of trusts) duties towards the company. However, under the Companies Act, the duties to be performed by the Directors are clearly defined.

16. **Imposition of Liability upon Directors and Officers:** The Act, 2013 empowered the company to indemnity (compensation for harm or loss caused to the company) its Directors and Officers for the losses or damage incurred.
17. **Provision for Rotation of Auditors:** The Act, 2013 provided for the rotation of Auditors and Audit firms in the case of publically treated companies.
18. **Rehabilitation of Liquidation Process:** The entire gamut of the rehabilitation and liquidation process of companies has been time-bound/ specific during financial crises faced by the company.

9.5 THE FACTORIES ACT, 1948

In India the, first Factories Act was passed in 1881. This Act was basically designed to protect children and to provide a few measures for the health and safety of the workers. This law was applicable to only those factories, which employed 100 or more workers. In 1891 another factories Act was passed which extended to the factories employing 50 or more workers.

9.5.1 Objectives, Scope, and Applicability of the Act

The Act is to protect human beings from being subject to unduly long hours of bodily strain or manual labor. It also seeks to provide that employees should work in healthy and sanitary conditions so far as the manufacturing process will allow and that precautions should be taken for their safety and for the prevention of accidents.

The Act extends to the whole of India. It applies to all factories including factories belonging to the Central or any State Government unless otherwise excluded. The benefits of this Act are available to persons who are employed in the factory and be covered within the meaning of the term "worker" as defined in the Act.

It would, therefore, be desirable to discuss the meaning and definition of the term **"factory"** and **"worker"**. Since the term "factory" refers to the manufacturing process, it would be helpful to know the meaning of the term "manufacturing process" as defined by the Act.

9.5.2 Definitions

i) **Factory:** Section 2(m) of the Factories Act, 1948 defines “factory” to mean any premises including the precincts thereof:

- Whereon ten or more workers are working or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on.
- Whereon, twenty or more workers are working or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on.

It specifically excludes: A mine subject to the operation of the Mines Act, 1952, or a mobile unit belonging to the armed forces of the Union, a railway running shed, or a hotel, restaurant, or eating place.

ii) **Manufacturing Process:** CS 2(k) The expression "manufacturing process" has been defined in Section 2(k) to mean any process:

a) Making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery, or disposal; or

b) Pumping oil, water, sewage, or any other substance; or

c) Generating, transforming, or transmitting power; or

d) Composing types for printing, printing by letter press, lithography, photogravure, or other similar processes or book binding; or

e) Constructing, reconstructing, refitting, finishing, or breaking up ships or vessels; or

f) Preserving or storing any article in cold storage.

iii) **Worker:** Section 2 (1) of the Factories Act, 1948 defines a "worker" to mean a person employed, directly or through any agency (including a contractor) with or without knowledge of the principal employer, whether for remuneration or not, in any manufacturing process, or in cleaning any part of the machinery or premises used for a manufacturing process or in any other kind of work incidental to, or connected with, the manufacturing process, or the subject of the manufacturing process but does not include any member of the armed forces of the Union.

iv) **Occupier:** Section 2 (n) of the Act defines "occupier" of a factory to mean the person who has ultimate control over the affairs of the factory: Provided that -

a) in the case of a farm or other association of individuals, any one of the individual partners or members thereof shall be deemed to be the occupier;

b) in the case of a company, any one of the directors shall be deemed to be the occupier;

c) in the case of a factory owned or controlled by the Central Government or any State Government, or any local authority, the person or persons appointed to manage the affairs of the factory by the Central Government, the State Government, or the local authority, as the case may, be shall be deemed to be the occupier.

v) **Other Definitions**

- **'Adult'** means a person who has completed his 18th year of age. [**Section 2 (a)**]
- **'Adolescent'** means a person who has completed his 15th year of age but has not completed his 18th year. [**Section 2 (b)**.]

- **'Calendar year'** means the period of twelve months beginning with the first day of January in any year. [**Section 2 (bb)**.]
- **'Child'** means a person, who has not completed his 15th year of age. [**Section (c)**.]
- **'Young Person'** means a person, who is either a child or an adolescent. [**Section 2 (d)**]
- **'Day'** means a period of twenty-four hours beginning at midnight [**Section 2 (e)**.]
- **'Week'** means a period of seven days beginning at midnight on Saturday night or such other night as may be approved in writing for a particular area by the Chief Inspector of Factories. [**Section 2 (f)**]
- **'Relay and Shift means'** where work of the same kind is carried out by two or more sets of workers working during different periods of the day, each of such sets is called a 'relay' and each of such periods is called `shift'. [**Section 2 (r)**].
- **'Worker' [Section 2 (f)]:** A worker means a person employed directly or indirectly with or without the knowledge of the principal employer (whether for remuneration or not) in any manufacturing process or in cleaning any part of machinery or premises used for a manufacturing process etc.

9.5.3 Approval, Licensing, and Registration of Factories

The responsibility for getting the premises approved, when the factory is to be established, lies on the occupier. Under Section 6, the State Government has been vested with the power to frame rules which are to be complied with. Section 4 empowers the State Government to declare different departments or branches of a factory as separate factories, in case a request is made in writing in this regard by the occupier.

Procedure for Approval, Licensing, and Registration of Factories

The factory is to be got approved and registered after obtaining a license by the occupier following the rules framed by the State Government. The State Governments are empowered to frame rules requiring the occupier of a factory for the purposes of this Act for the submission of plans of any class or description of factories to the Chief Inspector or State Government and to obtain previous permission of the Chief Inspector of Factories with regard to site where the factory is proposed to be constructed, or extension, in case the factory already exists.

The occupier is required to submit full building plans along with necessary particulars of specifications according to which the building is to be got approved in accordance with the rules.

9.5.4 The Inspecting Staff

The Act also elaborately dealt with the following aspects via (a) The inspecting staff including powers of inspectors, (**Chapter 2**), Health related

issues (**Chapter 3**), Safety of the workers (**Chapter 4**), Provisions relating to Hazardous Process (**Chapter IV A**), Welfare of workers (**Chapter 5**) Working hours of Adults (**Chapter 6**) Employment of young persons (**Chapter 7**), Annual leaves with wages (**Chapter 8**), etc.

For the enforcement of the provisions of the Act, the State Government is empowered to appoint Inspectors having prescribed qualifications. This may be done by notification. They may be assigned such local limits as the State Government may think fit. There are six types: (i) Chief Inspector (ii) Additional Chief Inspectors, (iii) Joint Chief Inspectors (iv) Deputy Chief inspectors (v) Inspectors, and (vi) Additional Inspectors.

Check Your Progress 9.3

Note: a) Use the space given below for your answers.

b) Check your answer with those given at the end of the unit.

1. What are the scope and applicability of the Factories Act in India?

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2. What do you understand by Factory under the Act?

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9.6 LET US SUM UP

In this unit, we have understood the Indian legal system, and the basic need of law to form a legal system for legislation. Law is an important element and is the body of rules and regulations framed by the Authority vested with the power (eg. Legislative Executive and Judiciary) with regard to human conduct and actions which can be enforced in a court of law. We have understood mercantile law, and different business laws as business laws are an important branch of civil law that deals with laws relating to business transactions.

We have deliberated to understand the meaning of a Contract and the difference between a contract and an agreement. Kinds of contract (void, voidable, valid), competency to enter into a contract, consideration, essential elements of a contract, and also remedies available for breach of contract. We have also discussed briefly the following aspects under the new Companies Act, 2013 *viz*. (a) Evolution of Company Law, the meaning of the definition of Company, kinds of Companies, important definitions, coverage of the Act,

2013, and salient features of Companies Act, 2013.

The Factories Act, 1948 was passed to make the work life of persons employed in factories free from hazards and injuries. The protection is afforded to all workers men, women, and children. Women and children are given special protection, as they are considered more vulnerable. As the employer prepares the environment, the law seeks to regulate the same in the interests of the workmen. The law provides for scrutiny of the place and approval of plans and specifications before they are registered under the Act to ensure the health, safety, and welfare of the workers. Appropriate standards are also prescribed. Working hours of adults are made subject to regulations. Employment of children below the age of 14 is prohibited. The law regulates the employment of minors who are permitted to work. Law provides for the entitlement of annual leave with wages. Special provisions are also envisaged to meet certain eventualities. The Act provided for various health and social welfare-related measures.

9.7 KEYWORDS

Adult : A person who has completed his 18th year of age.

Agreement : Every promise and set of promises, form consideration for each other.

Civil Law : A branch of continental law that is the general part of private law.

Consensus ad-idem : Parties agreeing upon the same thing in the same sense.

Contract : An agreement enforceable by law.

Corporate Governance : Managing an organization.

Corporate Veil : Organizational status.

Criminal Law : The body of **rules** that defines conduct that is not allowed because it is held to threaten, harm, or endanger the safety and welfare of people, and that sets out the punishment to be imposed on people who do not obey these laws.

Dishonor of Instrument : When the instrument does not get processed on account of default on the part of the drawer or acceptor or on account of any other technical reasons.

Express Contract : An agreement made in writing or by word of mouth.

Hundi : Hundi is a bill of exchange, which is prevalently used in India.

Incorporation : Registration.

Legal system : A legal system consists of certain basic principles and values, a set of operational

norms including rights and duties of the citizens spelled out in the laws - central, state, and local, institutional structures for the enforcement of those laws, and a cadre of legal personnel, endowed with the responsibility of administering the system.

Mercantile or Business Law : The body of law that governs mercantile or business and commercial transactions.

Noting : It is the process of recording the reasons for dishonor by the notary.

Obligation : An undertaking to do or to abstain from doing some definite act.

Post-Dated Cheque : When the date of the cheque is after the date of issue then it is called a post-dated cheque. The same is valid after the date mentioned in the cheque.

Precincts : Precincts mean a space enclosed by a wall. For any 'premises' to be categorized as factory two conditions must be fulfilled: Ten or more persons are employed in the premises using power or be employed not using power and twenty or more workers must be employed not using power.

Premises : Premises means open land or land with a building or building alone. Therefore salt works where the process of converting seawater into salt is carried on in the open comes within 'premises' as defined in the Act.

Procedural Law : The rules by which a court hears and determines what happens in civil lawsuits, or criminal or administrative proceedings.

Promise : An accepted proposal.

Protest : It is the formal certificate issued by the notary as an acknowledgment of noting.

Quorum : Minimum number of persons.

Stale Cheque : The cheque becomes stale when six months expire from the date mentioned in the cheque. Once the cheque becomes stale, then it is not valid and cannot be enforceable.

Statute : A statue is a formal written enactment of a legislative authority that governs a state, city, or country.

Substantive Law : The statutory or written law that defines rights and duties, such as crimes and punishments (in criminal law), civil rights, and responsibilities in civil law.

Unenforceable Agreement : An agreement which, though valid, cannot be enforced due to some technical defect.

Unilateral Contracts : A contract in which only one party has still to fulfill his obligation, while the other party has already fulfilled his own at the time of the formation of the contract itself.

9.8 SUGGESTED FURTHER READINGS/REFERENCES

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9.9 CHECK YOUR PROGRESS: POSSIBLE ANSWERS

Check Your Progress 9.1

1. Law is the body of rules whether proceeding from formal enactment or from custom, which a particular State or community recognizes as binding on its subjects or members.

2. Business Law may be defined as that branch of law that prescribes a set of rules for the governance of certain transactions and relations between:
   i) Business persons themselves,
   ii) Business persons and their customers, dealers, suppliers, etc, and
   iii) Business persons and the state.

Check Your Progress 9.2

1. The Contract Act, 1872 is a law of those agreements which create obligations, and in the case of breach of a promise by one party to the agreement, the other has a legal remedy.
2. Express contract, Implied contract, Tacit contract, Quasi-contract.
3. An agreement becomes a valid contract if it has the following essential elements: Proper offer and its proper acceptance; Intention to create a legal relationship; Free consent; Capacity of parties to contract; Lawful consideration; Lawful object; Agreement not expressly declared void; Certainty of meaning; Possibility of performance; and legal formalities.

Check Your Progress 9.3

1. The Factories Act, 1948 extends to the whole of India. It applies to all factories including factories belonging to the Central or any State Government unless otherwise excluded. The benefits of this Act are available to persons who are employed in the factory and be covered within the meaning of the term "worker" as defined in the Act. It would, therefore, be desirable to discuss the meaning and definition of the term "factory" and "worker". Since the term "factory" refers to the manufacturing process, it would be helpful to know the meaning of the term "manufacturing process" as defined by the Act.
2. Section 2(on) of the factories Act, 1948 defines “factory” to mean any premises including the precincts thereof:

- Whereon ten or more workers are working or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on.
- Whereon, twenty or more workers are working or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on.
- It specifically excludes A mine subject to the operation of the Mines Act, 1952, or a mobile unit belonging to the armed forces of the Union, a railway running shed, or a hotel, restaurant, or eating place.