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BUSINESS LAW

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CONTENTS

- ❖ Introduction
- ❖ Nature Of Law
- ❖ Meaning And Definition Of Business Law
- ❖ Scope and Sources Of Business Law
- ❖ Fundamental Rights
- ❖ Directive Principle Of State Policies
- ❖ Principles having Economic Significances
- ❖ An Overview Of Business Laws In India

Introduction

- Business comprises all profit seeking activities and enterprises that provide goods and services necessary to an economic system.
- Law refers to the principles and regulations established by a Government , applicable to people and enforced by judicial decision.

Meaning Of Law:

Law is a system of rules that are created and enforced through social or governmental institutions to regulate behaviour.

Nature Of Law:

- a) Idealistic
- b) Positivistic
- c) Historical
- d) Sociological
- e) Realistic

Meaning and Definition Of Business Law

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. It establishes a set of rules and prescribes conduct to order to avoid misunderstandings and injury in our business relationships.



Business Law

Scope of Commercial or Business Law

- **Law of contract:** Deals with any agreement which may be in particular or general with the individuals belonging to the society and also of various commercial activities.
- **Law of sale of goods:** Deals with the agreement between one trader to another trader with only commercial transactions.
- **Economic and other Legislation:** Are termed as 'General Law', deals with both the business and society which sets the rules towards rights, duties and obligations for any category of people in the society.

- Some of the law of this nature which are termed as 'Act' are:
 - ❑ The Monopolies and Restrictive Trade Practices Act 1969.
 - ❑ The Environment (Protection) Act 1986.
 - ❑ The Parents Act 1970.
 - ❑ The Sick Industrial Companies (Special Provision) act 1985.
 - ❑ The Consumer protection Act of 1986.
 - ❑ The Securities Contracts (Regulation) Act 1956.
 - ❑ The Foreign Exchange Management Act and so on.

Sources of Indian Law.

Principal Sources

- Customary Law
- Judicial Decision
- Statutes
- Personal Law

Secondary Sources

- Justice
- Equity
- Good conscience

English Law

- Common Law
- Law merchant
- Equity
- Statute Law

Mercantile Law

- Law merchant
- Statute Law
- Common Law
- Equity

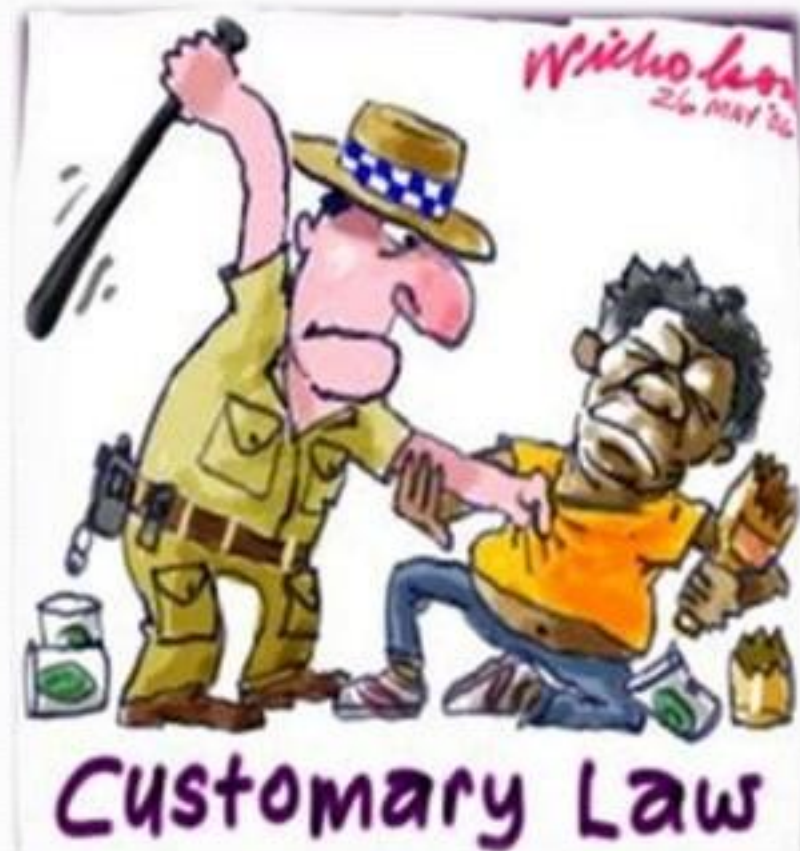
Principal Sources of Indian Law:

These are the essential sources of Indian Law. They are categorised in:

- Customary Law
- Judicial decision
- Statutes or Legislations
- Personal Law (Hindu, Mohammedan Law)

• Customs or Customary Law:

1. A "General Custom" as a source of law is not normally written, but if a practice can be shown to have existed for a very long time, such as "since time immemorial" (1189 AD), it becomes a source of law.
2. A "Particular Custom" (or "private custom") may arise and become a right with the force of law when a person, or a group of persons has from long usage obtained a recognised usage, such as an easement.



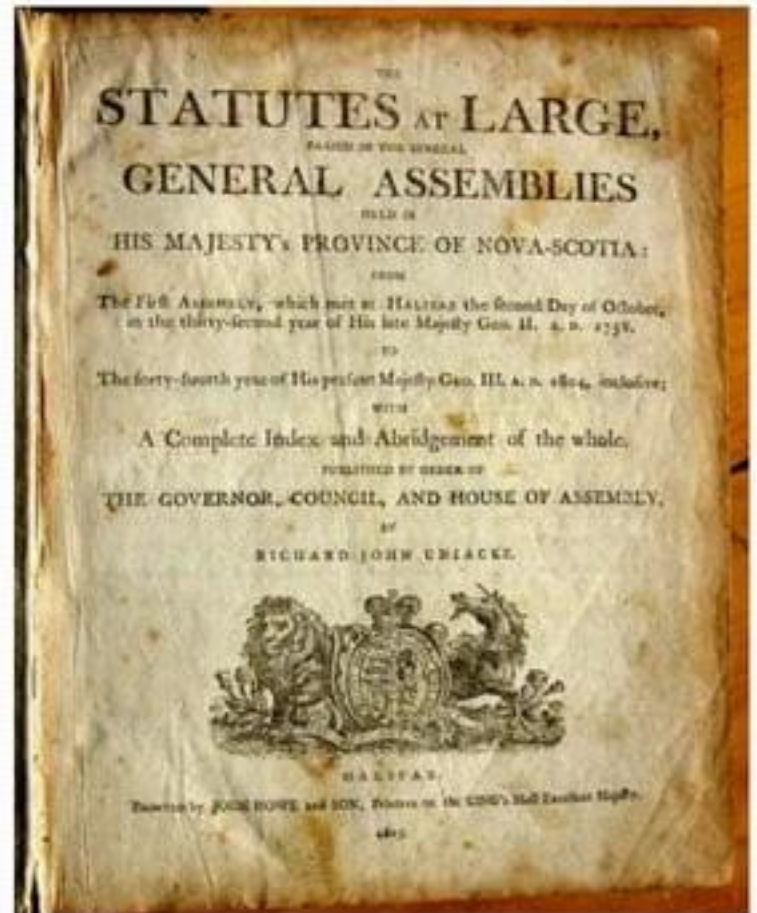
- Judicial decision or Precedents:

Judicial precedents are based on the principle that a rule of law which has been settled by a series of decisions generally should be binding on the court and should be followed in similar cases.



• Statutes or Legislations

The statutes or the statutory law or the legislation is the main source of law. This law is created by legislation such as Parliament. In India, the Constitution empowers the Parliament and state legislatures to promulgate law for the guidance or conduct of persons to whom the statute is, expressly or by implication, made applicable. It is sometimes called 'enacted law' as it is brought into existence by getting Acts passed by the legislative body. It is called Statute Law because it is the writ of the state and is in written form (jus scriptum).



• Personal Law

Many times, a point of issue between the parties to a dispute is not covered by any statute or custom. In such cases the courts are required to apply the personal law of the parties. Thus in certain matters, we follow the personal laws of Hindus, Mohammedan and Christians.



Secondary Sources of Indian Law:

- Separate Courts (England), administering “equity”
- The equitable principle of law
- Guiding force behind,
 - Statutes
 - Decisions of the courts
- Importance:
 - Good faith
 - Public policy
- Categories:
 - Justice
 - Equity
 - Good Conscience

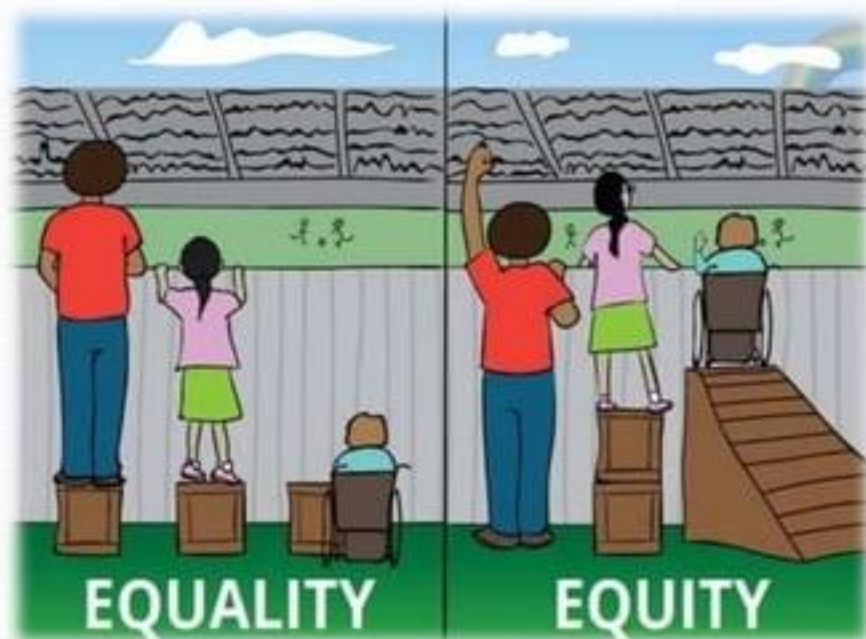
• Justice

Fairness in protection of rights and punishment of wrongs.



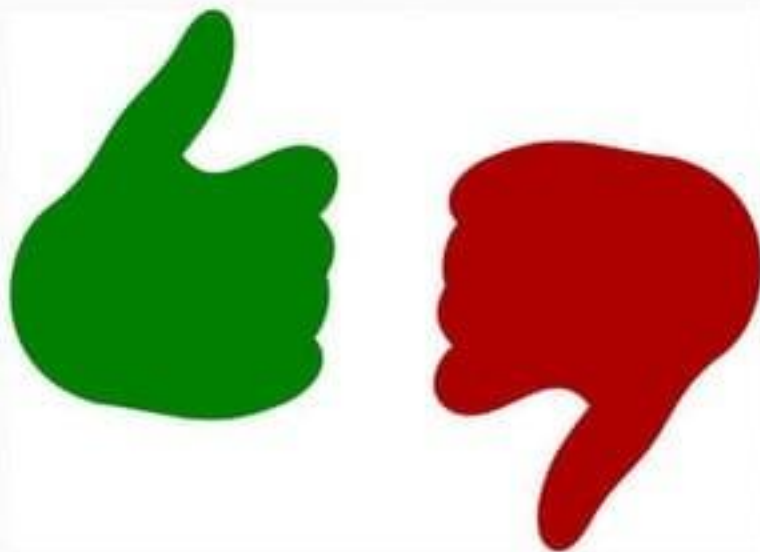
• Equity

1. Fairness and impartiality towards all concerned, based on the principles of even-handed dealing.
2. Gives advantage, consideration, or latitude to one party
3. Essential for:
 - a) Economy
 - b) Effectiveness
 - c) Efficiency
 - d) Extent and costs of funds, goods and services fairly divided among the recipients.



• Good Conscience

The moral sense or that capacity of our mental constitution, by which we irresistibly feel the difference between right and wrong.



English Law

When the courts do not find a provision on a particular problem in the primary sources of Indian Law that it may look to subsidiary sources such as the English Law.

Mercantile Law

A legal code that governs the operations of both banks and varied businesses.

Agreements, contracts, copyrights, franchising, insurance, licensing, patents, shipping and transport, trademarks, and the like are all covered by mercantile law.

• Common Law

This source consists of all those unwritten legal doctrines embodying customs and traditions developed over centuries by the English courts. Thus, the common law is found in the collected cases of the various courts of law and is sometimes known as 'case law'. The Common Law emphasizes precedents.



• Law Merchant

It is another important source of law and is based to a great extent on customs and usages prevalent among merchants and traders of the middle ages. Its evolution like that of equity can be traced to unsuitability of Common Law so far as the commercial transactions were concerned.



• Equity

1. The literal meaning of the term 'equity' is 'natural justice'.
2. 'Equity' means a body of legal doctrines and rules emanating from the administrations of justice, developed to enlarge, supplement or override a narrow rigid system of existing law of the land.



Equity

• Statute Law

1. The Statute law consists of the law passed by the Parliament and therefore, is 'written' law.
2. It can pass any law it pleases and can override its own previous Acts and decisions of the courts.

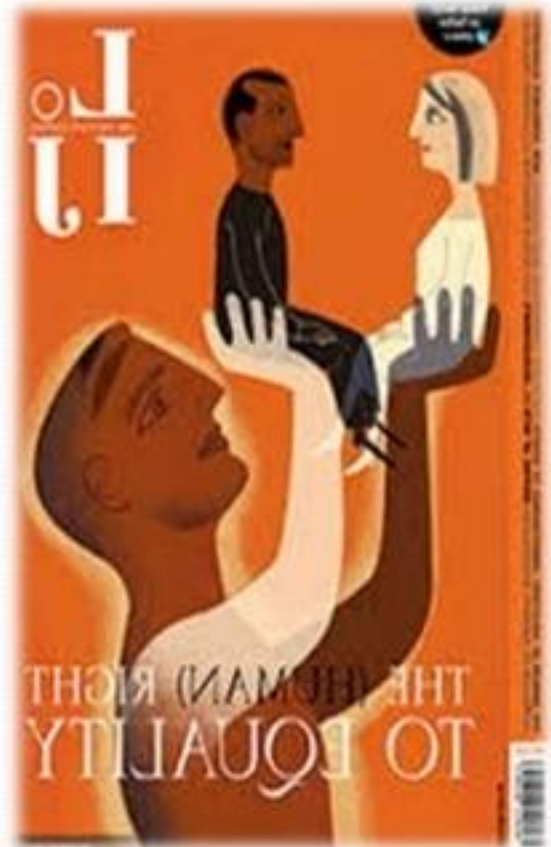


Fundamental Rights

The Fundamental Rights is defined as “the basic human rights of all citizens. These rights, defined in Part III of the Constitution, apply irrespective of race, place of birth, religion, caste, creed, or gender. They are enforceable by the courts, subject to specific restrictions”.

1) Right to Equality

Which includes equality before law, prohibition of discrimination on grounds of religion, race, caste, gender or place of birth, and equality of opportunity in matters of employment, abolition of untouchability and abolition of titles. Right to equality is provided from Article 14 to Article 18 of Indian constitution.



2) Right to freedom

Which includes freedom of speech and expression, assembly, association or union or cooperatives, movement, residence, and right to practice any profession or occupation, right to life and liberty, protection in respect to conviction in offences and protection against arrest and detention in certain cases. Right to freedom is provided from Article 19 to 22 of constitution.



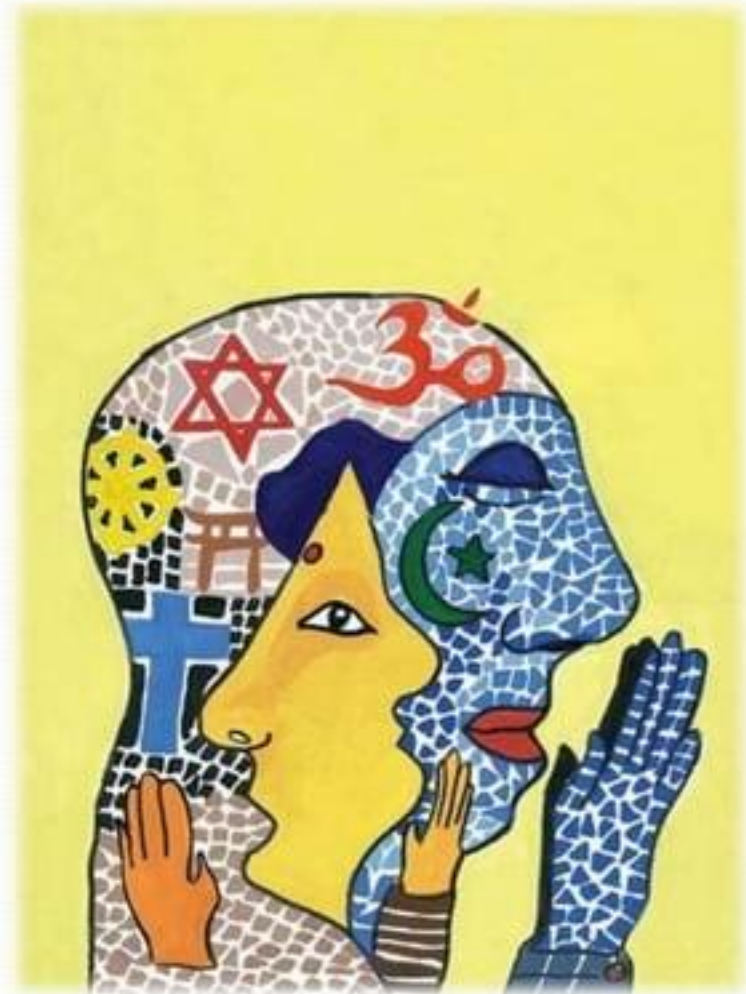
3) Right against exploitation

Which prohibits all forms of forced labour, child labour and traffic of human beings. It is provided under Articles 23 and 24 of Indian constitution.



4) Right to freedom of religion

Which includes freedom of conscience and free profession, practice, and propagation of religion, freedom to manage religious affairs, freedom from certain taxes and freedom from religious instructions in certain educational institutes. Article 25 to 28 enumerates the right to freedom of religion.



5) Cultural and Educational rights

Preserve the right of any section of citizens to conserve their culture, language or script, and right of minorities to establish and administer educational institutions of their choice. Article 29 and Article 30 of Indian constitution provides for cultural and educational rights.



6) Right to constitutional remedies

Which is present for enforcement of Fundamental Rights. It is provided under Article 32 to 35 of Indian constitution.



Directive Principle Of State Policies

Part IV, Articles 36-51 of the Indian constitution constitutes the Directive Principles of State Policy which contain the broad directives or guidelines to be followed by the State while establishing policies and laws. The legislative and executive powers of the state are to be exercised under the purview of the Directive Principles of the Indian Constitution.

Categories

The Directive Principles are divided into the following three categories:

- 1) Socialistic Directives:** This part contains the directives for securing the welfare of the people of India, equal distribution of the material resources of the country protection of the fundamental rights of the children and youth, equal pay for equal work, education etc.
- 2) Gandhian Directives:** Under these directives are the guidelines for organising village Panchayat, prohibition of intoxicating drinks and cow-slaughter, secure living wage, decent standard of life, and to promote cottage industries, to provide free and compulsory education to all children up to 14 years of age etc.
- 3) Liberal Intellectual Directives:** In this section there are guidelines for uniform civil code throughout the country and the legislatures to follow in issuing orders or making laws.

Socialistic and Economic Principles:

- ❖ Adequate means of livelihood for all citizen irrespective of men and women
- ❖ Equal pay for equal work for both men and women
- ❖ Equal distribution of wealth and resources among all classes.
- ❖ Just and humane conditions of work, a decent standard of living, full employment, social and cultural opportunities.
- ❖ Participation of workers in the mgt of undertakings and establishments.

Gandhian Principles:

- ❖ To organize village panchayats and endow them power and authority to enable them to function as unit of self -govt.
- ❖ To promote cottage and village industries on as individual or co-operative basis in rural areas.
- ❖ To Promote educational and economic interests of the weaker sections of the people
- ❖ To Prohibit consumption of intoxication drinks and drugs

Directive Principles Having a Bearing On Business

- Provision by the state to secure the right to work to education and to public assistance in cases of unemployment, old age, sickness and disablement (Article 41).
- Provision for just and humane conditions of work and maternity relief (Article 42).
- Provision of a living wage for workers (Article 43).
- Participation of workers in management of industries (Article 43-A).
- Duty of the state to raise the level of nutrition and standard of living and to improve public health (Article 47).