

As per New CBCS Syllabus for Sixth Semester, B.Com,
Bangalore University w.e.f. 2014-15

Business Regulations

(Including Skill Development)

**K. Aswathappa
G. Sudarsana Reddy**



Himalaya Publishing House

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(INCLUDING SKILL DEVELOPMENT)

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PREFACE

Any course on Business Law generally comprises Chapters on Contract Act, Sale of Goods Act, Agency Acts, Companies Act, and the like. But the syllabus of **Business Regulations** prescribed for B.Com. students of Bangalore University is an exception. Besides including chapter on the Contract Act (which is fundamental for any business transaction and hence cannot be missed), the paper include chapter on highly relevant and contemporaneous legislations like Competition Act, Consumer Protection Act, Patent Laws, Foreign Exchange Management Act, Environmental Protection Act covering landmark judgments of a few Acts. The members of Board of Studies are sensitive and responsive to the changed needs of business.

We have brought out **Business Regulations** to meet the specific needs of the Semester VI B.Com. students of Bangalore University. Besides being comprehensive coverage, the book is rich in pedagogy also. The book is full of figures and tables. Every chapter is appended with classified questions and skill-building exercises. Also provided Supreme Court landmark judgments of a few Acts.

We hope that **Business Regulations** serves the purpose for which it is meant.

We thank Mr. Niraj Pandey and Mr. Vijay Pandey of HPH for their interest in the book.

K. Aswathappa
G. Sudarsana Reddy



SYLLABUS

6.1 BUSINESS REGULATIONS

Objective:

To introduce the students to various Business Regulations and familiarize them with common issues of relevance.

Unit 1: Introduction to Business Laws

06 Hours

Introduction, Nature of Law, Meaning and Definition of Business Laws, Scope and Sources of Business Laws.

Unit 2: Contract Laws

18 Hours

Indian Contract Act, 1872: Definition of Contract, Essentials of a valid contract Classification of contracts, Remedies for breach of contract.

Indian Sale of Goods Act, 1930: Definition of contract of sale, Essentials of contract of sale, Conditions and Warranties, Rights and Duties of buyer, Rights of an unpaid seller.

Unit 3: Competition and Consumer Laws

14 Hours

The Competition Act, 2002: Objectives of Competition Act, Features of Competition Act, CAT, Offences and Penalties under the Act, Competition Commission of India.

Consumer Protection Act, 1986: Definition of the terms: Consumer, Consumer dispute, Defect, Deficiency, Unfair trade practices and services. Rights of the consumer under the Act, Consumer Redressal Agencies – District Forum, State Commission, National Commission.

Unit 4: Economic Laws

12 Hours

Indian Patent Laws and WTO Patent Rules: Meaning of IPR, Invention and Non-invention, procedure to get patent, restoration and surrender of lapsed patent, infringement of patent.

FEMA 1999: Objects of FEMA, salient features of FEMA, definition of important terms: Authorized person, Currency, Foreign currency, Foreign exchange, Foreign security, Offences and Penalties.

Unit 5: Environmental Laws

06 Hrs

Environment Protection Act, 1986: Objects of the Act, definitions of important terms: Environment, Environment pollutant, Environment pollution, Hazardous substance and Occupier, Types of pollution, rules and powers of Central Government to protect environment in India.

Skill Development

1. Prepare a chart showing sources of business law and Indian Constitution Articles having economic significance.
2. Draft an agreement on behalf of an MNC to purchase raw materials indicating therein terms and conditions and all the essentials of a valid contract.
3. Draft an application to the Chief Information Officer of any government office seeking information about government spending.
4. Draft digital signature certificate.
5. Draft a complaint to District Consumer Forum on the deficiency of service in a reputed corporate hospital for medical negligence.
6. Collect leading cyber crimes cases and form groups in the classroom and conduct group discussion.
7. Draft a constructive and innovative suggestions note on global warming reduction.



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CHAPTER 1

INTRODUCTION TO BUSINESS LAW

MEANING AND DEFINITION OF BUSINESS

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. The two definitions on business given below echo the same meaning.

Business is a “complex field of commerce and industry in which goods and services are created and distributed ... in the hope of profit within a framework of laws and regulations.”

Business “comprises all profit seeking activities and enterprises that provide goods and services necessary to an economic system. It is the economic pulse of a nation, striving to increase society’s standard of living. Profits are a primary mechanism for motivating these activities.

Business is as important as it is vast in its scope. It is a unique institution which converts ideas into saleable products. From the time we get up early in the morning till we go to bed in the night the products we consume and the services we use are all supplied to us by business. Business offers innumerable opportunities for us to earn money so that we can buy and enjoy the products. We depend so much on business that except for six or seven hours we sleep every day the remaining hours we spend for or on business. It is really shiver to imagine what would happen to us without business. Indeed there is no life without business.

MEANING AND DEFINITION OF LAW

Law refers to the principles and regulations established by a Government and applicable to people, whether in the form of legislation or of custom and policies recognised and enforced by judicial decision.

A few definitions of law are worth quoting in this context. According to **BLACKSTONE** “Law in its most general and comprehensive sense signifies a rule of action and is applied indiscriminately to all kinds of actions whether animate or inanimate, rational or irrational.”

Salmond defines law as the “body or principles recognised and applied by the State in the administration of Justice.”

Woodrow Wilson defines law as “that portion of the established habit and thought of mankind which has gained distinct and formal recognitions in the shape of uniform rules backed by the authority and power of the Government.”

Definitions of law frequently emphasise the coercive power of the State which stands behind the rules. And it is true of many rules that failure to comply with them may lead to the use of coercion by officials. Thus, if a man refuses to perform his/her obligations under a contract, he/she is sued in a court of breach of contract, loses the suit and is ordered to pay damages. But many rules of law merely grant permission to do certain things; and if a citizen does not do what he/she is permitted to do, he/she is not subject to any coercion. Moreover, the government often induces people to do what it wants

them to do by the lure of benefits. An entrepreneur, for example, is assured of certain concessions if he/she were to set-up his/her plant in a backward area. If he/she ignores the offer, he/she is not penalised, he/she simply does not get the concessions.

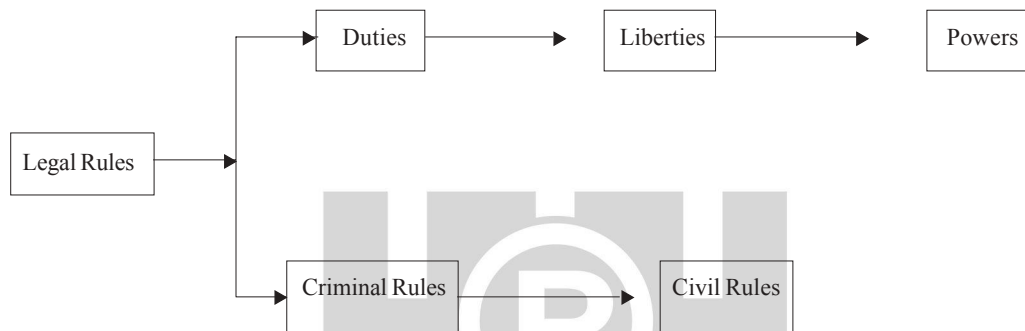
CLASSIFICATION OF LEGAL RULES

Legal rules of law are the creation of law prevailing in a society at a given time. We use the term “given time” because law is never a body of static rules. It is a dynamic process by which rules are constantly being created, changed and moulded to fit particular situation.

Now, the legal rules may be classified in a variety of ways. The most common categorisation is (i) duties, liberties and powers, or (ii) criminal rules and civil rules (see Fig. 1.1)

Fig. 1.1 Classification of Legal rules

1. Duties, Liberties and Powers



This classification is made on the position in which the people, to whom the rules are addressed, are placed.

(a) Duties : The first category imposes duties on people. In this class are rules that require a witness under oath to tell the truth, a husband to support his wife and children, and a person who is a party to an agreement to perform his/her part of the contract. The person who fails to do what each of these rules requires may find officials intervening in his/her life.

Often, rules that impose duties take the form of command, for example “you are required to file an income tax return.” Sometimes they are prohibitory, for example, “smoking prohibited.” The form is unimportant. What is important is that if the persons addressed do not act as the rules require, remedial rules will apply. For example, “if you smoke you will be fined.” The law imposes duties not only on private individuals, but on officials also. A police, for instance, is under a duty not to enter a private home without permission unless he/she has a search warrant.

(b) Liberties : We are familiar with only duties imposed by rules. There are also liberties or privileges that are granted to us by rules. In effect, liberties say that if a person performs a certain type of act, no other person will have any legal basis for complaint, and hence officials will not interfere.

For example, liberties established by law are freedom of speech and freedom of religion which are guaranteed to us by our Constitution. We have a liberty either to speak or to maintain silence, the law allows us to choose. Thus, liberty simply means absence of duty.

(c) Powers : Rules also create powers. Powers are particularly relevant to business people. Let us assume, for example, that a buyer is planning to buy a washing machine from a seller. Buyer, we can

say, has a *power* under the law to sell what the law calls an “offer.” Notice that buyer has no *duty* to do so, he/she is equally at liberty to make an offer for some other washing machine or to make no offer at all. But once a person exercises *power* given to him/her he/she will create new legal duties, liberties, and powers for himself/herself and for others. To have a power means to “change the legal situation.”

Before an offer is made by the buyer, relationship between him/her and the seller is like that of any other two individuals. Once an offer is made a new situation arises. Buyer’s offer “binds” him/her until he/she withdraws it or until it expires or is rejected. So long as the buyer’s offer is in effect the seller has a *power* — which he never had before — to accept the offer. If he/she accepts it, buyer and seller are, from that moment, linked in an agreement, and each is subject to new legal *duties*. Buyer is under a duty to pay the agreed price, and the seller is under duty to deliver the washing machine.

If one of the parties fails to honour his/her new obligations, the other may apply to a court for redress. Before the court can decide whether to grant the remedy asked for, it must determine whether the parties exercised their powers in the manner prescribed by rules. In the buyer-seller example, for instance, the rules required that the offer and the acceptance must be in writing and be signed to be enforceable. And if so, was this requirement fulfilled? Powers exercised without fulfilling prescribed formalities fail to achieve desired results. A businessman is under no obligation to enter into an agreement. But once he chooses to do so, it is expected of him/her that he/she shall satisfy the prescribed procedures.

2. Classification of Rules

Rules may also be classified into (i) criminal rules and (ii) civil rules depending upon the severity of action to be taken against the wrong doer. If the offender is subject to a fine or imprisonment he/she has violated a criminal rule. On the other hand, if he/she is sued and ordered to pay damages to whomsoever he/she has harmed, then he/she has violated a civil rule.

Thus, rules of *criminal* law impose duties on people (and sometimes on associations of people) and specify that any violation of these duties is wrong, not merely to the individuals who are harmed, but to the community at large. Since the whole community has been wronged, public officials take the initiative in bringing wrong-doer to justice, prosecuting him/her before a court, and urging the judge and jury to convict and punish him. Any redress received by the individuals wronged as a result of a criminal proceeding is purely incidental. *Criminal wrongs are of two types: felonies and misdemeanours. Felonies* are graver in severity, murder, for example. *Misdemeanours* are not grave, but are offenses, nevertheless. An example for misdemeanour is parking violation.

Rules of *civil* law also impose duties on people and associations of people. Violation of a duty created by a civil rule is wrong; but unlike a criminal wrong a civil wrong does not constitute a wrong against community at large. When a wrongful act is merely a civil wrong, public officials will not take the initiative in prosecuting and punishing the wrong-doer. It is left to the injured person to bring a suit against the offender. Civil wrongs (excluding only breaches of contract) are more commonly known as torts (from the French word meaning “Wrong”). Example of torts are trespass, libel, and negligence.

MEANING AND DEFINITION OF BUSINESS LAW

Business law, also called commercial or mercantile law, is that branch of legal system which regulates business activities. The same meaning is revealed in the two definitions given below :

- (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.

SCOPE OF BUSINESS LAW

The scope of business law is indeed vast. It usually deals with topics of licences, large houses, monopolies, issues of securities, contracts, property, agency, negotiable instruments, foreign exchange, partnerships, companies, insurance, sales, bailment, guarantees, labour, suretyship, bankruptcy, consumer interest, business crimes, raising loans from financial institutions, obtaining electricity, iron and steel, customs clearance, allotment of materials, import of capital goods, pollution control and the like. These and other aspects are covered by legislations enacted by Central, State or Local Bodies.

ORIGIN OF BUSINESS LAW

As a part of the discussion on the nature of business law it is useful to refer to its origin and evolution. Before coming to origin of business law, it is necessary to know when law in general, took its birth.

While it is difficult to give precise date on which law was born, suffice it is to trace the broad period during which it came into being. The earliest law was the one available from Dharmasastras which were associated with such legendary names as Manu, Vishnu, Yajna-vaalkya, and Narada. Of these, the Dhannasastra of Manu is the standard and most authoritative work on Hindu law. The name of Manu is of old antiquity, being that of the first progenitor of the human race, the first king, and the first law giver.

The Dharmasastras covered such areas as civil rights, duties, wrongs, criminal law and the procedures connected therewith.

Then came the Arthasastra of Kautilya which was compiled around 300 B.C. Kautilya's Arthasastra, unlike Dharmasastras, covered rights, duties and responsibility of the king in the administration of the state including judicial administration.

It was probably the Arthasastra, which for the first time, contained provisions relating to business. The seeds of Contract Act were shown in the Arthasastra. All types, of contract — sale, purchase, marriage, etc. — were dealt with, reasonable precision and appealing logic. A contract was valid if made in the open with free consent by competent parties and if it were not against public policy and morals. Fraud and misrepresentation vitiated the contract. The invalid contracts could be rescinded by the party and the wrongdoer suffered the damages as well as penalty.

Similarly, other areas of business like debts, deposits, pledges, masters and servants, labourers and cooperatives were also covered in the Arthasastra.

The foundation of the East India Company was the major landmark in the Indian legal history. The company was set up under the British Crown's Charter of 1,600. The Charter conferred corporate character and juristic personality on the company. It granted power to make laws for its government and to impose such fines and penalties as might be necessary to enforce these laws.

It was in 1858 that the British Crown assumed sovereignty over India from the East India Company, and the British Parliament enacted the first statute for the governance of India under the direct rule of the British Government, the Government of India Act, 1858. By this Act, the powers of the Crown were to be exercised by the Secretary of State for India, assisted by a Council of fifteen members. The Council was composed exclusively of Englishmen some of whom were nominees of the Crown while others were the representatives of the directors of the East India Company. The Secretary of State, who was responsible to the British Parliament, governed India through the Governor-General, assisted by an executive council, which consisted of high officials of the Government. The Act was dominated

by the principle of absolute imperial control without any popular participation in the administration of the country.

The year 1861 witnessed a very important development in the history of judicial institutions of India. The Indian High Courts Act was passed to terminate the duplication of jurisdiction as between the courts of Company and of the Crown, and to establish a unified system of High Courts.

The Government of India Act 1919 declared that the polity of the British Parliament was to provide for the increasing association of Indians in every branch of Indian administration and for the gradual development of self-governing institutions with a view to the progressive realisation of responsible government in British India as an integral part of the British Empire.

The Government of India Act 1935 brought about significant changes. While, under all the previous Government of India Acts, the Government of India was unitary, the Act of 1935 prescribed a Federation, taking the provinces and the Indian States as units. But it was optional for the Indian States to join the Federation; and since the rulers of the Indian States never gave their consent, the Federation envisaged by the Act of 1935 never came into being. Though the part relating to the Federation never took effect, the part relating to provincial autonomy was given effect to from April 1937. The Act divided legislative powers between the Provincial and Central Legislatures and within its defined sphere, the Provinces were no longer delegates of the Central Government, but were autonomous units of administration. The executive authority of the Province was also exercised by a governor on behalf of the Crown, and not as a subordinate of the Governor-General. The Governor was required to act with the advice of ministers responsible to the legislature.

A Federal Court was established under the Government of India Act 1935. It was the first Federal institution and it was India's first constitutional court in the sense that its primary function was to interpret the Constitution Act (Act of 1935). Till 1949, however, its decisions were subject to the appellate authority of the Privy Council in England whose jurisdiction over India was abolished in the same year.

The Indian independence bill was introduced in the British Parliament on 4 July 1947, received the Royal Assent on 18 July 1947 and came into force from that day. The most outstanding characteristics of the Indian Independence Act was that while other Acts of the British Parliament relating to Government of India (such as the Government of India Acts from 1858 to 1935) sought to lay down a constitution for the governance of India by the legislative will of the British Parliament, this Act of 1947 did not lay down any such constitution. The Act provided that as from 15 August 1947, in place of "India" as defined in the Government of India Act 1935, there would be set up two independent dominions, to be known as India and Pakistan. The Constituent Assembly of each dominion was to have unlimited power to frame and adopt any constitution and to repeal any Act of the British Parliament, including the Indian Independence Act.¹¹ Expectedly, India framed its own constitution and adopted it from 26th Jan. 1950.

As was pointed earlier, business law figured, for the first time, in Kautilya's Arthashastra. From then onwards there was no going back. From time to time number of acts were brought into force exclusively to regulate business activities. A time has now come to repeal some of the enactments which have outlived their utility, as it happened in the case of Capital Issues Control Act.

SOURCES OF BUSINESS LAW

The important sources of business law are : (1) Legislation, (2) Custom, (3) Case law, (4) Natural law, and (5) English law (see Fig. 1.2).

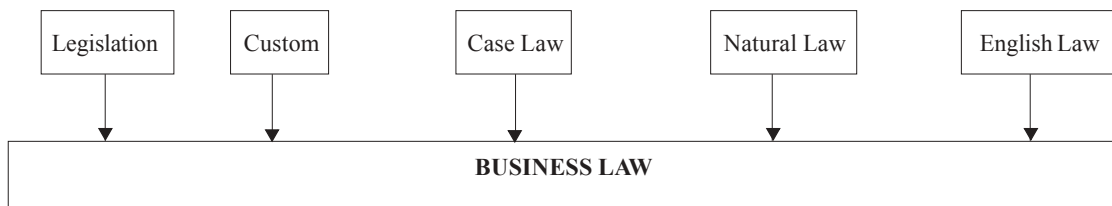


Fig. 1.2 Sources of Business Law

1. Legislation Legislation is the common source of law. Both Parliament and State assemblies have enacted a number of legislations that cover various aspects of business.

2. Custom 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 legalised. 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.”

3. Case Law Case law, popularly called “precedent” by lawyers is a judgement of a superior court including a point of law or principle and which necessitates its adoption and adherence in a subsequent case involving the same point. Case law is useful in as much as it helps courts to render uniformity with regard to the interpretation of statutes or formulation of principles.

In spite of the prevalence of multiple laws, we still find vacuum on any given matter. Such gaps are filled by case laws. The Contract Act, for example, is not clear whether an agreement with a minor is voidable at his/her option or altogether void. It was the judgement by the Judicial Committee of the Privy, Council in *Muhoribibi v. Dharmadas Ghose* (1903) that an agreement with a minor was declared absolutely void. This decision has become precedent for subsequently pronouncing all agreement with minors as void, in fact, the Indian Contract Act has not been amended till now ever since it came into effect on the first day of September, 1872. Not that the Act has been fool-proof in all respects. But case laws were ably filling the gaps in the Act.

4. Natural Law Natural law or natural justice is another source of law. The natural justice that no man can be punished twice for the same crime is a guiding principle for any legislation. Similarly, natural justice demands that no individual can be dubbed guilty unless the charges are proved against him/her.

A historic case to be quoted in this context is the *National Textile Unions v. Ramakrishna* (1983). The dispute raised before the Supreme Court involved the point whether or not the workers of a company have *locus-standi* to be heard in proceedings relating to the winding up of the company. The Court found no provision to the effect in the Companies Act though it runs into more than 650 sections. The Court actually created the right for the workers by falling upon the principle of natural law and natural justice.

5. English Law Our business laws are largely based on English acts applicable in England. Our Sale of Goods Act, for instance, has been taken directly from the English Sale of Goods Act. Similarly, our Companies Act corresponds with the English Companies Act. Again in any discussion on the Indian Contract Act, reference is invariably made to the English law.

Dharma: What is unfortunately ignored is the fact that *Dharma* was the main source of law

during ancient periods and we have no doubt in asserting that it continues to be the main spirit behind every law even today. To prove the role of *Dharma* in judiciary we quote A. H. Basham, “Though we know very little about the legal system of the Rigvedic period”, wrote he/she, “it is clear that the idea of a divine cosmic order already existed. *Rta*, the regulatory of the universal process, was perhaps the forerunner of the later concept of *Dharma*.”

As well as *Dharma* there are, according to the textbooks, other bases of law : contract, customs and royal ordinance. The earlier religious law books paid little attention to these, but their importance increased with time. It was recognised that, owing to the decadence of the age, *Dharma* was not now known in its fullness, and purity and therefore supplementary sources of law were needed. Generally *Dharma* was thought to override all other bases of law, but the *Arthashastra* and one other lawbook maintain that the royal ordinance overrides the others, a doctrine which we must ascribe to the totalitarianism of the Mauryas, and which few later jurists would have supported.

“The King’s duty of protection was chiefly the protection of *Dharma*, and as protector of *Dharma* he/she was *Dharma* incarnate. From Ashoka onwards kings sometimes assumed the title to *Dharmaraja*, which was also one of the names of Yama, the god of death and departed. Both Yama and the King maintained the sacred law by punishing evil-doers and regarding the righteous.” (*The Wonder That Was India*, p. 114).

Dharma continues to be the guiding principle of justice even today. For example, a debtor who owed Rs. 100 and who executed a bond by which he/she was required to put forth manual labour until the amount was repaid and in case of default would be required to pay exorbitant interest would be freed from such an obligation. In other words, the agreement would be declared void (*Ram Sarup V. Bansi Mandir, 1915*). It is *Dharma* which makes such agreements void.

OBJECTIVES OF BUSINESS LAW

The objectives of Business Law are as follows :

1. Define the Rules of the Game

Laws define the “rules of the game” within which business activities shall be carried on. These rules of the game are essential to provide a congenial environment of the business to function smoothly. Imagine X Company makes statements openly disparaging the interests of its vital Y Co. Also imagine, Z Co., imposes sanctions on dealers if they deal with products of competitors? Surely, business cannot function smoothly in such a hostile environment.

2. Enable Enforcement of Rights

Businessmen have “rights” like other citizens— rights which are judicially forceable against infringement by private parties or by government itself. Thus, the businessman may turn to High Courts or Supreme Court to enforce his/her claims against debtors, his/her rights to a patent or copyright, right to own property and so on. The businessman has also a right to defend himself/herself against actions of government — Central, State or local bodies. These rights are provided to him/her by business laws.

The fact that a right exists does not mean that a judicial verdict is always favourable to the business. The outcome of the litigation may prove unfavourable to his/her claim. Whether to initiate a legal action in the first place, and then how far to carry it involve strategic and tactical questions that each businessman, with the advice of counsel, must answer for himself in terms of the expected value of the action, expense and time considerations.

3. Facilitate Industrial Growth

Business law is not expected to do only policing job, i.e., laying rules of the game for business and providing certain rights and protecting the rights of the businessmen. The role of business law is much wider. For example, business law may contribute to the industrial growth. By selectively issuing licences to deserving entrepreneurs, by facilitating capital formation, by ensuring cordial industrial relations, and by providing other needed facilities, business law contributes considerably to the growth of industries.

4. Achieve Social Justice

Business law has social objective too. It seeks to check exploitation of child labour and discrimination in employment or remuneration on the basis of sex, caste or religion; misuse of economic power against any section of society; reckless exploitation of economic resources at the cost of posterity; and systematic disruption of ecology. It prohibits business from indulging in practices which are harmful to public interest.

5. Fix Priority of Wants

Finally, legal rules of which business law is a part, have an ultimate objective of deciding priorities among unlimited wants which compete for satisfaction. In elaboration of this statement we quote James J. Houghteling and George G. Pierce: "Individuals and groups have an infinity of wants that they seek to satisfy. Obviously not all these wants can be wholly satisfied; indeed some of them must be defied satisfaction altogether. Since some of these wants are more urgent, and some more socially desirable than others, we must have a system for establishing priorities among them.

"Conceivably, of course, a society could allow consideration of sheer power — economic, physical, social, political — to determine which wants should be satisfied. But civilised societies have rejected private power as the primary criterion for establishing priorities and have substituted instead of such criteria as "justice and social utility." A major task of governments is to create and enforce rules of law based on those criteria."

PROBLEMS OF BUSINESS LAW

Business law, like any other system, has its own problems. The major ones are outlined below:

1. Gap between Principles and Practice

There is a wide gap between what is stated in a particular law and what is implemented in practice. This is because of the known predilections and weakness of the law enforcing authorities. There is so much talk about the removal of exploitation of child labour. Article 39 of the Constitution enjoins upon the State to protect childhood against exploitation. Sec. 67 of the Factories Act, 1948, prohibits employment of children below 14 years of age. But it makes pathetic scene to watch a small boy of six or seven years of age, travelling in a city bus, early in the morning, hair unkept, face unwashed, clothes soiled and torn and with a tiny tiffin box tucked under his armpit, to his work place. From the early hours of the morning till late in the evening, the boy spends his hard day inflating cycle tubes, cleaning engines, washing plates and glasses in hotels, or rolling beedies or incense sticks. The boy gives his monthly earning of ₹ 150 to ₹ 180 to his father who squanders it on drinks. No legislation has punished the guilty father or saved the helpless boy.

Again the Factories Act, 1948, provides standards of cleanliness, lighting, ventilation, safety and other-facilities to be maintained in industrial establishments. But if you visit some factories, you are reminded of the 18th century cells.

Another example relates to the manufacture of drugs in our country. Tetracycline (which is an essential drug) combination with vitamin C is banned in our country. But Pfizer, a leading drug company, combines Oxytetracycline (no different to tetracycline) with vitamin C and is marketing the product opposing the ban. Such instances are several.

2. Enactment and Enforcement by different Authorities

In several cases laws are enacted by the Central Government but enforcement is left to the States and local agencies. The Constitution specifically delegates much of the control of business activity to individual States. However, law enforcement efforts at the State and local levels vary widely. This anomaly gives room for avoidable problems. Consequently the purpose of the legislation itself is defeated.

An example of this can be found in the legislation concerned with the control of pharmaceutical products. Although we have the Drugs Control Act enacted by the Central Government, enforcement is the constitutional responsibility of the various States, Majority of States have not established appropriate agencies to enforce the legislation. In most of those which have, the drug control organisations are poorly staffed and cannot effectively handle their administrative duties. The Drug Controller of one of the States has complained that the only firms he/she can supervise adequately are those which already comply with the law. He does not have the trained man-power he/she needs to ferret out the many small companies which do not file required reports and which do not meet legal standards.

3. Road Blocks to Industrial Progress

It was claimed in point three above, that legal system contributes to the business growth. While admitting the positive contribution of legal system to business growth, the damage it can cause to the industrial development should not be forgotten. It is an established fact that the legal system has been putting several road blocks to our industrial progress. Being a highly regulated economy, all aspects of business — what to produce, where to produce, how much to produce, at which price products must be sold, how much profit a businessman must earn, and how he must spend his profit, are decided by the government. This means that the businessman has no choice of his own. Further, every decision a businessman takes must be in conformity with one rule or the other. Freedom to decide on a course of action, to act on the chosen path, and to reap the benefits of an action are the basic tenets of effective management. This freedom is largely denied to the businessman thanks to the pervasive legal environment.

4. Short and Swift Road to Justice for Wealth

It is highly regrettable that there is a short and swift road to justice for the wealthy, influential and well connected people. For others the road to justice is long, weary, and heart breaking. Misuse of judiciary by the wealthy and powerful to exploit the innocent, poor and honest people has become a fertile ground for fiction-writers to dish out cashbooks some of which have become best sellers. The main reason for this phenomenon is to be found in the judiciary itself. It is said that corruption and nepotism have entered the sacred portals of judiciary and the judges are susceptible to political influences. Maladies of this type of judiciary prompted Dickens to dub judiciary as an ass, an idiot.

5. Loopholes in the Laws

It is a well-known fact that manufacturers take advantage of loopholes in the laws, manage to obtain stay on the operation of government orders, and avoid or postpone payment of taxes and other dues to the government. Government should now get several hundred crores as excise duty from our manufacturers. But the amount is not coming to the government because of stay issued by judiciary.

Business law is, probably, at its worst in the field of industrial relations. During the last decade and a half, in the name of “directive principles”, “social justice”, and “active law making”, the Supreme Court, instead of having a balanced and reasoned consideration of opposing interests, has entirely vitiated the industrial relations fabric by making wholesale dogmatic assertions in undermining discipline. To borrow a simile from G.K. Chesterton, while dealing with discipline cases, the courts lost not only the path but also the map and the compass. It has gone to the extent to say that even an “illegal strike is justified.” By those whose horizons are limited, trifles are easily contrived with technicalities. The result is that indiscipline in industry as spread like wildfire and sapped to national production and productivity. The classic case is that of textile industry which has been wrecked by indiscipline.

6. Other Problems

In order to make this point clear we quote Justice V.R. Krishna Iyer, the retired judge of the Supreme Court:

Today, litigative justice has come to a grinding halt, the judicature has caricatured itself into a dinosaur and both the Bench and the Bar, alas, have become a law unto themselves. Indian humanity having come to discard the judiciary as barred by limitation of time except as a pantomime. If it is not to be regarded as a case of survival after death, a new elan is needed now. The cult of the robbed process has short mileage! If all the judges and lawyers of India pull down the shutters of their law shops nationwide, injustice may not any more escalate. If at all, litigative waste of human and material resources may be obviated. What an obituary!

Many superficial diagnoses, charlatan recipes and myopic prognoses have been offered which are as potent therapeutically as painkillers for terminal cancer. Esoteric jurists have interpreted the decadent judicial disorder in various ways. Our statesmanly task is to transform this imbroglio into an opportunity for overhaul which by performance, restores order and confidence not only in the lowly, the lost and the last. Business management must come to court! I am convinced that democracy will die soon if an independent, alert and quick-to-act judiciary — not a functioning anarchy — does not come alive as a sentinel on the *qui vive!*

“The condition of the subordinate courts where most litigants seek relief, especially the poor and the weak, is deplorable. Rickety buildings which accommodate the courts are dismally inadequate, what with fish-market jostling and client crowds wrangling, broken furniture and absence of standing space for lawyers and members of the public, confusion, pollution ... making proceedings insufferable and inaudible.”

Read the following to understand more about the state of judiciary-

German Law: Everything is forbidden except what is permitted.

French Law: Everything is permitted except what is forbidden.

Soviet Law: Everything is forbidden including what is permitted.

Italian Law: Everything is permitted specially what is forbidden.

India: Indian Acts have various sections and proviso therefore. What is permitted by the main section is forbidden by the proviso and what is forbidden by the main section is permitted by the proviso.

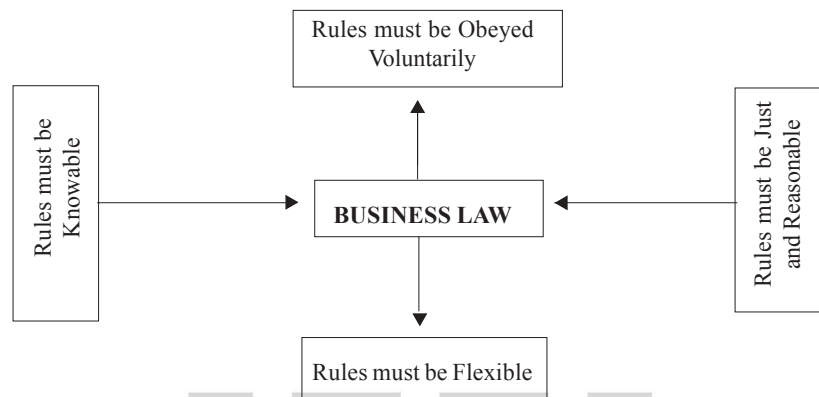
It is this paradox that makes the Indian legal world a veritable paradise an gold mine for the lawyers. But let us not be baffled by the situation. You can certainly get better of the situation—gather your wits and-have your way in India.

REQUIREMENTS OF EFFECTIVE BUSINESS LAW

Following are the requisites of effective legal rules influencing business: (see Fig. 1.3).

1. Rules Must be Obeyed Voluntarily

The primary objective of a legal system is to set forth guidelines for human conduct that will cause people to behave in the way society wants them to behave. This is the “preventive” function of



law. The most important legal rules (known as the primary rules) are those designed to channelise the conduct of private persons and groups into patterns likely to keep conflict to a minimum. Without a large measure of voluntary compliance with the primary rules, social life would be impossible: no community could afford to employ enough officials to compel everyone to obey the law.

Fig. 1.3 Requirements of Effective Business Law

But some people do not comply with the legal rules either deliberately or through ignorance or carelessness. So a legal system must have officials - judges and police, for instance - to apply the remedial (called the secondary) legal rules. These rules determine the consequences of non-compliance of primary rules by people. But resort to remedial rules and officials must always be exceptional. If a legal system were to be effective, people must voluntarily observe traffic rules, buy tickets, pay taxes and in other ways comply with the law.

2. The Rules Must be Just and Reasonable

Popular belief is that people comply with the law out of fear of prosecution, as a force of habit, or out of a feeling that doing so is right. But the truth is that people observe legal rules when they are relatively fair and reasonable. A rule that seems unjust or unreasonable to a large section of community is difficult to enforce.

3. The Rules Must be Flexible

Since the material circumstances of community life, and with them the values and attitudes of the community are continually changing, the system of rules under which the community lives must be flexible and adaptable. There must be ways to bend existing rules to meet novel situations, and ways to make more substantial changes in the rules when such changes seem necessary. While the task of bending the rules to meet new situations is generally assigned to courts, introducing major changes is done by legislative bodies.

4. The Rules Must be Knowable

If the community expects its members to comply with the legal rules, they must know what the rules are. It is obviously not necessary for every citizen to know all the rules, though the popular dictum is: "ignorance of law is no excuse." But the experts in the field - the lawyers - must be knowledgeable about all rules and be in a position to advise their clients on the probable consequences of their acts. As a famous judge, Benjamin Nathan Cardozo, once said: "Law as a guide to conduct is reduced to the level of mere futility if its is unknown and unknowable."

REVIEW QUESTIONS

Conceptual Type

1. What is business?
2. What is common law?
3. What is statutory law?
4. What is business law?
5. Mention three important objectives of business law.
6. State three major pitfalls of business law.
7. State three important requisites of an effective legal system.
8. What is Law?
9. Define Law.
10. What is Criminal Rule?
11. What is Civil Rule?
12. What is right to equity?

Ansalytical Type

1. "Role of business law is much more than mere policing." Comment.
2. "Business law, like any other system, has its own problems." Elucidate?
3. Briefly discuss the sources of Business Law.
4. What is Business law? Discuss the objectives of Business Law.
5. Briefly discuss the problems of Business law.
6. State the objectives and pitfalls of Business law.
7. Briefly discuss the requirements of Business law.
8. Discuss the requirements of Business Law.

Essay Type

1. What do you understand by business law? What are its objectives?
2. Define business law. How to make business law effective?
3. What is Business Law? Discuss its objectives and problems.