

shall try to know what is law.

1.1 DEFINITION AND MEANING OF THE TERM 'LAW'

It is very difficult to state a single and accurate definition of the term 'Law' as it is a general term and has different connotations for different people. For example, a common man may think of law as a set of rules he has to obey whereas for a judge, it is nothing but a set of guiding principles to be applied in deciding the cases.

'Law' in simple term implies 'rules' and as such includes different sets of rules which govern or regulate various external human actions and conduct of individuals, institutions and the Government with each other. But, merely rules or sets of rules do not mean law, but they must be enforced by the sovereign state and must receive due recognition.

The term 'Law' has been defined by many authorities. In order to understand its meaning clearly, let us consider the definitions stated by some of the authorities.

(1.1)

Salmond

"Law is the body of principles recognised and applied by the state in the administration of justice".

Holland

"Law is a rule of external human action enforced by the sovereign political authority".

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".

Austin

"A Law is a rule of conduct imposed and enforced by the sovereign".

Anson

"The object of Law is order, and the result of order is that men are enabled to look ahead with some sort of security as to the future. Although human actions cannot be reduced to the uniformities of nature, men have now endeavoured to reproduce by law something approaching to this uniformity".

Woodrow Wilson

"Law is that portion of the established habits and thought of mankind which has gained distinct and formal recognition in the shape of uniform rules backed by the authority and power of the Government".

From the above mentioned definitions, we come to know certain characteristics of law which are as follows :

1. Law is related to external human actions. Law attempts to regulate the external actions of human beings. Many times, internal human actions can also be the subject of law. For example, if A is killed in an accident caused by the action of B and if it is proved that B purposely killed A, he can be prosecuted under Section 302 of the Criminal Procedure Code. But if it is proved that B had no intention to kill A, the law may take lenient view. Thus, the cognizance of both actions, external as well as internal, is taken by the law.
2. Law is rule of conduct imposed and enforced by the sovereign. The Government regulates the conduct of the citizens by passing necessary Acts. It ordains a general course of conduct to be followed by the citizens of the country. Such rules or Acts enforced by the Government are termed as 'Law'. In other words, Law is the command of the sovereign and is enforced by the State.
3. These rules of conduct are very essential for peaceful and prosperous living of the people in the country. In a sense, they help all people to have maximum freedom.
4. Law is supreme and is applicable to all. It is the same for the poor and for the rich, for the rulers as well as for the subjects of the country.

Thus, law includes all the rules or Acts enforced by the sovereign which regulate the relations between the citizens and also the relations with the Government or State. It is the body of principles with regard to human behaviour as determined by the legislature from time to time. All these principles are interpreted and enforced by the judiciary of the country.

1.2 DEFINITION AND SCOPE OF BUSINESS LAW

The Legislature of a country enacts the laws with regard to several subjects like transfer of property, crimes and punishment, torts, rent control, contracts, monopoly control, control of foreign exchange, matters relating to industry, commerce, trade etc. The term 'Business Law' includes within its purview the laws concerning industry, commerce and trade.

Business Law and Mercantile Law are not two different laws. Mercantile, business and commercial are synonymous terms. Business or Mercantile law is not a specific law but a branch of General Law. As it relates to business, trade, industry, commerce, etc., it includes all such laws which are considered to be very important from the point of view of businessmen, traders, producers, entrepreneurs, etc. Therefore, Business law can be defined as that branch of law which is concerned with or applicable to industry, commerce, trade or business in connection with various business or mercantile transactions.

With the increasing complexities of the business world of the present day, the scope of business law is enormously widening. In order to regulate and control increasing business or commercial transactions and activities, the legislature has to enact various new pieces of legislation and amend the existing ones.

It must be remembered that all laws are inter-related in one way or the other and therefore, while applying the provisions of business law which includes various laws relating to contracts, sale of goods, partnerships, companies, negotiable instruments, patents, designs and trademarks, insurance, contracts of guarantee and indemnity, etc. recourse has to be taken to other concerned pieces of legislation. It is just a matter of convenience to classify the legislation into various branches of Law.

1.3 SOURCES OF INDIAN BUSINESS LAW

Indian Business Law is basically adapted from English Law and English Law is made up of Statute Law, Common Law and Equity including Judge-made Law.

In the Nineteenth century, the first efforts were made to codify and establish uniform principles of Mercantile Law in India and as a result, the Indian Contract Act was passed in 1872. Prior to that, English Courts in India used to apply the personal law of the parties to the suit. This means where both the parties were Muslims, Mohammedan law and customs were applied. Where both the parties were different and relevant personal laws did not contain the necessary rules to decide the cases or disputes, the Judges used to apply the rules of English Law. Later on English Law was gradually incorporated into Judicial decisions in India and in the process, it became the part of Indian Law. Besides the English Mercantile Law, there are other sources also. The other important sources of Indian Business Law are as given on next page.

(i) Statute Law or Acts of Indian Parliament

The law making power in India is vested in the Parliament of India and the State Legislatures. Laws passed by them constitute the bulk of Mercantile Law in India. The Contract Act of 1872, the Partnership Act of 1932, the Sale of Goods Act of 1930, Negotiable Instrument Act 1881 are some of the examples of the Statute Law. The Indian Parliament, after the country became the Republic in 1950, adopted all these Acts. After Independence, many acts like the Companies Act 1956, MRTP Act, FERA, etc. were passed and the Acts already passed are being gradually modified to suit the circumstances.

(ii) Judicial Decisions

Under the Indian constitution, the Courts in India are divided into three groups namely the Supreme Court, the High Courts and the Subordinate Courts. These courts decide various cases which are brought before them. The decisions given by some of the courts become the source of law. The decisions given by the courts have persuasive as well as guiding value for a court of the same stature and for the lower courts, the decisions are binding. Thus, the decisions given by the courts are followed in similar future cases. This system of precedents is one of the important sources of the Business Law.

(iii) Customs and Usages

Customs and usages are also the important sources of the Business Law. The rule of conduct that grows in any society is known as usage and when usage is adopted by all in the society and often repeated without an exception then it becomes a customary law. Customs and usages established by repeating them for longer uses and consciously put into practice become very much binding on all parties entering into contracts or commercial transactions. When these customs are accepted by the courts, they become the part of the Business Law.

1.4 QUESTIONS

1. State and explain the definition of Business Law.
2. Explain fully the nature and scope of Business Law.
3. "Business Law is not a specific law but a branch of General Law". Explain.

