
1.5 SOURCES OF BUSINESS LAW

The principal source of law in India is the Constitution which, in turn, gives due recognition to statutes, case law and customary law consistent with its dispensations. Parliament, State Legislatures and Union Territory Legislatures enact statutes. There is also a vast body of laws known as subordinate legislation in the form of rules, regulations as well as by-laws made by Central and State Governments and local authorities such as Municipal Corporations, Municipalities, Gram Panchayats and other local bodies. This subordinate legislation is made under the authority conferred or delegated either by Parliament or State or Union Territory Legislature concerned. The decisions of the Supreme court are binding on all Courts within the territory of India. As India is a land of diversities, local customs and conventions that are not against statute, morality, etc. are to a limited extent recognized and taken into account by Courts while administering justice in certain spheres.

The very first efforts to consolidate and codify the then-existing principles and practices of mercantile law in India were made in the nineteenth century. These efforts culminated in the passing of the Indian Contract Act in 1872. Until this time, the English Courts in India used to apply the personal law of the parties to the suit. In case of the parties belonging to different personal laws, the personal law of the defendant prevailed. Where the relevant personal laws did not contain the necessary rules to decide the cases or disputes, the Court applied the rules of English Law.

Let us have a brief overview of the sources of business law in India as given below :

1. **Common Law** : The term common law refers to that part of law, which was created by court judgments, based on the generally acknowledged conventions and social practices in

Britain. In the British legal world, this term is very frequently used. There were some conventions and traditions which were practiced in Britain for a long period of time. Such habits later secured extensive acceptability from the society. Eventually the Courts also recognized these widespread and universal practices to settle suits. Thus evolved what is called the common law.

2. **Equity** : There were certain occasions when the conventions and social practices or the common law could not suffice in providing justice to parties. In such cases the judges applied what was commonly known as the principles of 'justice, equity and good conscience'. These later came to be called the principles of equity.
3. **The Law Merchant** : As time passed by, business societies practiced their own special set of laws to be applied to the mercantile transactions. These were the customs and usages customary to merchants. These trading practices when later recognized by the Courts became part of common law. This gave rise to another source of law called the 'law merchant'.
4. **Legislation** : A bill when passed by the Parliament becomes a statute. A statute is a formally codified law or the written law of the land announced by an authorized law-making body in the society. When a statute is created by the Parliament, it takes into account the entire judicial experience accumulated till date on the matter to give to the society the most comprehensive piece of legislation. In course of time however this law is further expanded through judicial pronouncements and interpretations. In India, there are numerous legislations, which form part of mercantile law of the country. The Contract Act 1872, the Companies Act 1956, the Negotiable Instrument Act 1881, the Partnership Act of 1932, the Sale of Goods Act of 1930, etc. are some of the examples of the Statute Law.
5. **Precedents** : Under the Indian Constitution, the decisions of the Supreme Court of India have the binding word of law. Similarly, where the decisions given by a superior court become binding on the subordinate courts, it becomes a source of law. These decisions are based on the principle that what has been once settled in an earlier case should be followed in similar future cases. It is called the rule of precedents and has become an important source of law.
6. **Customs and Usages** : Customs are traditions practiced universally over a long period of time. Customs and usages are also the important sources of the Business Law. Usage means the norms of behaviour that evolve in any civilization. In order to be binding on the parties, a custom should be ancient, reasonable, certain, definite, consistent with other customs and uniformly recognized in the ordinary course of business. When the courts accept these customs, they become the part of the Business Law.

1.6 SUMMARY

