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An MHRD Project under its National Mission on Education throught ICT (NME-ICT)

Subject: Management

Production of Courseware

e-Content for Post Graduate Courses

Paper: 12, Business Environment

Module: 07, Legal Environment

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Items	Description of Module
Subject Name	Management
Paper Name	Business Environment
Module Title	Legal Environment
Module Id	Module no.-07
Pre- Requisites	Basic knowledge of legal aspects of business in India
Objectives	To study in brief outline of the laws which affect business in India
Keywords	Act, Law, legislation, legal environment, Regulation.

QUADRANT-I

	Module 07:Legal Environment
1	Learning Outcome
2	Introduction
3	Labour and Industrial Laws
4	Taxation Laws
5	Intellectual property Laws
6	Banking and insurance Laws
7	Business and Corporate Laws
8	Some other Laws which may affect business in India
9	Summary

1.

Learning Outcome:

After completing this module the students will be able to:

- Understand the concept of legal environment of India
- Describe the objectives of various laws affecting business in India
- .Learn the basics of various laws in India
- Interpret the terminology related to legal environment affecting business in India

2. Introduction

The code of conduct which decides the legal boundaries of business is called legal environment. Business is regulated in a country by government as per well defined priorities. Legal environment of business keep on changing as per need and demands of the business, government and consumers. Legal environment constitutes the various laws which are passed by the government in a country to regulate the business operations. All the decisions in a business are dominated by regulatory environment. A business should have a thorough knowledge of laws and legislations of the government as non implementation of policies may lead to heavy fine and penalties.

There are a numbers of laws which are regulating the system in India .Some of the laws which affect the businesses in India are mentioned as below:

2.1 Labour and Industrial Laws

- Workmen Compensation Act, 1923
- Trade Union’s Act, 1926

- Employee’s State insurance Act,1948
- Minimum Wages Act ,1948
- Apprentice Act,1961
- Factories Act,1948
- Industrial Disputes Act,1947

2.2 Taxation Laws

- Income Tax Act, 1961
- Central Sales Tax Act, 1956
- Customs Act, 1962
- Central Excise Act, 1944
- Value Added Tax (VAT), 2005

2.3 Intellectual Property Laws

- Patents Act, 1970
- Trade Marks Act, 1999
- Copyrights Act, 1957

2.4 Banking and Insurance Laws

- Banking Regulation Act, 1949
- Insurance Act, 1938

2.5 Business and Corporate Laws

- Indian Contract Act,1872
- Sales of Goods Act,1930
- Partnership Act,1932
- Companies Act, 2013

2.6 Some other Laws which may affect business in India

- Competition Act, 2002
- Arbitration and Conciliation Act,1996
- Foreign Exchange Management Act (FEMA), 1999
- Information technology Act, 2000
- Environmental Protection Act,1986

3. Labour and Industrial Laws

Industrial legislation affects a large number of industries, workmen and their families. Hence a large population of country is affected by industrial legislations. Traditionally the employer used the policy of hire and fire to his workmen. But now the concept of master and servant has changed. The employer may hire the employee but cannot fire at own will. The legislation protects the rights of employees. Industrialization in India or in any other country means factory system growth with employers and wage earners. Wage population migrated to industrial towns due to introduction of factory system and the society faces labour problems which need solution. Earlier the workers were illiterate and unaware of their rights and employer’s socio economic status was above the employees. Hence workers could not dictate their terms and conditions related to work hours, wages and leaves etc.To promote social justice there is need of equitable distribution of profits. Another objective is to provide protection to their health against harmful effects. Some of the Labour Laws are as follows:

3.1 Workmen Compensation Act, 1923 ensures that compensation be paid to the workers in case of an injury caused by an accident during course of employment. Act provide adequate protection to the workers from losses by accidents and improve employee's working conditions. In case of an injury to workmen due to accident the Act provides for payment of compensation to certain class of employees.

3.2 Trade Union's Act, 1926 ensure better conditions of employment to the workers and trade union concept has grown up. In any industry labour and capital contribution is very essential. To secure better amenities, privileges and working conditions to the labour through collective bargaining, strikes and mutual insurance are used as tools.

3.3 Employee's State insurance Act, 1948 is another important step by government through legislation is to ensure social security to workmen .Which aims to provide economic and social justice to poor labour class and extended to the workers of every factory and industry etc.

3.4 Minimum Wages Act, 1948 prevents exploitation of labour and aims to fix minimum wages which an employer must pay. It protects the ignorant, less privileged and less organized workers to be protected from capitalist. Minimum wages ensures the physical need of workers to keep them above starvation level and provide certain level for educational, medical requirements etc.

3.5 Apprentice Act, 1961 regulates the training of apprentice in an industry. Act passed to ensure to carry on a systematic training programme of skilled labour and provide facilities to ensure training as per programmes.

3.6 Factories Act, 1948 deals with the provisions of health, welfare and safety of workers. As per Act there must be cleanliness in the factory and precautions be taken for accumulation of dirt and it should be removed daily. Every workroom, floor be cleaned once in a week. The promotion of human conditions at work place, securing full employment to the workers and welfare of people are covered under Act.

3.7 Industrial Disputes Act, 1947 have the objective to maintain industrial relations through industrial peace and economic justice. If there are good relations between management and labour due to absence of disputes, then it will have the positive influence on production. This will promote smooth growth of the industry. Hence industrial peace can be maintained through legislations for industrial relations.

4. Taxation Laws

There are two types of taxes: Direct taxes and indirect taxes. Direct taxes are those taxes which are directly charged from the person who avails benefits and indirect taxes are those taxes which are passed ultimately to the consumer of goods but collected from seller, importer and producer etc. Income tax and wealth tax are direct taxes whereas central excise duty, customs duty, central sales tax, state VAT and service tax are indirect taxes.

4.1 Direct Taxes

4.11 Income Tax Act, 1961 provides for the administration, levy, collection and recovery of income tax in India. To replace Income Tax Act, 1961 and Wealth Tax act, 1956 Government of India has drafted a statute named "Direct Tax Code'. Income of a person who is resident in India during previous year is chargeable under income tax Act. There are five heads of income called Income under head

‘Salary’, Income under head ‘House Property’, Income under head ‘Capital Gains’, Income under head ‘Business or Profession’ and Income from other sources.

4.2 Indirect Taxes

4.2.1 Central Sales Tax Act, 1956 is an indirect tax and chargeable by central Government from a registered dealer on taxable turnover of interstate sale of goods i.e .when goods move from one state to another. Import and export of goods are not covered under CST.

4.2.2 Customs Act, 1962 is the law related to customs duty to be charged on import or export in the country and levied by the Central Government. It contains the provisions for duty chargeable on cargo exports, postal articles and baggage etc.It also imposes restrictions on imports and exports. Smuggling activities are prevented by Central Government through this Act.

4.2.3 Central Excise Act, 1944 is the law related to duty chargeable on goods produced or manufactured in India. On essential goods like alcohol, cigarettes consumption is discouraged and duty is charged at high rate on commodities like oil and gas to reduce their consumption. It is chargeable from manufacturer for goods produced in India.

4.2.4 Value Added Tax (VAT), 2005 is a tax on sale and another form of sales tax. During sales of goods it is charged in different stages of transaction and paid on purchases. The registered dealer is issued an 11 digit number called Taxpayer’s Identification Number (TIN) under the law to charge VAT.

5 Intellectual Property Laws

Human intellect and human mind creation is called intellectual property. It is a hidden property means to accumulate wealth. Intellectual property has fear of piracy and covers two branches: industrial property i.e. patents, trademarks, industrial designs etc.whereas copyrights covers writing rights, musical works, dramatic works and photographic works etc.l

5.1 Patents Act, 1970 grants privilege or authority to one or more individuals in property which is approved by Government. The Government provides an exclusive monopoly for a limited period of time for an invention which is called Patent. For the invention exclusive rights can be enjoyed by the inventor. The Government encourages research by innovation encouragement to promote technological, industrial and economic development in the country. Patentee is the owner of the patent who can deal with the property in same manner as owner of any other movable property.

5.2 Trade Marks Act, 1999 is related to the fact that a consumer may be cheated when purchases a commodity presuming to be the original which is of substandard. The reputation of trader may also suffer. To protect the interests of consumer and trader a symbol is marked on the origin of the goods. Such symbol is called trade mark. The trade mark may be a brand, symbol, letter etc.which can be represented graphically and may include combination of colours and packaging. Trade mark ensures quality of the product and it identifies the product at origin.

5.3 Copyrights Act, 1957 says that copyright is a special kind of intellectual property. This right is acquired by a person as a result of intellectual labour which is called copyright. It protects the work, labour, skill of a person which is in the nature of musical, dramatic or literature work or may be artistic, sound recording work etc.

6 Banking and Insurance Laws

Indian banking and insurance sector had undergone a bigger change in last few years. A bigger amount has been in invested in India in banking and insurance sector in the form of Foreign Direct Investment (FDI). Although banking and insurance sector is entrusted with the safety of funds of the general public as well as government institutions. Many reforms have been introduced in both the sectors. In the era of globalisation these sectors need a proper regulation. The related laws are mentioned below.

6.1 Banking Regulation Act, 1949 is related to the banks and public service institutions which deal in funds of public. Banking Regulation Act contains various provisions related to capital of banks, businesses which are prohibited to banking companies, liquid assets, banking licences, new branch opening, loans and advances etc. Successful banking venture depends upon position of liquidity. Before the commencement of business a banking company requires a license from Reserve Bank of India and RBI inspects that whether position of bank is good to pay depositors at present or in future.RBI grants prior permission to the banking companies for opening new places of businesses in India and abroad. A banking company can wind up business like any other company if unable to pay debts or otherwise.

6.2 Insurance Act, 1938 is the law related to insurance and Insurance Regulatory Authority of India (IRDA) is the regulatory body which makes supervision and development of insurance sector in India. Insurance is an agreement between two parties. The person who takes protection, pay premium is called insured and person who agrees to compensate for loss is called Insured. Policy is the document in which terms and conditions of contract are mentioned. There are various types of insurances like life insurance, fire insurance, marine insurance and general insurance.

7 Businesses and Corporate Law

There are various types of business and corporate laws which may affect a business in India. Many laws are prevalent in the country before independence. Business Laws in India includes some of the following laws. Although this is not complete list of Business Laws in India.Some of the laws are covered in earlier sections or in the forthcoming sections

7.1 Business Laws

In India business is regulated by different laws. But some basic business laws are in the form of Indian Contract Act,1872,Sales of Goods Act,1930,Partnership Act,1932 and other additional laws related to Bailment and Pledge, Principle of Agency,Nagotiable Instruments Act,1881 are also operational, Brief outline is as follows:

7.1.1 Indian Contract Act, 1872 is the law which is most important part of mercantile law. Trade or business is not possible without this law. Every person is affected by law of contracts in one way or another way. Every one of us enters into a large number of contracts right from morning till evening. As per Indian Contract Act one person makes an offer and when this offer accepted by other person, it becomes a valid contract. There must be free consent of the parties which are entering into a valid contract. The objective of the contract must be lawful and a consideration is a valid one. For a valid contract the parties must be competent to enter into contract. There are remedies which are available to to an aggrieved party if other party makes a default in the contract.

7.1.2 Sales of goods Act, 1930 is the law of contract under which property in goods is transferred by the seller to the buyer. Two parties are covered under the Act, one is called 'seller' and other is known as 'buyer'. Consideration for the contract of sale is money paid or promised. Subject matter of contract of sale is 'goods' which may be existing, future or contingent goods. Performance of contract of sale is complete when both the parties i.e seller and buyer complete their promises. Seller delivers the goods and buyer makes payment of the goods.

7.1.3 Partnership Act, 1932 mentions that partnership is an association of two or more persons who have agreed to share the profits for the business concern carried on by all or one of them acting for all. Partnership business is based on the principle of mutual agency which means that if decisions which are taken by one partner in good faith then such decisions are carried on by all of the partners i.e every partner will be liable for such decisions. The liability of the partners is unlimited i.e. if debts are not paid then they can be recovered even from private property of partners. To remove the shortcomings of Partnership Act, 1932 a new Act called **Limited Liability Partnership Act, 2008** has come into existence.

7.2 Corporate Laws

There are various laws which are affect corporate houses in India. One of the most important law which regulates the companies is called Companies Act, 2013.before this law Companies Act,1956 was operational. Some details are below:

7.2.1 Companies Act, 2013 came into existence when corporate sector has undergone a bigger change over the years and Companies Act, 1956 revamped due to these changes. A company is an association of a number of persons, having perpetual succession and common seal. A company is an artificial legal person having separate entity from persons who constitute it. The property of the company belongs to it and not to the members. One of the biggest advantages of company is that the members have a limited liability which means in case of winding up of a company liability of members will be limited to the extent of shares subscribed by them i.e. if the face value of share is Rs. 10 and a shareholder has already paid Rs. 7 then he will be liable to pay only Rs. 3 in case of winding up (if shares are issued at par).Another privilege of company form is that it has perpetual succession which means that company is not affected by death, lunacy, insolvency of any member. Members may come and go but company remains in existence. A company being a legal entity is separate from members, directors, employees etc. and has certain rights which are not enjoyed by members. Company can sue and can be sued in its own name. A company is not a citizen like a natural person. To bring a company into existence certain important steps are taken by some persons who are called promoters. In the formation of a company Memorandum of Association is most important document. It is the foundation of the company structure and considered as constitution of the company. The internal management of the company is managed by Articles of Association but in no case they can exceed Memorandum of Association. A company can invite public for subscription in shares or debentures by issue of Prospectus. The shares of a company are freely transferable being a movable property in a manner mentioned in Articles of Association. A company can also raise funds through borrowings and being an artificial person cannot act by itself hence certain persons carry on business of company are called Directors. Meetings are conducted in a company to transact a lawful business. A company being an artificial person comes into existence by a legal process and comes to an end by a legal process called winding up.

8. Some other Laws which may affect business in India

Although businesses are affected by a large number of laws. Some of them are as follows:

8.1 Arbitration and Conciliation Act,1996 mentions that Arbitration agreement is an agreement under which in case of a dispute between the parties the dispute can be referred to an Arbitrator .Such dispute may arise due to a legal relationship in between the parties which may be contractual or not. The agreement of arbitration must be in writing, parties should sign it and record of agreement may be through different means of communication like telegrams, telex or exchange of letters. The number of arbitrators to be appointed by the parties is as per their will, but such number cannot be an even number. If the parties fail to determine the number of arbitrators, then arbitral tribunal will be the sole arbitrator. On the death of a party, arbitration agreement will not be discharged. In such a case it will be enforceable by or against the legal representatives of the deceased. To present the case each party shall be given full opportunity and treated with equality. The place of arbitration is as agreed between the parties. In case of failure to decide the place it shall be determined by the arbitral tribunal as per the convenience of the parties and circumstances of the case.

As per the Act the conciliation proceedings may be commenced when one party initiates conciliation and an invitation in writing is send to the other party with the identification of the subject of the dispute. On the acceptance in writing by the other party there shall be commencement of the conciliation proceedings. No conciliation proceedings will be there, if the invitation is rejected by the other party. If the reply is not received by the party who initiates conciliation within thirty days from the date when invitation is sent or other period mentioned in the invitation conciliation invitation may be treated as rejected. One conciliator should be there unless agreed between the parties two or three conciliators may be there. There may be an agreement between the parties on sole conciliator name in case of one conciliator. One conciliator appointed by each party in case of two conciliators. When there are three conciliators one conciliator is appointed by each party and third conciliator is the person who is agreed in between the parties and act as presiding conciliator. Principles of justice, fairness shall be in the mind of conciliator and shall act in an impartial and independent manner for speedy settlement of the dispute.

8.2 Competition Act, 2002 is an act which protects the interests of consumers and ensures in Indian market a free trade. The purpose of the act is to prohibit those activities due to which business entities are restricted from competition and free trading. The entrepreneurs are provided an opportunity to compete in the market and ban the monopoly situations. As per the act there is a restriction on agreements related to supply, distribution and production etc.in between persons or associations due to which the competition in India is adversely affected. There will be an adverse impact on the agreements which determine prices for sale or purchase directly or indirectly and due to which a limit of investment, supply, markets, and control of production etc.is set. There are two types of agreements as per the competition law. When the enterprises are competing within same business then these are called horizontal agreements and presumed to be illegal. When the agreements are among independent enterprises then these are called vertical agreements. When an enterprise restricts production, directly or indirectly imposes conditions of discriminatory nature for purchase and sale of goods or for the entry of new operators create hindrances against the benefits of consumers. Then there is an abuse of dominant position which is controlled by the law. The activities of combination like mergers, amalgamations and acquisition are regulated by the Act and it also keeps a watch on the combinations which cause an adverse effect on the competition in the market. Competition Commission of India is an independent entity and body corporate which can sue in own name, possess a common seal and have the power to enter into a contract. Commission consists of a chairperson, who works with the assistance of minimum two and maximum ten members. At present there are six members in the commission. The practices which have an adverse effect on competition can be eliminated by

Commission to ensure trade freedom in the markets in India and protects the interests of the consumers.

8.3 Foreign Exchange Management Act (FEMA), 1999 has replaced Foreign Exchange Regulation Act, 1974(FERA). To tune with the foreign policy of India FEMA regulation enables Reserve Bank of India and Central Government to pass the regulations. In the foreign exchange market currency is purchased or sold by individuals, governments and businesses. There may be an exposure of risk or benefit to country due to frequent changes in the foreign exchange market. Restrictions are imposed by the central government through FEMA when payments are made to any person outside India or receipts are from them. There are restrictions on the transactions in foreign exchange and payments from outside country when not made through an authorized person. Necessary requirements are required to be complied with by the exporters and need to furnish export details to Reserve Bank of India (RBI)

8.4 Information Technology Act, 2000 deals with the commitment of crimes where computer is used as a tool. Computer may be used to commit a crime or there may be computer related crimes. Crimes may be committed without computer but computer may facilitate commitment of crime in a better way. For the electronic governance legal framework is provided by the Act. Digital signatures and electronic records are recognized by the Act. Cyber crimes and penalties are also prescribed. Cyber Appellate Tribunal is established to resolve the disputes. The cyber crimes may cover harassment by mails, hacking, defamation, virus transmission, network trespassing, cyber terrorism against Government organization, pirated software distribution etc. To cover cyber law security in India and expansion of companies in e-commerce has prompted government to regulate the area..

8.5 Environmental Protection Act, 1986 is related to protection of the environment in India. Environment may relate to surroundings and for progress of society industry is must and pollution is obvious. Environmental protection is a global issue. There is a close link between healthy environment and economic conditions of community. Due to industrialization water pollution is created .Industrial waste is discharged by large number of industries into rivers and pollute them. Air pollution is also felt in the form of smoke, heat, dust etc.Noise is an atmospheric pollution and increases due to urbanization and industrislation.

9. Summary

Legal environment of business is one of most important aspects related to a business. Although there are a large number of laws which are regulating the businesses in India. This may vary depending upon the business. To solve the various labour problems in the changing scenario Labour Laws are there. Indian Contract Act, 1872 is most basic business law. To regulate the Companies form of business organisations there is Companies Act, 2013.To safeguard the environment Environmental Protection Act is working. To discourage monopoly situation in the market Competition Act has been framed. Information Technology Act is the law which protects from cyber crimes. Due to globalisation there is exchange of foreign currency hence FERA is working in India. In the reforms period of banking business and insurance business the laws are in operation. To avoid cut throat completion at cost of others completion Act plays a very good role. Taxation laws are formulated to balance the social and economic structure of the society. If disputes are to be settled out of court then Arbitration and Conciliation Act is very much helpful for businesses. All in all government is trying to simplify the legal environment to regulate the businesses as per demands of global business world. Although all laws cannot be mentioned in a small space here.