Unit-3

Module 3- Introduction and Basic Information about Legal System:

The Legal System: Sources of Law and the Court Structure: Enacted law -Acts of Parliament are of primary legislation, Common Law or Case law, Principles taken from decisions of judges constitute binding legal rules. The Court System in India and Foreign Courtiers (District Court, District Consumer Forum, Tribunals, High Courts, Supreme Court). Arbitration: As an alternative to resolving disputes in the normal courts, parties who are in dispute can agree that this will instead be referred to arbitration. Contract law, Tort, Law at workplace

Introduction

The law and the legal system are very important in any civilization. In modern times, no one can imagine a society without law and a legal system. Law is not only important for an orderly social life but also essential for the very existence of mankind. Therefore, it is important for everyone to understand the meaning of law.

In a layman's language, law can be described as' a system of rules and regulations which a country or society recognizes as binding on its citizens, which the authorities may enforce, and violation of which attracts punitive action. These laws are generally contained in the constitutions, legislations, judicial decisions etc.

Introduction

Justitia, a Roman goddess of justice, wore a blindfold and has been depicted with sword and scales. Representations of the Lady of Justice in the Western tradition occur in many places and at many times. Like Justitia, She too usually carries a sword and scales. Almost always draped in flowing robes and mature but not old, she symbolizes the fair and equal administration of law. without corruption, avarice, prejudice, or favor.

Some of the major functions and purposes of law are listed below:

- To deliver justice.
- To provide equality and uniformity.
- To maintain impartiality.
- To maintain law and order.
- To maintain social control.
- To resolve conflicts.
- To bring orderly change through law and social reform.

Sources of Law

Sources of law mean the sources from where law or the binding rules of human conduct originate. In other words, law is derived from sources.

Three major sources of law can be identified in any modern society are as follows:

- Custom
- Judicial precedent
- Legislation

CUSTOM AS A SOURCE OF LAW

A custom, to be valid, must be observed continuously for a very long time without any interruption. Further, a practice must be supported not only for a very long time, but it must also be supported by the opinion of the general public and morality. However, every custom need not become law.

Saptapadi is an example of customs as a source of law. It is the most importantrite of a Hindu marriage ceremony. The word, Saptapadi means "Seven steps". After tying the Mangalsutra, the newly-wed couple take seven steps around the holy fire, which is called Saptapadi.

The customary practice of Saptapadi has been incorporated in Section 7 of the Hindu Marriage Act, 1955.

Essentials of a valid Custom

All customs cannot be accepted as sources of law, nor can all customs be recognized and enforced by the courts. The jurists and courts have laid down some essential tests for customs to be recognized as valid sources of law. These tests are summarized as follows:

- **Antiquity:** In order to be legally valid customs should have been in existence for a long time, even beyond human memory. In India there is no such time limit for deciding the antiquity of the customs.
- **Continuous:** A custom to be valid should have been in continuous practice. It must have been enjoyed without any kind of interruption.
- **Exercised as a matter of right:** Custom must be enjoyed openly and with the knowledge of the community. It should not have been practiced secretly. A custom must be proved to be a matter of right.

- **Reasonableness:** A custom must conform to the norms of justice and public utility. A custom, to be valid, should be based on rationality and reason. If a custom is likely to cause more inconvenience and mischief than convenience, such a custom will not be valid.
- **Morality:** A custom which is immoral or opposed to public policy cannot be a valid custom.Courts have declared many customs as invalid as they were practiced for immoral purpose or were opposed to public policy. Bombay High Court in the case of Mathura Naikon v. Esu Naekin, ((1880) ILR 4 Bom 545) held that, the custom of adopting a girl for immoral purposes is illegal.
- **Status with regard to:** In any modern State, when a new legislation is enacted, it is generally preferred to the custom. Therefore, it is imperative that a custom must not be opposed or contrary to legislation. Many customs have been abrogated by laws enacted by the legislative bodies in India. For instance, the customary practice of child marriage has been declared as an offence. Similarly, adoption laws have been changed by legislation in India.

JUDICIAL PRECEDENT AS A SOURCE OF LAW

In simple words, judicial precedent refers to previously decided judgments of the superior courts, such as the High Courts and the Supreme Court, which judges are bound to follow. This binding character of the previously decided cases is important, considering the hierarchy of the courts established by the legal systems of a particular country. In the case of India, this hierarchy has been established by the Constitution of India.

Judicial precedent is an important source of law, but it is neither as modern as legislation nor is it as old as custom.

In the Indian context, former judges of the Supreme Court of India like Justice *P.N. Bhagwati* and *Justice Krishna* Iyer enlarged the meaning and scope of various provisions of the Constitution through their creative interpretation of the legal text. The Supreme Court, too in its role as through an activist, has created many new rights such as the: right to privacy, right to live in a pollution free environment, right to livelihood etc.

JUDICIAL PRECEDENT AS A SOURCE OF LAW

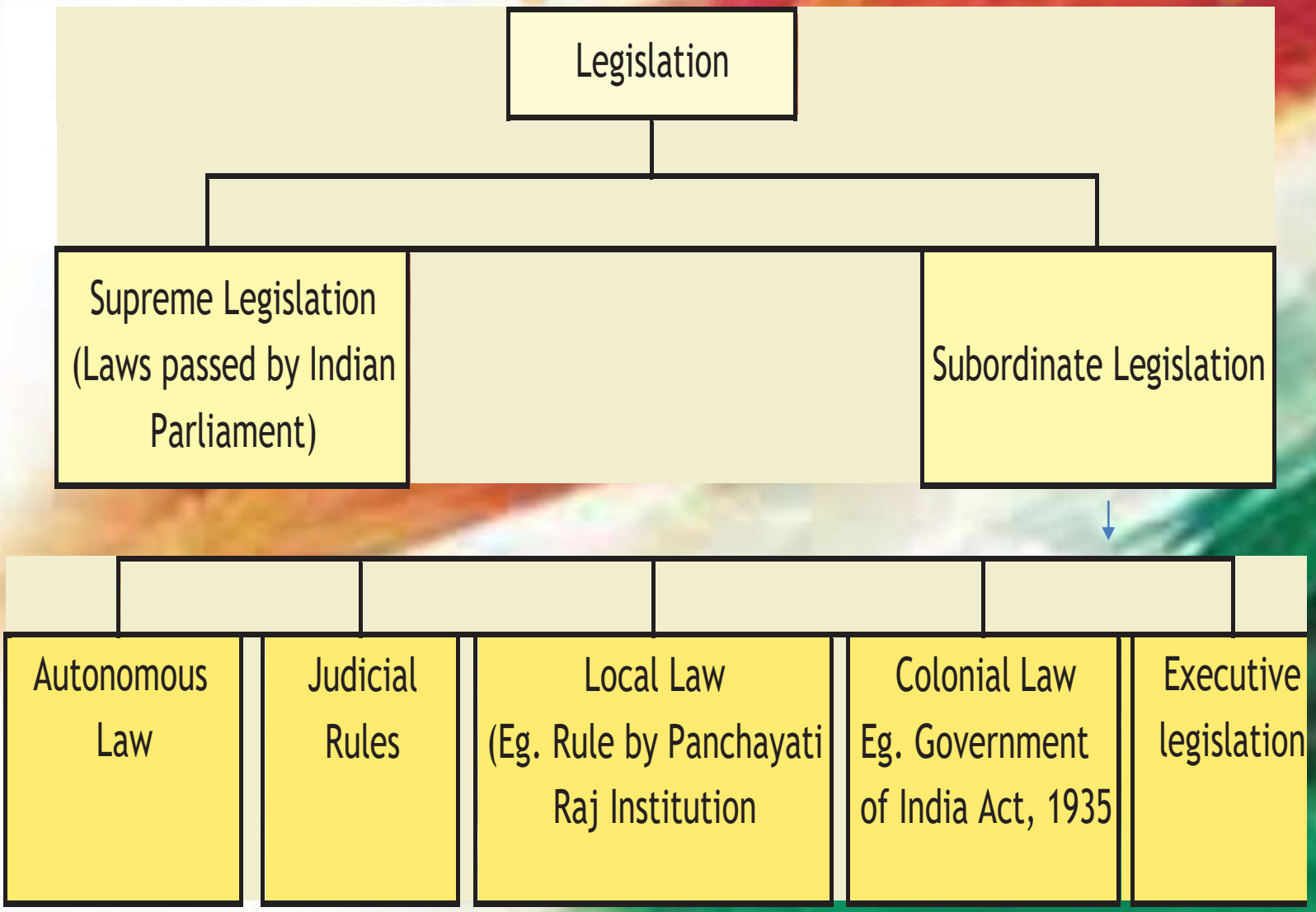
The Right to Education has received considerable impetus during the last decade as a result of the concerted effort of many groups and agencies towards ensuring that all children in India receive at least minimum education, irrespective of their socio-economic status and their ability to pay for education, in a situation of continuous impoverishment and erosion of basic needs. In a way, the right to education is the culmination of efforts made possible by judicial interpretations and a Constitutional amendment.

These new rights were created only by way of interpreting Article 21 (Right to Life) of the Constitution of India. These rights developed by the courts are not in any sense lesser than the laws enacted by the legislative bodies. Therefore, it can be concluded that the ***judicial precedents are important sources of law in modern society and judges do play a significant role in law-making.***

LEGISLATION AS A SOURCE OF LAW

In modern times, legislation is considered as the most important source of law. The term 'legislation' is derived from the Latin word legis which means 'law' and latum which means "to make" or "set". Therefore, the word 'legislation' means the 'making of law'.

Kinds of Legislation



ACTS OF PARLIAMENT

Acts of parliament, sometimes referred to as primary legislation, are texts of law passed by the legislative body of a jurisdiction (often a parliament)

In most countries, acts of parliament begin as a bill, which the legislature votes on.

Bills

A draft Act of Parliament is known as a bill.

In other words, a bill is a proposed law that needs to be discussed in the parliament before it can become a law.

ACTS OF PARLIAMENT

In bicameral parliaments, a bill that has been approved by the chamber into which it was introduced then sends the bill to the other chamber. Broadly speaking, each chamber must separately agree to the same bill. Finally, the approved bill receives assent and is often a function exercised by the head of state.

Once introduced, a bill must go through a number of stages before it can become law.

Procedure of converting a Bill into Act in India

In the Parliament of India, every bill passes through following stages before it becomes *an Act of Parliament of India*:

1. First reading - Introduction Stage: Any member, or member-in-charge of the bill seeks the permission of the house to introduce a bill. If the bill is an important one, the minister may make a brief speech, stating its main features.
2. Second reading - Discussion Stage: This stage consists of detailed consideration of the bill and proposed amendments.
3. Third reading - voting stage: This stage is confined only to arguments either in support of the bill or for its rejection as a whole. After the bill is passed, it is sent to the other house.

Procedure of converting a Bill into Act in India

4. Bill in the other house (Rajya Sabha): After a bill, other than a money bill, is transmitted to the other house, it goes through all the stages in that house as that in the first house. But if the bill passed by one house is amended by the other house, it goes back to the originating house.

5. President's approval: When a bill is passed by both the houses, it is sent to the President for his approval. The President can assent or withhold his assent to a bill or he can return a bill, other than a money bill. If the President gives his assent, the bill is published in The Gazette of India and becomes an Act from the date of his assent.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Common Law

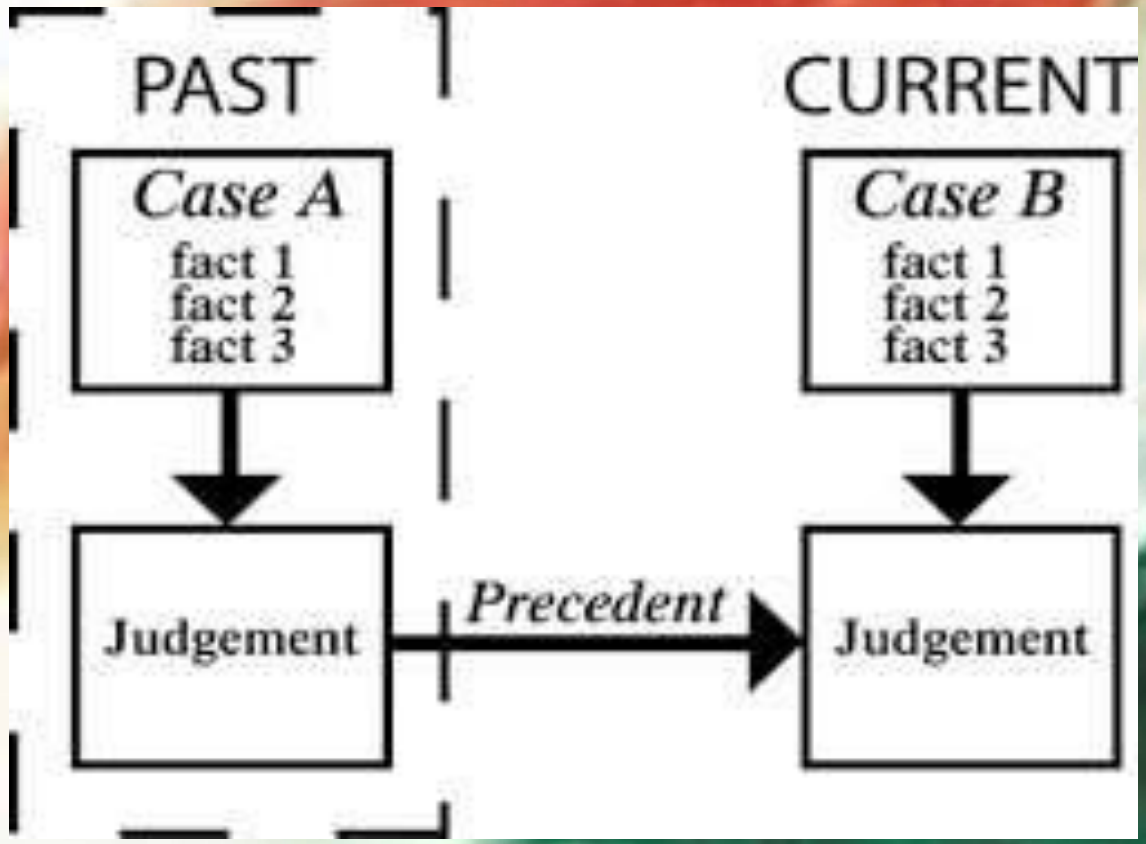
A precedent, known as stare decisis "to stand by things decided,"is a history of judicial decisions which form the basis of evaluation for future cases. Common law, also known as case law, relies on detailed records of similar situations and statutes because there is no official legal code that can apply to a case at hand.

The judge presiding over a case determines which precedents apply to that particular case. The example set by higher courts is binding on cases tried in lower courts.

However, lower courts can choose to modify or deviate from precedents if they are outdated or if the current case is substantially different from the precedent case.

The goal of common law is to establish consistent outcomes by applying the same standards of interpretation.

Judicial Precedent



Judicial Precedent

- Judicial precedent or decisions is a process which is followed by the judges to take the decision. In Judicial precedent, the decision is taken by following the similar cases happened in the past. So judicial decision is based on the principle of stare decisis i.e. “stand by the decision already made”.
- There is a term called the doctrine of stare decisis which states that the court’s decision becomes a precedent to be followed in future cases of a similar nature.

General Principle of Doctrine of Judicial Precedent

The first rule says that a court which is lower in a hierarchy is bound by the decisions of courts which are above it.

The second rule states that higher courts are bound by their own decision in general in matters of related to precedence.

High Court

- The decisions of the high court are binding on all subordinate courts. In case of a conflict between two benches of similar authority, the latter decision is to be followed.
- The more the number of judges on a bench, the higher their authority.
- The decision of one high court is not binding on other high courts.
- The Supreme court is the highest authority and its decisions are binding on all other courts. Article 141 of the constitution says that any law decided by the supreme court shall be binding on all courts of the country.

Supreme Court

Article 141 states all courts are legally bound to the Supreme Court judicial decisions with the exception of Supreme Court itself. The Supreme Court is not bound by its own decisions.

However, the Supreme Court recognises that its earlier decisions cannot be deviated from, except in case of extenuating circumstances. If an earlier decision is found to be incorrect, the Supreme Court will deviate from it.

Structure & Hierarchy of Courts in India

The Constitution of India lays out the framework of the Indian judicial system. India has adopted a federal system of government which distributes the law enacting power between the Centre and the States. Yet the Constitution establishes a single integrated system of judiciary comprising of courts to administer both Central and State laws. The Supreme Court located in New Delhi is the apex court of India. It is followed by various High Courts at the state level which function for one or more number of states. The High Courts are followed by district and subordinate courts which are known as the lower courts in India. To supplement the functioning of the Courts, there exist specialized tribunals to adjudicate sector specific claims such as labor, consumer, service matter disputes.


Supreme Court of India
High Court
District and Sub-Ordinate Courts
Specialized Tribunals
Civil Courts
Criminal Courts
Service Tax Consumer Labour

Structure & Hierarchy of Courts in India

Supreme Court of India

The Supreme Court of India came into being on 28 January 1950. The Constitution of India as it stood in 1950 envisaged a Supreme Court with a Chief Justice and 7 Judges. At present, the total strength of the Supreme Court is 31 judges including the Chief Justice of India.

High Courts

India consists of 25 High Courts at the state and union territory level. Below, the High Courts exists a hierarchy of lower courts functioning as civil courts and criminal courts as well as the specialized tribunals.

District and Sub-ordinate Courts

The Courts that function below the High Courts are popularly known as the lower Courts. They consist of district and sub-ordinate courts. Each state is divided into judicial districts presided over by a 'District and Sessions Judge'. The judge is known as a 'District Judge' when she/he presides over a civil case and a 'Sessions Judge' when he presides over a criminal case.

Tribunals

Indian judiciary is also characterized by numerous semi-judicial bodies involved in dispute resolution. Tribunals have been constituted under specific constitutional mandate enshrined in the Constitution of India or through legal enactments, e.g. a law passed by the legislature. Their creation aims at increasing efficiency in resolving disputes and reducing the burden on courts.

Examples of some of these tribunals include: Central Administrative Tribunal (CAT) for resolving the grievances and disputes of central government employees, and State Administrative Tribunals (SAT) for state government employees; Telecom Dispute Settlement Appellate Tribunal (TDSAT) for resolving disputes in the telecom sector in India; and the National Green Tribunal (NGT) for disputes involving environmental issues. Therefore these tribunals complement and supplement the role of courts in maintaining law and justice in the society.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Adversarial and Inquisitorial Systems

Every legal system in this world can be broadly classified into two models: Adversarial and Inquisitorial. Both the systems aim at dispensing justice, but they differ in their techniques of adjudication and justice delivery mechanisms.

Adversarial Systems

In an adversarial system, the parties in a legal proceeding develop their own theory of the case and gather evidence to support their claims. The parties are assisted by their lawyers who take a pro-active role in delivering justice to the litigants. The lawyers gather evidence and even participate in cross-examination and scrutiny of evidence presented by the other disputing party. The role of the judge/decision maker is rather passive as the judge decides the claims based solely on the evidences and arguments presented by the parties and their lawyers.

Inquisitorial Systems

In an inquisitorial system, the judge/decision maker takes a centre-stage in dispensing justice. The role of the judge/decision maker is active as he/she determines the facts and issues in dispute. The judge/decision maker also decides the manner in which the evidence must be presented before the court. For example, the judge may decide for presentation of a specific form of evidence, i.e. oral (witness statement) or documentary (correspondence between the parties through letters/emails) or a combination of both. The judge then evaluates the evidence presented before him/her and decides upon the legal claims. Therefore, this model of adjudication is also known as the interventionist/investigative model. Furthermore, in such a system, less reliance is placed on cross-examination and other techniques often used by lawyers to evaluate evidences of their opposing counsel.

Introduction to Alternative Dispute Resolution

Alternative Dispute Resolution (ADR) system refers to the use of non-adversarial techniques of adjudication of legal disputes.

The rise of ADR is further supported, as the law courts are confronted with following problems, such as:

1. The lack of number of courts and judges which creates an inadequacy within the justice delivery system;
2. The increasing litigation in India due to increasing population;
3. The increasing cost of litigation in prosecuting or defending a case, increasing court fees, lawyer's fees and incidental expenses;
4. Delay in disposal of cases resulting in huge pendency in all the courts.

Arbitration

Meaning: Arbitration is a term derived from the nomenclature of Roman law. Arbitration is a private arrangement of taking disputes to a less adversarial, less formal and more flexible forum and abiding by judgment of a selected person instead of carrying it to the established courts of justice.

Process of Arbitration:

Arbitration can be chosen by the parties by way of an agreement (Arbitration Agreement). The parties in an arbitration have the freedom to select a qualified expert known as an arbitrator. The process of dispute resolution through arbitration is confidential, unlike the court proceedings which are open to the public. This feature of arbitration makes it popular especially for commercial disputes where business secrets revealed during the process of dispute resolution are protected and preserved. Similarly companies can maintain their commercial reputation, as they can prevent the general public or their customers from discovering the details of their on-going legal disputes.

Process of Arbitration

The decision rendered by an arbitrator is known as an arbitral award. Similar to a judgment given by a judge, the arbitral award is binding on the disputing parties. Once an arbitral award is rendered, it is recognized and enforced (given effect to) akin to a court pronounced judgment or order. In addition to an arbitral award, the arbitrator also holds power and authority to grant interim measures, like a judge in the court. These interim measures are in the nature of a temporary relief and may be granted while the legal proceedings are on-going in order to preserve and protect certain rights of the parties, till the final award is rendered.

Features of Arbitration

- *Arbitration is consensual*
- *The parties choose the arbitrator(s)*
- *Arbitration is neutral*
- *Arbitration is a confidential procedure*
- *The decision of the arbitral tribunal is final and easy to enforce*

Appointment of Arbitrator

The Arbitration and Conciliation (Amendment) Act, 2015 grants the liberty to the parties to appoint an arbitrator mutually.

The Act provides that the parties are free to determine the number of arbitrators, provided that such number shall not be an even number.

Appointment of Arbitrator

The procedure in relation to appointment of arbitrator(s) is provided under Section 11 of the Act. A person of any nationality may be an arbitrator, unless otherwise agreed by the parties. The aforesaid section also deals with the contingency wherein the parties fail to appoint an arbitrator mutually. In such a situation, the appointment shall be made, upon request of a party, by the Supreme Court in the case of an International Commercial arbitration or by High Court in case of a domestic arbitration.

The purpose of this provision is to secure the appointment of an unbiased and impartial arbitrator.

Is Arbitration Legally Binding in India?

It is a way to settle disputes outside the courts thereby saving time and resources at the same time. **Arbitration** is a **legal** mechanism encouraging settlement of disputes between two or more parties mutually by the appointment of a third party whose decision is **binding** on the parties referring the said dispute.

What makes a Good Arbitrator?

A **good arbitrator** displays effective communication skills by being patient, understanding, flexible and a **good** listener. The **arbitrator** is chosen by way of agreement between the disputing parties. At the hearing of the matter, he gives all the parties a chance to be heard and to fully present their grievances.


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Introduction to Contracts

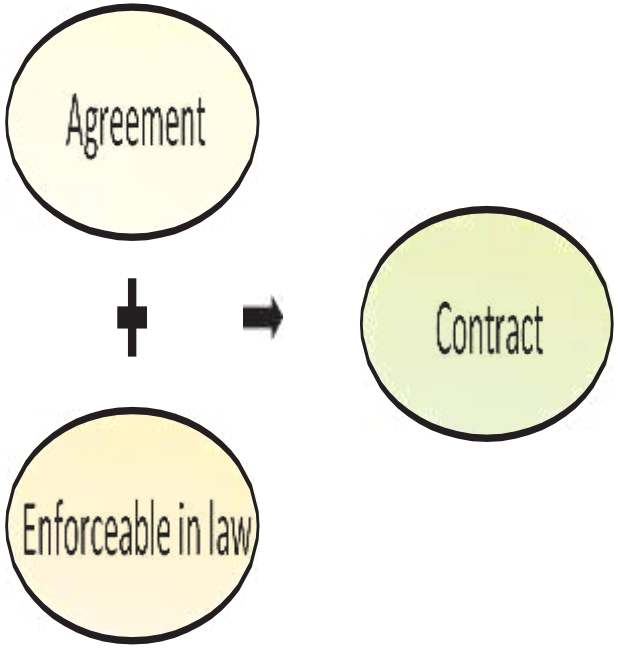
Contracts are an important part of commercial law because all commercial law transactions usually begin with an agreement or a contract.

Business transactions involving sale-purchase or exchange of services have become an integral part in day-to-day activities. In such instances, an agreement or a contract is necessary for determining the rights, obligations and liabilities of parties when they enter into any business transaction. The Indian Contract Act is the law governing contracts in India.

Indian Contract Act, 1872

According to the Indian Contract Act, 1872, (referred to as the ICA) an agreement that is enforceable by law is a contract under Section 2(h). An agreement, in simple words, is a promise. All agreements are not contracts. Agreements must meet certain criteria - like consideration, parties must be competent, free consent between parties, lawful object, and, not expressly declared void by law, in order to qualify as a contract. It is important that the persons to a contract should also have the intention and mindset to enter into contract.

"All contracts are agreements but all agreements are not contracts"



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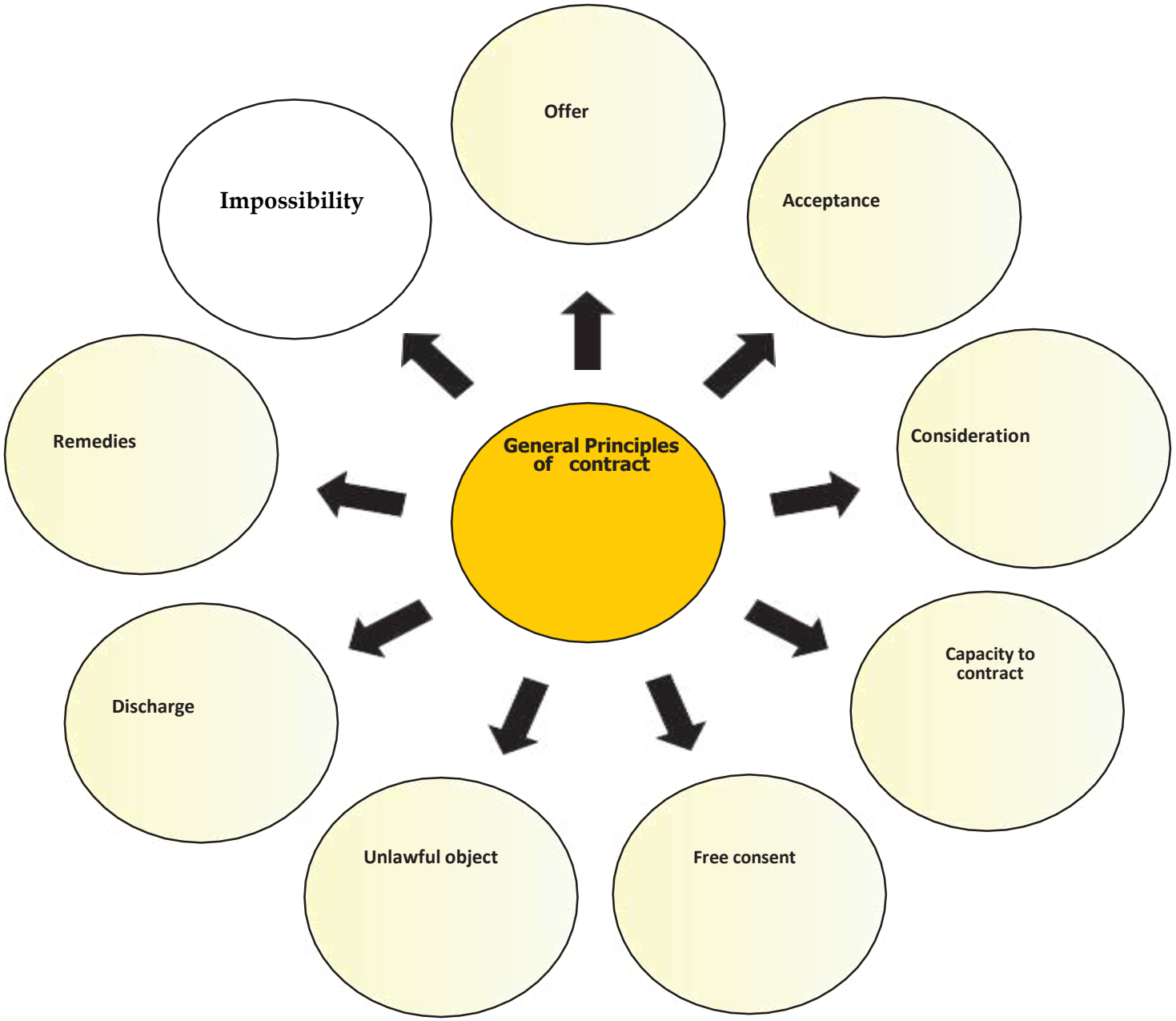
Essential Elements of a Contract



Offer / Proposal and

The offer or proposal is the first step in the formation of a contract. When one person signifies to another his willingness to do or not to do certain things, it is called an Offer under Section 2(a) of ICA. The person making the proposal or offer is called the offeror and the person to whom the offer is made is called the offeree. The offer given must be with an intention to create a legal relationship.

An assent or consent given to an offer by the offeree is known as Acceptance under Section 2(b) of ICA. By saying 'yes', 'ok' or clicking on 'I agree' on an offer on a website also amounts to acceptance. An offer when accepted becomes an agreement. An agreement is also called as promise.

Offer + Acceptance = Agreement

Consideration

Consideration is an important element in a contract. A contract without consideration is not valid. Consideration means 'something in return' for the offer. Consideration can be in the nature of an act or forbearance. The general rule is that, an agreement without consideration is void and not enforceable by law because in such cases, one party is getting something from the other without giving anything to the other. There should always be a mutual consideration. In other words, each party must give and also take.

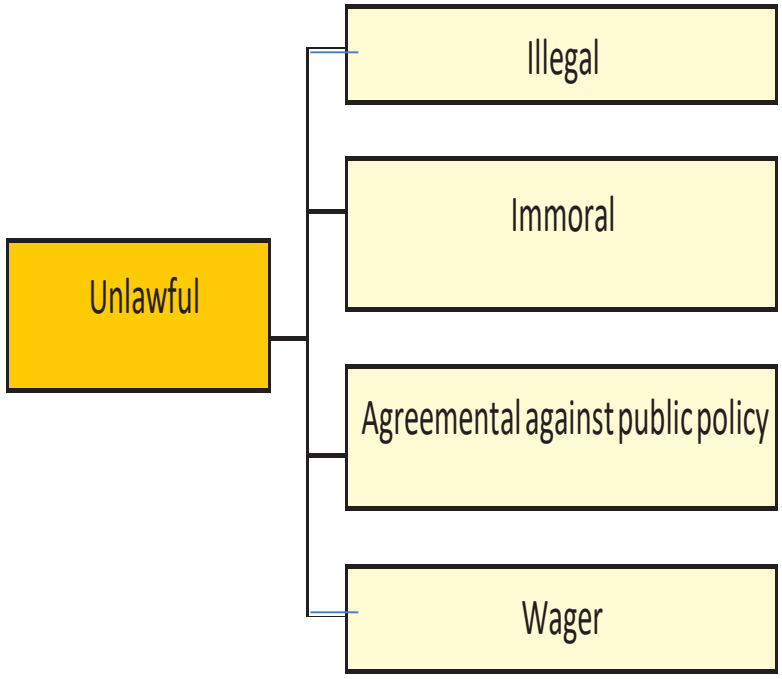
Capacity to Contract

Any person who is a major, i.e., above 18 years of age, is competent to enter into a contract and minors are not competent to enter into a contract. . At the time of making the contract, if the person is capable of understanding the contract and making a rational judgment, he is said to have a sound mind.

Free Consent

Consent is an important criterion while entering into a contract. When two persons agree on the same thing in the same sense, it is termed as consent under Section 13(a). Consent should be free and not caused by coercion, undue influence, misrepresentation, fraud or mistake. If consent is obtained by the influence of any one of the above said, then the consent so obtained is not free. It becomes voidable (avoid enforcement of contact) for the person whose consent is not free.

Unlawful Agreements



Unlawful Agreements

If the object of the agreement is to perform an unlawful act, then the contract is unenforceable. The object of the agreement should not be illegal, immoral or opposed to public policy.

As per the Indian Contract Act, agreements entered into by way of wager are not enforceable. Wager is a contract where one person promises to pay the other money on the happening of an uncertain future event and the other person promises to pay on the non-happening of the event. There is a reciprocal promise involved in a wager. Wager is like a bet where the happening of an uncertain event is the condition on which the promise depends.

Discharge of Contract

Mutual obligations of parties are created in a contract. When the mutual obligations of the parties are fulfilled, the contract comes to an end. When the contract is ended, it is said to be discharged. In other words, Discharge means termination of the contractual relations of the parties to the contract.

Discharge of a contract may be done by the following ways:

- Discharge by Performance;
- Discharge by Agreement or Consent;
- Discharge by Impossibility of Performance;
- Discharge by Lapse of time;
- Discharge by Breach of contract.

Discharge of Contract

Discharge by Performance: When parties to a contract perform their obligations and fulfil their promises, the contract gets discharged by performance.

Discharge by Agreement or Consent

(a) Novation - A new contract is substituted for an old contract.

(b) Rescission - Certain terms or all terms of a contract are cancelled.

(c) Alteration - When certain terms of a contract are altered or modified with the mutual consent of the parties.

(d) Remission - Acceptance is made to a promise but not on the complete terms of the promise but to a lesser fulfilment of the promise.

Discharge of Contract

Discharge by Impossibility of Performance:

Performance of a contract can become impossible with or without the knowledge of the parties to the contract. It can also become impossible subsequently after the parties have entered into a contract.

Discharge by Lapse of Time:

Time is very significant while entering into a contract. According to the Limitation Act, a contract should be performed within a specified time called period of limitation. If the contract is not performed within the specified time and the other party does not resort to any action within the limitation period, then he is deprived of his remedy and the contract gets discharged by lapse of time.

Discharge of Contract

Discharge by Breach of Contract:

Breach means failure to perform the obligation by a party. When a party to a contract does not perform his part of the obligation due to which the contract becomes broken, the person who suffers because of the breach is entitled to receive compensation or damages from the party who has breached the contract.

Damages

Remedy is a means given by law for the enforcement of the right of a person. A common remedy for breach of contract is awarding damages to the affected party. Monetary compensation given to the affected party for the loss or injury caused to him due to the breach is called damages. The objective of awarding damages by the court is to put the injured party in the same position as he would have been if the contract had not been breached. This, under the contract law, is called the Doctrine of Restitution.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LAW OF TORT

TORT LAW IS BASED ON THE IDEA THAT EVERYONE IN OUR SOCIETY HAS CERTAIN RIGHTS

Along With Having Certain Rights, Everyone Has The Duty to Respect the Rights of Others

The Purpose of Tort Law is to Enforce Those Rights and Duties

The word ‘Tort’ is derived from the Latin word ‘Tortum’ which means ‘twisted’ or ‘crooked’ act.

Tort denote any wrongful act which causes injury to any person.

The Law of Tort is based upon the English Law of Tort.

The Law of Tort is a uncodified law.

Characteristics of Tort

1. It is a civil wrong.
2. It arises from breach of duty.
3. It is different than a criminal wrong.
4. It is remedied by unliquidated damages.

Objects of Law of Torts

- To determine rights between the parties to a dispute.
- To prevent the continuation or repetition of harm i.e. by giving orders of injunction.
- To protect certain rights of every individual recognized by law i.e. a person's reputation.
- To restore one's property to its rightful owner i.e. where the property is wrongfully taken away from its rightful owner.

Characteristics / Elements of Torts

1. Wrongful act
2. Legal damage
3. Legal remedy

1. Wrongful act

The act complained must be legally wrongful act.

An act will be ‘wrongful’ when it affect someone’s legal right.

A legal right is created by law and is enforceable.

Wrongful act include – act or omission.

2. Legal injury

It means ‘injury in the eye of law’.

There must be infringement of legal right of a person.

Such infringement of a legal right has a presumption of injury in the eye of law.

There is no need of actual damage.

Legal injury can be explained by two maxims

1. Injuria Sine Damnum
2. Damnum Sine Injuria

Injuria - legal injury

Sine - without

Damnum - actual damage

Injuria Sine Damnum / Damno

It means legal injury without actual damage.

Law presume existence of legal injury and there is no need of actual injury.

What is important is – infringement of legal right.

Ashby v. White

In this case, the defendant, a returning officer wrongfully refused to register a duly tendered vote of the plaintiff. The candidate for whom the vote was tendered was elected and no loss was suffered by the rejection of the vote. The Court held that action is allowed on the ground that the violation of plaintiff's statutory right was an injury for which he must have a remedy and is actionable without proof of actual damage.

Municipal Board of Agra v. Asharfilal

In this case it was held that, if voter's name is wrongly omitted from the voter's list, he suffers as legal wrong and he can bring legal action.

Damnum Sine Injuria

It means actual damage without legal injury.

A damage without violation of legal right is not actionable.

Some time a person may suffer actual damage or loss but for that he can not take legal action.

Glucester Grammar School case

In this case the defendant, set up a rival school next door to the plaintiff's school and the boys from the plaintiff's school flocked to the defendant's school. It was held that no action lay, as no damage was caused by a rival in the exercise of the right to employ oneself in one's without any hindrance and freely competing with one's rivals in the same calling, trade, business.

Distinction between *Injuria sine damnum* and *Damnum sine injuria*

(1) On one hand, i.e. in the case of Injuria sine damnum, there is no physical damage or an actual loss on the part of the plaintiff while on the other hand in case of damnum sine injuria there is actual damage and loss on the part of the plaintiff.

(2) Secondly, in the case of Injuria sine damnum, the party suffers with the infringement of their legal rights, while in the case of Damnum sine injuria, there is no legal right infringement.

(3) Thirdly, Injuria sine damnum is actionable in the court while Damnum sine injuria is not actionable in court.

(4) Fourthly, the Injuria sine damnum deal with the legal wrongs while Damnum sine injuria deal with the moral wrongs.

3. Legal remedy

When the aggrieved person is taken back to the position that they were enjoying before their rights were infringed, they are said to have been provided with a legal remedy.

Legal remedies in tort are of three main types

1. Damages: Damages or legal damages is the amount of money paid to the aggrieved party to bring them back to the position in which they were before the tort had occurred. They are paid to a plaintiff to help them recover the loss they have suffered. Damages are the primary remedy in a cause of action for torts. The word “damages” should not be confused with the plural of the word “damage” which means ‘harm’ or ‘injury’.

3. Legal remedy

2. Injunction: Injunction is an equitable remedy available in torts, granted at the discretion of the court. An equitable remedy is one in which the court, instead of compensating the aggrieved party, asks the other party to perform his part of the promises. So, when a court asks a person to not continue to do something, or to do something positive so as to recover the damage of the aggrieved party, the court is granting an injunction.

3. Specific Restitution of Property: the third judicial remedy available in the Law of Torts is that of Specific Restitution of Property. Restitution means the restoration of goods back to the owner of the goods. When a person is wrongfully dispossessed of his property or goods, he is entitled to the restoration of his property.

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Introduction to Labour Laws

Work laws in India manage occupation terms as well as give work rights to the representatives. They are particularly focused on towards the boss-worker relationship, and insurance legitimate rights to the laborers. The fundamental point of work laws is to address the requests and needs of representatives. These laws really work towards getting particular change ranges like working conditions, wages, working hours, insurance of rights and so on., to the representatives.

Labour Laws

Labour laws which manage work issues particularly with respect to the privileges of laborers are as Below:

- Industrial Disputes Act 1947
- Laborers' Compensation Act 1923
- The Payment of Wages Act 1936
- Payment of Gratuity 1972
- Payment of Bonus Act, 1936
- Child Labor (Prohibition and Regulation) Act, 1986
- Trade Unions Act, 1926
- Maternity Benefit Act, 1961
- Factories Act, 1948.
- The Equal Remuneration Act, 1976
- The Employee's State Insurance Act, 1948

Industrial Disputes Act 1947

The principle point is to improve correspondence and the relationship in the middle of bosses and workers; and to give answers for their debate. This Act gives not just to the examination and settlement of mechanical question, additionally concentrates on the instrument key for settlement of contrasts between the managements' and the workers'.

Laborers' Compensation Act 1923

The Workmen’s Compensation Act aims to provide workmen and/or their dependents some relief in case of accidents arising out of and in the course of employment and causing either death or disablement of workmen. It provides for payment by certain classes of employers to their workmen compensation for injury by accident.

"The Payment of Wages Act 1936 mentions that employees should receive wages, on time, and without any unauthorized deductions. Section 6 requires that employees are paid in money rather than in some other kind." Thus employer cannot force the employee to work off the clock or overtime, without any additional pay for the efforts the employee apply.

Payment of Bonus Act, 1965 Payment of Bonus Act 1965 says that the payment of bonus should be provided to persons employed in certain establishments on the basis of profits or on the basis of production or productivity. This Act is applicable to establishments employing 20 or more persons.

Trade Union Act 1926

The trade Unions Act, 1926 provides for registration of trade unions with a view to render lawful organization of labour to enable collective bargaining. It also confers on a registered trade union certain protection and privileges.

The objectives were closely associated with Trade Union Act,1926;

1) To protect workers against exploitation by employers.

2) To represent the grievance of employees on behalf of them to the management.

3) To protect & safeguard rights of workers provided to them under employment clause or labour laws.

Factories Act 1948

The Factories Act is a beneficial legislation enacted in 1948 and provides for the health, safety, welfare and other aspects of the lives of workers in the factories. The main objectives of the Indian Factories Act, 1948are to regulate the working conditions in factories, to regulate health, safety welfare, and annual leave and enact special provision in respect of young persons, women and children who work in the factories.

The Employee's State Insurance Act, 1948

"Employees' State Insurance is a self-financing social security and health insurance scheme for Indian workers. For all employees earning 15000 or less per month as wages, the employer contributes 4.75 percent and employee contributes 1.75 percent, total share 6.5 percent." This scheme provides the employee as well as their families with many benefits such as medical benefits and cash benefits. This scheme is also useful for the medical treatment of the employee as well as dependents.

Maternity Benefit Act, 1961

Many times it may be the case that an expected mother may be deprived of the maternity leave just because the company calls it against the company laws. “The Maternity Benefit Act 1961, creates rights to payments of maternity benefits for any woman employee who worked in any establishment for a period of at least 80 days during the 12 months immediately preceding the date of her expected delivery.”

The Payment of Gratuity Act 1972

Gratuity in simple words is a part of the salary that the employee receives from his/her employer in gratitude for service rendered by the employee to the organization/company. Gratuity is paid when an employee working in an organization completes 5 or more years of full-time service. “The Payment of Gratuity Act 1972 applies to establishments with 10 or more workers. Gratuity is payable to the employee if he or she resigns or retires. The Indian government mandates that this payment be at the rate of 15 days salary of the employee for each completed year of service subject to a maximum of 1000000.”

Employees Provident Fund Act 1952

"**Employee's Provident Fund (EPF)** is a retirement benefits scheme that's available to all salaried employees. This fund is maintained and overseen by the Employees Provident Fund Organisation of India (EPFO) and any company with over 20 employees is required by law to register with the EPFO. It is a savings platform that helps employees save a fraction of their salary every month that can be used in the event that you are rendered unable to work, or upon retirement." Sometimes there may be cases that we become short of money and don't have any funds available. In this case, the provident funds earned through working in a company will help you a lot.

Discrimination

"Article 14 states everyone should be equal before the law. Article 15 specifically says the state should not discriminate against citizens, and Article 16 extends a right of "equality of opportunity" for employment or appointment under the state. Thus if any one facing discrimination at the workplace then may file the case against the company for violating the fundamental right to equality.

Sexual Harassment of Women

“Under Sexual Harassment Act, 2013 law, all women, irrespective of her age or employment status, whether in the organized or unorganized sectors, public or private and covers clients, customers, and domestic workers as well, will be protected against sexual harassment. Non-compliance with the provisions of the Act shall be punishable with a fine of up to 50,000.” Women are more vulnerable to lower pay as compared to men, and employers doubt their working ability as compared to men. Hence, it is important for women to protect their rights and ensure that their rights don’t get violated or they don’t get harassed by the employer.


THANK YOU