

# **LL.B. V Term**

## **Paper - LB – 5032 - Business Regulation**

The Constitution of India under sub-clause (g) of clause (1) to Article 19 guarantees to all citizens freedom to practise any profession, or to carry on any occupation, trade or business. This freedom is, however, subject to restrictions envisaged under clause (6) of Article 19. Likewise, Article 301 guarantees freedom of trade, commerce and intercourse throughout the territory of India subject to restrictions envisaged under Part XIII (Articles 302-307). There is a need to regulate business in the interest of general public, which is recognized in all countries. This need is reflected in the directive principles of state policy of our Constitution (Articles 38,39,41,42 and 43).

Since Independence, our country had been pursuing the policy of mixed economy where both public and private sectors were considered to be equal partners in the growth of economy of the country keeping in view the goals of social and economic justice. Two Industrial Policy Resolutions of 1948 and 1956 and Five Year Plans substantiate this view.

With liberalisation of the industrial policy in July, 1991, to attain the goal of globalization, the governmental control of private business seems to have considerably reduced. Despite this development, business activities always need to be regulated through independent regulators. The enactment of the Electricity Regulatory Commissions Act, 1998, the Insurance Regulatory and Development Authority Act, 1999, the Telecom Regulatory Authority of India Act, 1997 and other similar legislations by Parliament are the legislative measures in the right direction which aim at protecting the consumers in a big way. Moreover, legislations such the Consumer Protection Act, 1986 and the Competition Act, 2002 are directly aimed at protecting the consumers by giving them rights and quick remedies.

This course aims at a comprehensive study of governmental control that existed earlier and which is currently in vogue, particularly on the basis of the following legislations and cases.

### **Prescribed Laws**

1. Constitution of India
2. Essential Commodities Act,1955
3. Industries (Development and Regulation) Act, 1951
4. Competition Act, 2002
5. Consumer Protection Act, 1986
4. Telecom Regulatory Authority Act, 1997

### **Prescribed Books:**

1. Vinod Dhall ed., Competition Law: Concepts and Practices Relevant for India (2007)

2. T Ramappa, Competition Law in India: Policy, Issues and Developments (2009)
3. N R Madhava Menon and Narasimhaswamy G. Mysore, Government Control over Private Enterprise (1970)
4. Advocacy Booklets by the Competition Commission of India

**Recommended Readings:**

- Mazhuvanchery, Shiju Varghese, "Indian Competition Act: a Historical and Developmental Perspective", *The Law and Development Review*, vol.3, no.2, 2010.
- Report of the Working Group on Competition Policy (Planning Commission of India, 2007).
- Ninety Third Report on the Competition Bill, 2001 (Rajya Sabha Secretariat, 2002).
- Report of the High Level Committee on Competition Policy and Law, 1999.

**Topic 1 : Constitutional Provisions Relating to Regulation of Trade and Business (8 Lectures)**

**(A) Concept of Trade and Business**

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|----|---|----|
| 1. | Khoday Distilleries Ltd. v. State of Karnataka (1995) 1 SCC | 1  |
| 2. | B R Enterprises v State of UP and Others (1999) 9 SCC 700   | 14 |

**(B) Reasonable Restrictions in Public Interest; Restriction includes Prohibition**

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|----|--|----|
| 3. | Chintaman Rao v. State of M.P., AIR 1951 SC 118 : 1950 SCR 759       | 22 |
| 4. | Narendra Kumar v. Union of India, AIR 1960 SC 430 : (1960) 2 SCR 375 |    |

**(C) State Monopoly**

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|----|---|----|
| 5. | Akadasi Padhan v. State of Orissa, AIR 1963 SC 1047 : 1963 Supp (2) SCR 691 | 25 |
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**Topic 2 : The Essential Commodities Act, 1955 (4 Lectures)**

6. **Prag Ice & Oil Mills & Anr. Etc vs Union Of India on 21 February, 1978**
7. Mahalakshmi Sugar Mills Co.op.Ltd v. Union of India, 2008

**Topic 3 : The Industries (Development and Regulation) Act, 1951 (5 Lectures)**

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|----|--|----|
| 8. | Ambalal M. Shah v. Hathisingh Mfg. Co. Ltd., AIR 1962 SC 588 | 43 |
| 9. | Keshav Mills Co. Ltd. v. Union of India, AIR 1973 SC 389     | 50 |

10. *Swadeshi Cotton Mills v. Union of India*, AIR 1981 SC 818 62

**Topic 4 : The Securities & Exchange Board of India Act, 1992 (6 Lectures)**

- (i) Need for protection of rights of investors
- (ii) Definitions
- (iii) Securities and Exchange Board Of India
- (iv) Powers and Functions of the Board
- (v) Collective Investment Scheme
- (vi) Investigations
- (vii) Prohibition of Manipulative and Deceptive Device, Insider trading and substantial acquisition of securities or control
- (viii) Penalties

11. *Clariant International Ltd. & Anr v. Securities & Exchange Board of India*, (2004) 8 SCC 524

12. *Chairman, SEBI v. Shriram Mutual Fund* (2006) 5 SCC 361

**Topic 5 : The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) (6 lectures)**

- (i) Background and Objective of the Act
- (ii) Definitions
- (iii) Procedure or Enforcement of security interest,
- (iv) Central Registry

**Topic 6 : The Consumer Protection Act, 1986**

- (i) History and growth of Consumer Protection Laws
- (ii) Definitions – Complaint, Complainant, Service, Consumer, RTP, UTP, Deficiency
- (iii) Consumer Protection Redressal Agencies

**Topic 6 : The Consumer Protection Act, 1986**

11. *Lucknow Development Authority v. M.K. Gupta* (1994) 1 SCC 243 101
12. *Indian Medical Assn. v. V.P. Shantha*, AIR 1996 SC 550 110
13. *Maruti Suzuki v. Rajiv Kumar Loomba*, 2009 130

14. *Arulmighu Dhandayudhapaniswamy v. Director General of Post Offices*, 2011 133

**Topic 7 : The Telecom Regulatory Authority of India Act, 1997 (3 Lectures)**

- (A) Constitution, Jurisdiction, Role and Functions of TRAI  
(B) Telecom Disputes Settlement and Appellate Tribunal (TDSAT)

15. *Delhi Science Fortum & Ors. v. Union of India & Anr.*, AIR 1996 SC 1356 138

**Topic 8 : The Insurance Regulatory and Development Authority (3 Lectures)**

History of Insurance- Malhotra Committee Report- Reasons for Amendment of Insurance Act 1938 and Law Commission Report- Object and Scope of IRDA- Powers and Duties of IRDA