



# ABHIDHVAJ LAW JOURNAL

[ [www.abhidhvajlawjournal.com](http://www.abhidhvajlawjournal.com) ]

**The goal of Abhidhvaj Law Journal is to offer an open-access platform where anyone involved in the legal profession can contribute their research on any legal topic and aid in building a quality platform that anyone can use to advance their legal knowledge and experience.**

**Editor In chief – Assistant Professor Mr. Janmejy Singh**

**Publisher & Founder – Vaibhav Sangam Mishra**

**Frequency – Quarterly ( 4 Issue Per year )**

**ISSN : 2583-6323 (Online)**

**Copyright © 2023 - 24**

---

**BUSINESS LAWYERING THAT EVERY STARTUP ENTAILS: AN INDIAN PERSPECTIVE.**

---

**AUTHOR'S NAME – Sakshi Thakur, BALLB (HONS.) Completed.**

**INSTITUTION NAME – Himachal Pradesh University Institute of Legal Studies Avalodge,  
Shimla.**

**ABSTRACT:**

The startup is a common parlance term on everyone's lips when it comes to doing business. The startup is the 'nature' of a business entity that is in almost the initial stages of its operation. Starting a business as a 'startup' and continuing business operations demands legal exigencies, which must necessarily be looked upon and sorted up. Here comes the Business lawyering in the frame. What Business Lawyering offers to startups becomes crucial. Guess what, Business Lawyering is itself fraught with challenges. But we endeavour to design a roadmap to overcome these, and make this a 'Startup' and 'Business Law' tryst: a tryst with harmony!

**INTRODUCTION:**

STARTUP is a buzzword concerning business. The term, though, is not formal and is used in the colloquial sense. The Collins English Dictionary states the meaning of the word "start-up" as a business enterprise that has been launched recently. A newly established business is what the Oxford Dictionary gives the meaning as "start-up". What a startup actually means is very much relevant to go in-depth in this Article.

**What Is a Startup?**

The term startup points to a company that is preferably in its initial phases of functioning.<sup>1</sup> Startups are founded by one or more entrepreneurs who want to develop a product or service for which they believe there is demand.<sup>2</sup> Such companies have usually limited funding pools when they start afresh, which is why they seek finance from other measures and means such as venture capital.<sup>3</sup>

'Startup' as a term is not used in Companies Law or other like statutes in its abstract form. There is a dedicated #startupindia portal under the aegis of the Ministry of Commerce & Industry, specifically under Department for Promotion of Industry & Internal Trade (DPIIT),

---

<sup>1</sup> MITCHELL GRANT\ What a Startup Is and What's Involved in Getting One Off the Ground\investopedia\ (May. 07, 2023, 9:29 AM) \ <https://www.investopedia.com/terms/s/startup.asp>

<sup>2</sup> *Id.* at 01.

<sup>3</sup> *Id.* at 01.

concerning Startup recognition of business entities. A business entity of any nature can avail of the tag of startup if it fulfills certain requisites.

Is your Company a startup?? Well, it is so, *if all the below-enlisted requisites are hit.*<sup>4</sup>

1. COMPANY TYPE:

- Registered as a Private Limited Company (as stated in the Companies Act, 2013).
- A registered Partnership Firm (as stated in Partnership Act, 1932).
- Limited Liability Partnership (as stated in Limited Liability Partnership Act, 2008).

2. ORIGINAL ENTITY:

An entity should not have been constituted after making modifications in pre-existing companies or businesses as such.

3. COMPANY AGE:

Not 10 years should have elapsed after the onset of business incorporation.

4. ANNUAL TURNOVER:

Also, for the called a startup, the annual turnover of such an entity should be below 100 crores in any financial year after the incorporation of the same

5. INNOVATION & SCALE

- The aspiring business entity must be striving to bring about improvement, enhancement, and development of a product/process/service and/or
- Plus, the business must reflect the prospective for considerable employment generation & wealth creation.

**STARTUP INDIA RECOGNITION:**

The year 2016 marks the launch of the remarkable “Startup India Initiative”, which considerably focused on boosting entrepreneurship morale in the country. The program has aimed and in fact been able to carry on myriad programs with the primary goal of bracing the so-conferred fresh entrepreneurship, setting up a vigorous startup panorama, and transfiguring India’s outlook to a nation of business tycoons. These programs are carried on under the management & continuous surveillance of the diligent Startup India Team, ultimately which is

<sup>4</sup> Startup India \ <https://www.startupindia.gov.in/content/sih/en/startup-scheme.html> (last visited May. 6, 2023).

mandated to report to the concerned Department for Industrial Policy and Promotion (DPIIT). In fact, DPIIT is responsible for imparting *Startup Recognition* for the country's coming startups.

The dedicated National Single Window System (nsws.gov.in) takes through it the task of recognizing startups under the diligent scrutiny of DPIIT. The NSWS windows contain possible options, whereby the aspiring entity has to create an account and carefully fill out the form named 'Registration as a Startup'. The NSWS windows also let the aspiring entities/recognized startups, as the case may be, to additionally apply for other mandated business approvals concerning environmental, and labor laws and compliances of this sort.

<sup>5</sup>Recognition as a startup entails quite a few advantages to business entities. This includes Tax Exemption under the concerned 'section 80 IAC' and also (Angel Tax) exemptions under the provisions of the Income Tax Act. <sup>6</sup>Other benefits concerning Intellectual Property Rights (IPR) of such startups are also availed:

- i) Are allowed an 80% rebate in the patent application filing process and a 50% rebate in the trademark scenario.
- ii) Swift procedure for patent applications of startups respecting their examination & disposal.
- iii) To assist startups in filings of IPRs, a distinguished panel of Facilitators has been set up for helping startups out without unnecessary delay. Startups are liable to pay a nominal fee only in this respect, the rest is borne by the Central Government.

<sup>7</sup>Also, the relaxation in Public Procurement Norms for Startups, the relaxation in the form of Self-Certification regarding mandatory compliances with "Labour & Environment Laws", Faster Exit in cases of failure to carry on the business (unlike non-startup business entities whose dissolution processes are cumbersome).

### **THE EXPONENTIAL GROWTH IN STARTUP FIGURES:**

As of today, there are 97,064 DPIIT-recognized startups and 630,777 users, as per the Startup India Portal records. <sup>8</sup>On the international stage, India is occupying the rank of being the third

---

<sup>5</sup> *Id.* at 03.

<sup>6</sup> [SATISH.PRASAD10@GMAIL.COM](mailto:SATISH.PRASAD10@GMAIL.COM) Startup India-Definition, Recognition, Benefits and FAQs \ tax guru\ (May. 07, 2023, 9:29 AM) <https://taxguru.in/corporate-law/startup-india-definition-recognition-benefits-faqs.html>

<sup>7</sup> *Id.* at 03.

<sup>8</sup> Economic times\ <https://economictimes.indiatimes.com/tech/startups/india-now-has-nearly-27000-active-tech-startups-adds-1300-last->



largest tech startup ecosystem, with the United States being the 1<sup>st</sup>, followed by China in 2<sup>nd</sup> place. The exponential growth can be witnessed by various statistics. For instance, India figured up over 1,300 active technology startups in the past year, making the number of active technology startups rise to 25,000-27,000, as per the recent Nasscom report.

Globally, The **United States** is the leading country in the **number of startups** (71,153). 7.1% of the startups in the world operate in the Fintech industry. Followed by Life sciences and healthcare at 6.8%, Artificial intelligence at 5.0%, gaming at 4.7%, Adtech at 3.3%, and Edtech at 2.8%.<sup>9</sup>

### **BUSINESS IN STARTUPS:**

Startups can be formed on any idea, product, or service one wishes to operate in. From starting a meal prep business to create a food solution or capitalize on plant-based foods, from writing content and blogging to offering e-book making services company, from educational coaching companies to up-skilling or counselling services, from becoming a virtual assistant company to being social media influencing startup for other businesses. There can be 'n' a number of ideas to build a startup upon. The most common startups running the market currently (industry-wise) are: 'Software (SaaS) and technology', 'Marketing and advertising', 'Healthcare', 'IT', 'Insurance', 'Education', 'Real estate', 'Environmental and energy', 'Retail and ecommerce', 'Blockchain and crypto currencies. Some of the most successful startups in India are Boat, Paytm, Meesho, Ola, Nykaa, Byjus, Zomato, Oyo, Unacademy, and a lot more.

### **LEGAL EXIGENCIES OF STARTUPS:**

There are certain legal requisites every startup requires to successfully function. Right from the incorporation to acquiring Licensing, adhering compliances to filing taxation requisites, Contract management, and winding up, if need be, there are quite a few things a startup needs to work upon. Here comes the Business Lawyering in the frame. Let's peel off each legal requisite of startups:

***Incorporating a business entity*** and getting Startup Recognition is what the startup needs to focus on as its first & foremost step. A business model has to be chosen according to which the

---

[year/articleshow/97940297.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cpps](https://www.abhidhvajlawjournal.com/year/articleshow/97940297.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cpps)

(last visited May. 6, 2023).

<sup>9</sup> Firstsite guide\ <https://firstsiteguide.com/startup-stats/> (last visited May. 6, 2023).

business shall follow its day-to-day operations. By Business model, we mean the nature of the entity i.e. a corporation, partnership firm, Limited Liability, or Sole proprietorship. Choosing any of the structures & forming Articles of Association/Incorporation requires a thorough understanding of laws governing these.

**Filing Non-Disclosure Agreements** occupies a prominent space in Startup formation and working stages. <sup>10</sup>Also designated as a confidentiality agreement, an NDA is a legally binding contract in which two parties agree on the non-sharing of the privileged or secret information about any aspect of the concerned business of the business entity for a pre-decided time mentioned in the agreement itself. This is to protect the interests of the one giving information from being misused by the one receiving it for the purpose of doing business.

**Shareholder's Agreement** is one must-have as it is the written document specifying the ambit of shareholders' outreach in the startup and, in turn, helps to dictate the rights and respective liabilities of the prospecting shareholders of the business.

**Other Startup contracts and agreements** include various specific agreements viz. Agreements with Co-Founders, Employees Agreements, Contractor Agreements, Technology Lease Agreements, Funding Agreements, and Vendor-Supplier Agreements.

**Safeguarding the Intellectual Property** of the startup is very crucial in the competitive business arena, where a number of new businesses spring up every day. Right from filing Trademarks to Patents, products, and websites, the IP saves business ideas or outcomes from being mimicked. These intangible assets give a distinct identity to the startup.

**Environmental permits and licenses** are a major pointer bothering Startups. For Instance, getting approvals from State Pollution Control Boards to establish and operate businesses in compliance with Plastic Waste Management Rules or Hazardous Waste Rules, and renewing these from time to time.

**Tax Filings** can never be ignored when it comes to a startup business. <sup>11</sup>The types of taxes to which a business is mandatorily exposed to is three – 'Service Tax', 'Value Added Tax, (VAT), and 'Central Sales Tax' (CST). The start-ups who claim incentives to tax deductions for being a startup really required to:-

- Keep various separate Books of accounts for their Eligible Business

---

<sup>10</sup> Kaitlin Herbert\ non-disclosure agreement (NDA)\ techtargt\ (May. 07, 2023, 9:29 AM)\ <https://www.techtargt.com/whatis/definition/non-disclosure-agreement>

<sup>11</sup> Policybazaar\ <https://www.policybazaar.com/income-tax/income-tax-guide-for-start-ups/>\ (last visited May. 6,2023).

- Diligently make arrangements for the filing of the Audit Report in Form 10CCB appended with the Income Tax Return (ITR)
- Facilitate the audit of the business by a duly qualified CA (Chartered Accountant)

### **BUSINESS LAW:**

A set of Laws that caters to the regulation and efficient functioning of doing business in the country, be it corporate, manufacturing, services, or retail business. Business Law aims to maintain the order and decorum in nuances of which a business entity is obligated to perform. The prominent objective is to balance the level playing field and righteous business perspectives.

Business Law, in fact, is a generic term and includes within itself a whole lot of statutes that facilitate and regulates the business in some way or the other. To put it in a broader perspective, it includes Corporate Laws, Contract Laws, Intellectual Property Laws, Taxation Laws, Securities Laws, and Labour Laws.

Here I'm enlisting specific Indian Legislation dealing with business:

Corporate Laws include:

- Companies Act, 2013
- Limited Liability Partnership Act, 2008
- Partnership Act, 1932

Mercantile Laws include:

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

Intellectual Property Laws include:

- Trade Marks Act, 1999
- Patents Act, 1970
- Copyright Act, 1957
- Designs Act, 2000
- GI (Registration & Protection) Act, 1999

Taxation Laws include:

- Income Tax Act, 1961
- Wealth Tax Act, 1957

Insolvency & Bankruptcy Laws include:

- Insolvency & Bankruptcy Code of India, 2016

Labour Laws include:

- the Code on Wages, 2019,
- the Industrial Relations Code, 2020,
- the Code on Social Security, 2020 and
- the Occupational Safety, Health, and Working Conditions Code, 2020

(Formed by merging 44 labor laws)

Environmental Laws include:

- National Green Tribunal Act, 2010
- Water (Prevention and Control of Pollution) Act, 1974
- Air (Prevention and Control of Pollution) Act, 1981
- Wild Life (Protection) Act, 1972
- Forest (Conservation) Act, 1980
- Environment Protection Act, 1986
- Public Liability Insurance Act, 1991
- Biological Diversity Act, 2002

Other Regulatory Laws include:

- Competition Act, 2002

(\*\* The list is, of course, not exhaustive.)

### **THE SPACE FOR BUSINESS LAWYERING:**

Lawyering refers to the profession or work of a lawyer. Lawyering is an art as much as it is a profession. But what does this imply when an advocate tags them as a Business Lawyer? What role do Lawyers perform in the running of a business entity (in this case, specifically a Startup)? Business lawyering refers to the practice of law in various business regimes. A solid legal foundation is necessary for Business onsets, growth & expansion.<sup>12</sup> Business Lawyers interpret the various laws governing businesses and help them in fulfilling their functioning and compliance needs. Here are enlisted a few roles Business Lawyers are meant to play:

---

<sup>12</sup> Merriam/ <https://www.merriam.com/dictionary/lawyering#:~:text=%3A%20the%20profession%20or%20work%20of%20a%20lawyer/>

(last visited May. 6,2023)



Getting the Business registered. Incorporation of a business entity is the foremost thing in starting a Startup. Various laws require a declaration by Advocates as to incorporation. For instance, Companies Act 2013 Section 7 which deals with the incorporation of Companies requires a Declaration to be given by an advocate. Section 7(1) (b) read with Rule 14 titled as a declaration by professionals<sup>1314</sup>, states that “For the purposes of clause (b) of sub-section (1) of section 7, the declaration by an advocate, a Chartered Accountant, Cost Accountant or Company Secretary in practice shall be in Form No. INC.8.”<sup>15</sup>

The omission of one important clause or condition in an agreement/contract can lead to serious repercussions when it comes to the Formation of business agreements. Thus, it requires sound knowledge and distinct art of framing these agreements as each agreement require specific elements to serve the purpose the agreement is made for and thus avoid troubles of running businesses.

The consultation appetite of a Startup business can be aptly fulfilled by a Business Lawyer, by making them understand and decipher complex legal language, thereby ensuring their smooth functioning.

Business Lawyers help Businesses plan their findings and actually make it happen through legal channels. Framing Shareholders’ agreements are one such quote here.

Developing the plan to protect a startup’s intangible Intellectual Property –your trademark, copyright, patent i.e. their Business brand. What role the Intellectual Property plays in a business

Selecting the Tax Filing mechanisms based on the type of entity is a prominent task. Engaging with the startups in annual and periodical tax filing events is to be done at a Business lawyer’s end.

What type of Licenses & Permits does a startup need in the specific line of work they are in? Determining the industry-specific regulations of the business and ensuring compliance with the same is demanded from a business lawyer.

Also, worth mentioning here are the insurance needs of startup businesses. Acquainting the stakeholders as to the risks involved in the businesses and addressing ‘how can the business be protected from those risks using insurance.

---

<sup>13</sup> Companies Act 2013,7, No. , Act of Parliament, 2013 (India)

<sup>14</sup> Company Incorporation Rules, 2014, Rule 14, No. 18, Act of Parliament (India)

<sup>15</sup> Company Incorporation Rules, 2014, Rule 14, No. 18, Act of Parliament (India)

**CHALLENGES IN BUSINESS LAWYERING:**

Thus Business Lawyering is an enormously vast pool of services it demands to perform, yet it is fraught with myriad challenges.

Rapid outburst in Technology is having a distinct impact on the practice of law (especially business law) as any other field. The swift advancements in Technology, be it in the form of Artificial Intelligence or chatGPT, or some other elevation of like nature, demands the fulfillment of legal business needs with the same momentum.

A startup business involves transactions of multiple natures and demands myriad functions to be handled by the lawyer. Thus, specialization in one aspect or the other becomes one challenge. The Business lawyer may be put in a dilemma to opt for a particular specialization or be a generalized Business lawyer instead.

Reaching out to lawyers with the right skillsets and attitude to work is one hurdle that startups face. Since Lawyering is a vast ocean to cater to the needs of startup businesses while upgrading oneself as a business lawyer demands attention.

Education in Law schools in consonance with Market & Business needs is one factor where Business lawyers struggle. When it actually comes to practicing law in the field of business, lawyers clearly see the loopholes in law school learning and performing up to the standard of exposure they are getting in the field.

Lawyering in business while keeping up the standards, trust & ethos of the Institution is a testing point for Business lawyers. The ability to work despite ethical, personal, and economic influences is demanded by a business lawyer.

**THE WAY FORWARD:**

Continuous digital & technological upskilling & reskilling programs specially designed for Business lawyers are the need of the hour. A Business lawyer must endeavor to make time & money investments to ensure adaptability with changing technological regimes, to avoid himself from turning obsolete.

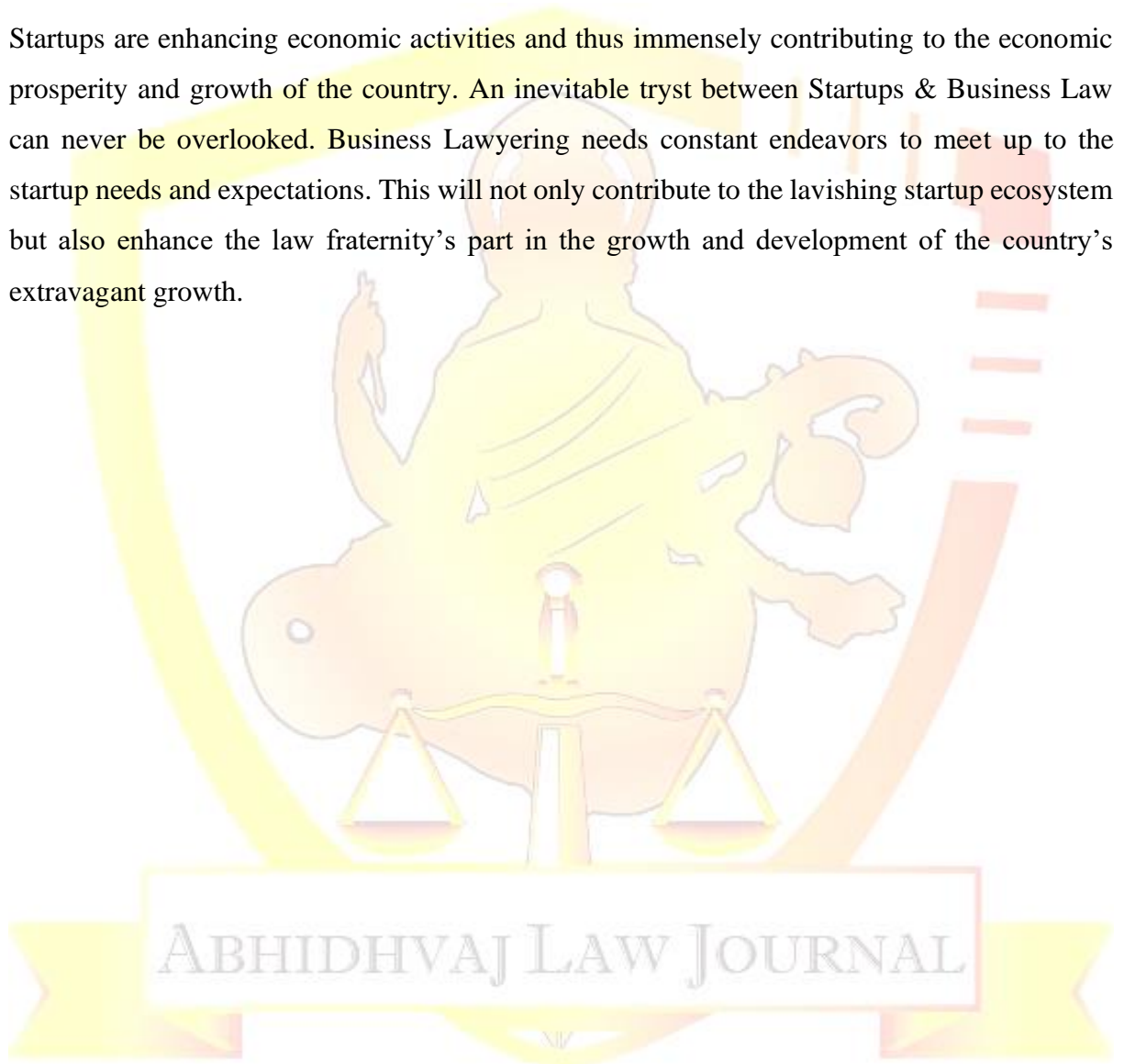
Also upgrading the various skillsets of networking, business analysis, and dispute resolution is quite an important undertaking on the part of Business lawyers.

Bar Council of India, the body regulating Legal Education in India, needs to redefine and make amendments to existing study courses to bring legal education in consonance with the changing business & industry regimes.

The understanding of a unique set of challenges Business lawyers face needs to be encouraged. <sup>16</sup>Business lawyers as well need to identify the ways in which they can utilize the theory & principles to enhance their decision-making and problem-solving skills while keeping in place the working ethics of lawyers.

### CONCLUSION:

Startups are enhancing economic activities and thus immensely contributing to the economic prosperity and growth of the country. An inevitable tryst between Startups & Business Law can never be overlooked. Business Lawyering needs constant endeavors to meet up to the startup needs and expectations. This will not only contribute to the lavishing startup ecosystem but also enhance the law fraternity's part in the growth and development of the country's extravagant growth.



---

<sup>16</sup> KEITH WILLIAM DIENER/'The Lawyer's Guide to Business ethics'/ Giving Voice to Value