

Chp-1. Indian Regulatory Framework

⇒ Introduction

Awareness of law is essential to become a full-fledged CA. This is because a CA is the first level of contact on many legal matters. So, we should possess knowledge of law so that we can advise our management and clients on legal matters at a basic or threshold level.

The purpose of a regulatory framework is to provide a set of uniform rules and regulations that will govern the conduct of people interacting with each other in personal as well as business relationships.

⇒ What is law?

Law is a set of obligations & duties

→ imposed by the Government

→ for securing welfare and

India's legal framework reflects the social, political, economic and cultural aspects of our vast and diversified country.

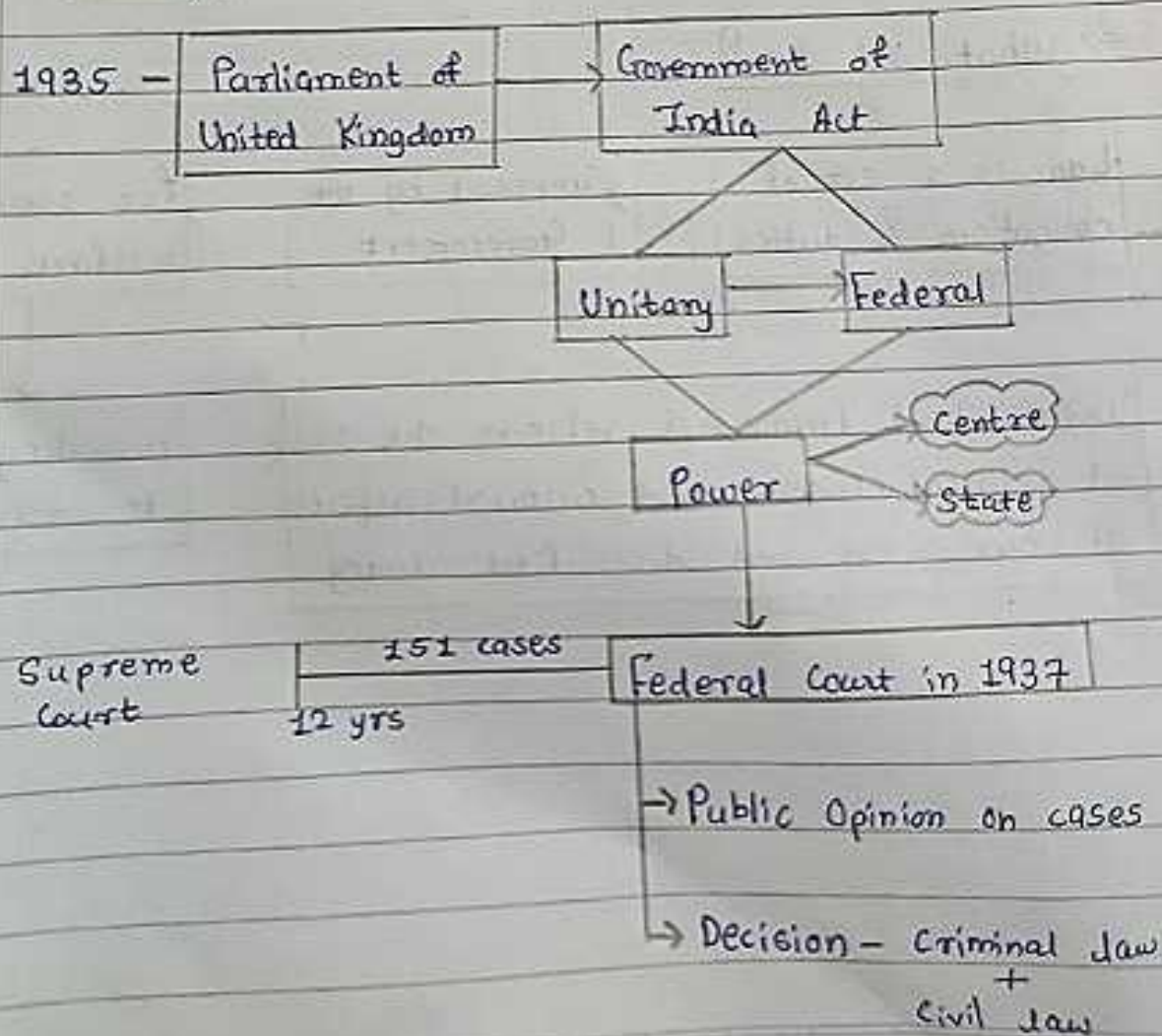
↓
providing justice to society.

⇒ Sources of Law

The main sources of law in India are:-

- The Constitution
- The statutes or laws made by Parliament and State Assemblies
- Precedents or the Judicial Decisions of various courts
- In some cases, established Customs and Usages. eg. Hindu Marriage Act, etc.

⇒ History



The Indian Constitution has three list :

- 1) Central List contains matters over which only Central Government has the power to make laws. For e.g. Income Tax, etc.
- 2) State List contains matters over which only State Government has the power to make laws. For e.g. Public order, etc.
- 3) Joint / Concurrent List includes matters over which both Central and State government have the power to make laws. For e.g. Education policies, etc.

List I: Central List	List II: State List	List III: Joint List
→ Defence	→ Public Order	→ Justice
→ International Relations	→ Police	→ Education
→ Railways	→ Public Health	→ Trade Unions
→ Highways	→ Hospitals & Dispensaries	→ Forests
→ Com	→ Sanitation	
→ Communication	→ Agriculture	

⇒ Process of Making a Law

When a law is proposed in parliament. It is called a Bill.

After discussion and debate, the law is passed in Lok Sabha.

It then has to obtain the assent (approval) of the President of India.

Thereafter, it has to be passed in Rajya Sabha.

Finally, the law will be notified by the Government in the publication called the Official Gazette of India.

The law will become applicable from the date mentioned in the notification as the effective date.

Once, it is notified and effective. It is called an Act of Parliament.

⇒ Types of Laws

1) Criminal law

→ It is concerned with laws pertaining (related to) to violations of the rule of law or public wrongs and punishment of the same.

→ It is governed under ~~the~~ ⁱⁿ the Indian Penal Code, 1860 and the Code of Criminal Procedure, 1973 (Crpc).

→ IPC, 1860 defines crime, its nature and punishment whereas Crpc, 1973 defines exhaustive procedure for executing the punishment of the crimes.

→ For e.g. Murder, Rape, Theft, Assault, etc

2) Civil law

→ It deals with matters of disputes between individuals or organisations.

→ It primarily focuses on dispute resolution rather than punishment.

→ It is ~~governed~~ ^{by} governed ~~under~~ ^{by} the Code of Civil Procedure, 1908 (CPC).

→ It is further classified into Law of Contract, Family Law, Property law and Law of Tort

→ For e.g. breach of contract, non-delivery of goods, defamation, etc

3) Common Law

→ A judicial precedent or a case law.

judgement → A judgment delivered by the Supreme Court will be binding upon the courts within the country of India.

→ The doctrine of Stare Decisis which means "to stand by that which is decided".

→ The doctrine of Stare Decisis reinforces the obligation of courts to follow the same principle or judgement established by previous decisions while ruling a case where the facts are similar.

4) Principle of Natural Justice

→ Natural Justice is also known as 'Jus Natural'.

→ It deals with certain fundamental principles of justice going beyond written law.

→ Nemo Jure In causa Sua (meaning "No one should be made a judge in his own cause, and it's a Rule against Prejudice.") and Audi Alteram Partem (meaning "hear the other party or give the other party a fair hearing.") and reasoned decision are the rules of Natural Justice.

→ A judgement can override or alter a common law, but it cannot override or change the statute.

⇒ Enforcing the Law

The Government of India exercises its executive authority through a few government authority ministries or departments of state.

A Ministry is composed of employed officials, known as civil servants, and politically accountable through a minister.

Most major Ministries are headed by a Cabinet Minister, who sits in the Union Council of Ministers, and is typically supported by a team of junior ministers called the Ministers of State.

~~Government~~

Various Ministries under government of India:-

1/ Ministry of Finance

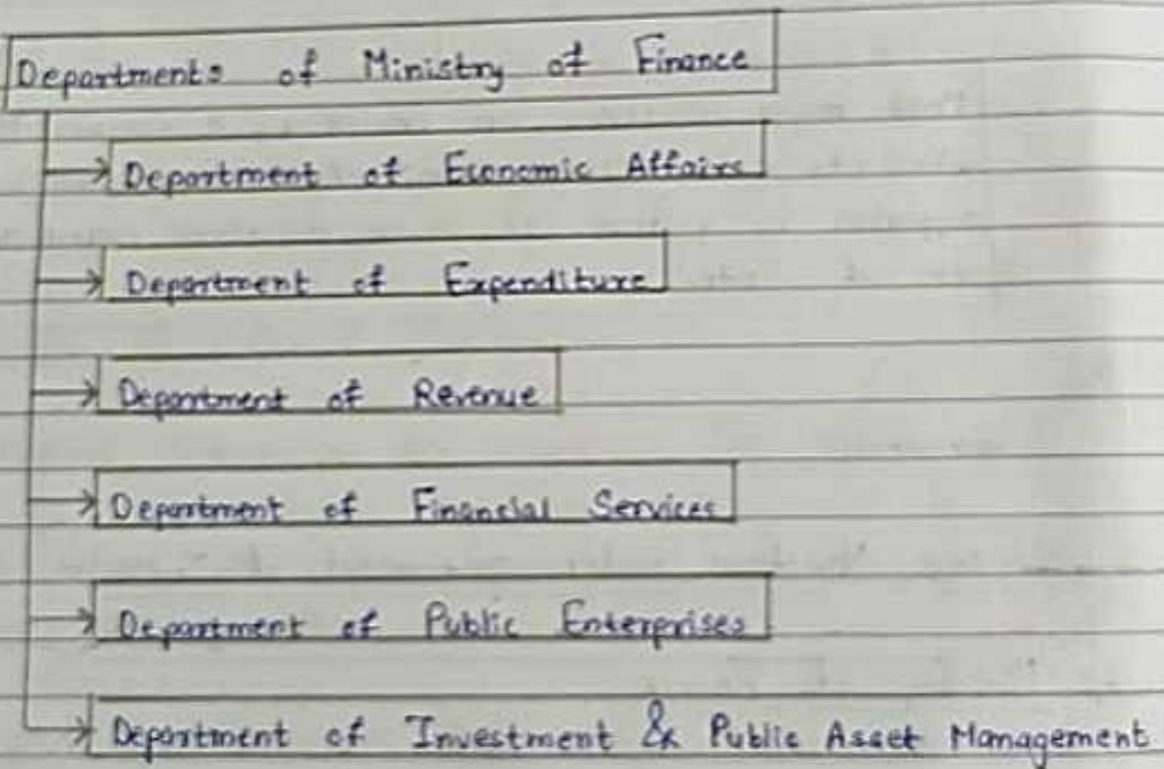
→ It is concerned with Economy of India, serving as the Treasury of India.

→ It covers taxation, financial legislation, financial institutions, capital markets, centre and state finances, and the Union Budget.

→ One of the most important functions of Finance Ministry is the presentation of the Union Budget.

→ Constitution of the Ministry of Finance

- It is the apex controlling authority of four Central Civil Services, namely:-
 - (i) Indian Revenue Service.
 - (ii) Indian Audit and Accounts Service.
 - (iii) Indian Economic ~~Service~~ Service &
 - (iv) Indian Civil Accounts Service.
- It also controls Indian Cost and Management Accounts Service.



2) Ministry of Corporate Affairs

→ It is concerned with administration of the Companies Act, 2013, the Companies Act, 1956, the Limited Liability Partnership Act, 2008, and the Insolvency and Bankruptcy Code, 2016.

→ It is responsible for Regulation of Indian enterprises in the industrial and services sector.

→ The Ministry is ~~mostly~~ mostly run by civil servants of the ICLS cadre (Indian Corporate Law Service). These officers are elected through the Civil Services Examination conducted by the Union Public Service Commission.

→ The highest post, Director General of Corporate Affairs (DGCA), is fixed at Apex Scale for the ICLS.

3) Ministry of Home Affairs (Gharha Mantralaya)

→ It is a ministry of the Government of India.

→ It is an interior ministry of India, it is mainly responsible for the maintenance of internal security and domestic policy.

→ The Home Minister is headed by Union Minister of Home Affairs.

Departments of Ministry of Home Affairs

→ Department of Border Management

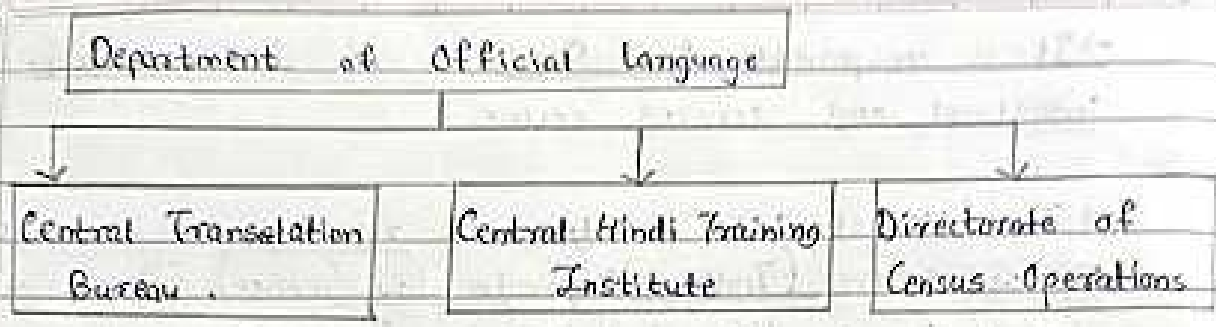
→ Department of Internal Security

→ Department of Jammu, Kashmir & Ladakh Affairs

→ Department of Home

→ Department of Official Language

→ Department of States



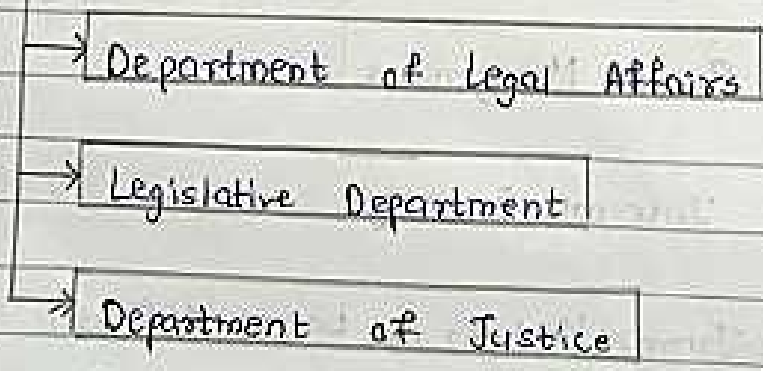
4) Ministry of Law and Justice

→ It is in the Government of India is a Cabinet Ministry deals with the; (i) management of the legal affairs, through the ~~Legis~~ Legislative Department.

- (ii) legislative activities through the Department of Legal Affairs.
- (iii) administration of justice in India through the Department of Justice.

→ The Department of Legal Affairs is concerned with advising the various Ministries of the Central Government while the Legislative Department is concerned with drafting of principle legislation for the Central Government.

Departments of Ministry of Law and Justice



5) The Securities and Exchange Board of India (SEBI)

- It is the regulatory body.
- It is for securities and commodity market in India.
- It is under the ownership of Ministry of Finance within the Government of India.
- It was established on 12 April, 1988 as an executive body and was given statutory powers on 30 January, 1992 through the SEBI Act, 1992.

6) Reserve Bank of India (RBI)

- It is India's Central Bank and regulatory body responsible for regulation of the Indian banking system.
- It is under the ownership of Ministry of Finance within the Government of India.
- It is responsible for the control, issue and maintaining supply of the Indian rupee.
- It also manages the country's main payment systems and works to promote its economic development.
- Bharatiya Reserve Bank Note Mudran (BRBNM) is a specialised division of RBI through which it prints and mints Indian currency notes (INR) in two of its currency printing presses located in Nashik (Western India) and Dewas (Central India).

→ RBI established the National Payments of India (NPCI) as one of its specialised division to regulate the payment and settlement systems in India.

→ Deposit Insurance and Credit Guarantee was established by RBI as one of its specialised division for the purpose of providing insurance of deposits & guaranteeing of credit facilities to all Indian Banks.

7) Insolvency and Bankruptcy Board of India (IBBI)

→ It is the regulatory for overseeing insolvency proceedings and entities like Insolvency Professional Agencies (IPA), Insolvency Professionals (IP) and Information Utilities (IU) in India.

→ It was established on 1 October 2016, which was passed by Lok Sabha on 5 May 2016.

→ It covers Individuals, Companies, Limited Liability, Partnerships and Partnership firms. The new code of will speed up the resolution process for stressed assets in the country.

→ It attempts to simplify the process of insolvency & bankruptcy proceedings.

→ It handles the cases using two tribunals like NCLT (National company law tribunal) and Debt recovery tribunal.

⇒ Structure of Indian Judicial System

→ When there is a dispute between citizens and the Government, these disputes are resolved by the judiciary.

→ The functions of judiciary system of India are:-

- (i) Regulation of the interpretation of the Acts and Codes,
- (ii) Dispute Resolution,
- (iii) Promotion of fairness among the citizens of the land.

(1) Supreme Court

→ The Supreme Court is the apex body of the judiciary. It was established on 26th January, 1950.

→ The Chief Justice of India is the highest authority appointed under Article 126.

→ The principal bench of the Supreme Court by filing a consists of 7 members including the Chief Justice of India.

→ An individual can seek relief in the Supreme Court by filling a writ petition under Article 32.

(2) High Court

→ The highest court of appeal in each state and union territory is the High Court.

→ In India, there are twenty-five High Courts, one for each state and union territory, and one for e

→ An individual can seek remedies against violation of fundamental rights in High Court by filling a writ under Article 226.

③ District Court

→ The Courts of District Judge deal with Civil Law i.e. contractual disputes and claims for damages, etc.

→ The Courts of Sessions deals with Criminal matters.

→ Jurisdiction means the power to control. Courts get territorial Jurisdiction based on the areas covered by them.

→ Cases are decided based on the local limits within which the parties reside or the property under dispute is situated.

④ Metropolitan Courts

→ Metropolitan courts are established in metropolitan cities in consultation with the High Court where the population is ten lakh or more.

→ Chief Metropolitan Magistrate has powers as Chief Judicial Magistrate and Metropolitan Magistrate has powers as the court of a Magistrate of the first class.