

## CHAPTER-1

### INDIAN REGULATORY FRAMEWORK

#### (I) INTRODUCTION

- As a CA, 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 & regulations that will govern the conduct of people interacting with each other in personal as well as business relationships.
  
- The Code of Hammurabi - oldest law (written)
- King Hammurabi ruled Babylon (1792 BC - 1758 BC).
- The code was <sup>(carved)</sup> inscribed on stone slabs, placed throughout the city.
- Judges were appointed to ensure <sup>(Follow एत रति ए २१ - १६)</sup> compliance with the laws.
- In 450 BC, 'The Twelve Tables' [Bronze] were <sup>[carved]</sup> engraved in Rome, a detailed code protecting rights & providing remedies. ← Purpose of this code

WHAT IS LAW? "Law is a set of obligations & duties estd. by the govt. for societal welfare & justice."

#### (II) SOURCES OF LAW IN INDIA

- Constitution, statutes, laws made by Parliament & State assemblies, Precedents or the judicial decisions made by courts (Customs & Usages).
  - Law enacted by legislative branch of Govt.
  - Customs: Rules estd. in previous legal cases.
  - Usages: A common practice.
- India's parliamentary democracy involves elected representatives making laws.
- Laws passed by parliament may apply throughout whole or a portion of india while laws passed by state legislatures apply only within the borders of the states concerned.

The Govt of India Act, 1935 (Passed by the Parliament of United Kingdom),

<sup>(something happened before)</sup>  
- Precursor for the Indian Constitution.

- Defined the characteristics of the Govt. from Unitary to federal, i.e. powers were distributed b/w Centre & State to avoid any disputes.
- In 1937, Federal court → established & had the <sup>(structure)</sup> jurisdiction of appellate, original and advisory.
- The powers of appellate Jurisdiction extended to civil & Criminal cases in order to appeal against judgements of lower courts.

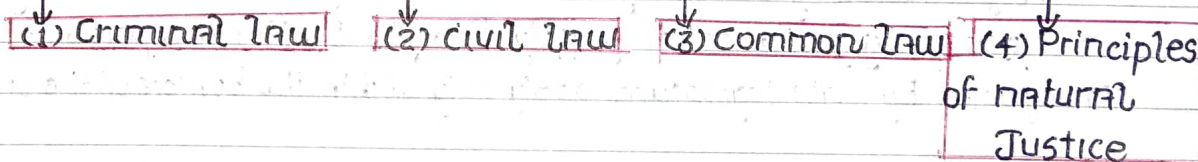


- Original Jurisdiction has power to look into the cases that can be initiated only in Supreme court.
- Advisory jurisdiction was extended with the powers to Federal court to advise Governor General in matters of public opinion.
- Federal court operated 12 years & heard roughly 151 cases.
- Federal court was <sup>(replaced)</sup> supplanted by India's current Apex court, the Supreme Court of India.
- Constitution of India, 1950, is the fundamental document that defines governance and rights. It protects rights of citizens, lays down fundamental duties as well as the powers & duties of Govts., both central & State.
- Indian legal system operates within a hybrid structure, with powers distributed b/w Central & State Govts.
- Constitution of India divided 3 lists - central, State & Concurrent / Joint list, determines jurisdiction over various matters. (Article 246)

### (III) THE PROCESS OF MAKING OF A LAW

- Proposed law in Parliament as a Bill.
- Passed in Lok Sabha, then in Rajya Sabha.
- Requires president's assent to become law.
- Notified in Official Gazette of India with an effective date of law.
- Becomes an Act of Parliament once in effect.

### (IV) Types of LAWS in the Indian Legal System



(1) Criminal Law - Laws related to the violations of law or public wrongs and their punishments.

- Governed under Indian Penal Code, 1860 (defines crime, its nature & Punishments) and the code of Criminal procedure, 1973 (defines the procedure to execute the punishments of the crime).
- Example; Murder, Rape, theft, fraud & assault.



(2) Civil Law - Resolves disputes b/w individuals or organisation.

- Enforces rights & Obligations through civil suits <sup>courts</sup>.
- focuses primarily on dispute resolution rather than punishments.
- Governed by the code of Civil Procedure, 1908.
- further classified - Law of Contract, Family Law, property law and Law of Tort.
- Example → Non-delivery of goods, breach of contract, non-payment of dues to lenders/seller, defamation & disputes b/w landlord & tenant.

(3) Common Law - Based on judicial precedents or case law.

- Supreme Court judgements are binding under Article 141 of the Indian Constitution.
- Supporting principle of this law is "Stare Decisis" <sup>स्टार डिसिसिज</sup> → Latin phrase which means - to stand by that which is decided.
- Enforces courts to follow previous judgements, this applies when facts of a case are similar to an earlier decision.
- Referred to as being "on all four legs" with the previous case.   
 pehle case aur us case mein bahut similarity ho

(4) Principles of Natural Justice - also known as 'Jus Natural' → deals with the fundamental principles of justice going beyond written law:

These are: (i) Nemo Jux in causa sua: No one should judge their own case.

(ii) Audi alteram partem :- Both sides should be heard or given a fair chance to present their case.

(iii) Reasoned decision :- Decisions should be well reasoned & based on facts and evidence.

- Judgement can override common law but cannot override or change the statute.

(V) ENFORCING THE LAW

- After passage in parliament, laws need enforcement & monitoring.
- This is the job of the executive, who oversees law enforcement based on central or state law. (if centre law → central Govt., & if state law → state govt.)



- Various ministries handle govt. functions, ex - Ministry of Finance, Ministry of Corporate Affairs, Ministry of Home Affairs, and Ministry of Law & Justice.
- Ministries are led by ministers & run by civil servants.
- Govt. of India exercises executive authority through Ministries or Depts. of State.
- Major ministries are led by cabinet ministers.
- For. ex - Income Tax act: - Administered by Ministry of Finance.
  - Implemented via central Board for Direct Taxes.
  - Part of the Deptt. of Revenue & Indian revenue officers handle it.

#### (A) The Ministry of Finance (Vitta Mantralaya)

- Concerned with the Indian economy, serves as the Treasury.
- Deals with taxation, financial legislation, financial institutions, capital markets, centre & State finances and the Union Budget.
- Functions - Presents Union Budget, setting tax rates & budget allocations
- It is the open controlling authority for central civil services & central commerce services. Indian cost & Management Accounts service is one of the central commerce services.

Que - Who presented the maximum no. of Union Budgets as a finance Minister?

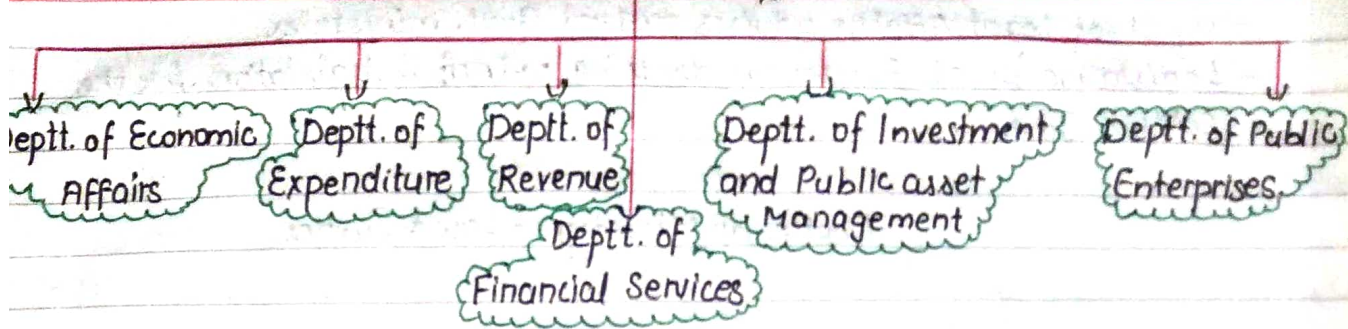
- Shri. Maraji Desai: Presented 10 Union Budgets during 1962-1969.
- Shri. P. Chidambaram: Presented 9 Union Budgets.
- Shri. Pranab Mulcheyjee & Shri. Yashwant Sinha: Presented 8 Union Budgets.
- Dr. Manmohan Singh: Presented 6 Union Budgets.

#### Central Civil services under Ministry of Finance

- (1) Indian Revenue Service
- (2) Indian Audit & Accounts service
- (3) Indian Economic service
- (4) Indian Civil Accounts Service
- (5) Indian Cost & Management Accounts Service.
- (6) Indian



## Depths. under the ministry of Finance



(1) Ministry of Corporate Affairs (MCA) - Indian Govt. Ministry which is concerned with administration of the Companies Act, 2013, the Companies Act, 1956, the LLP Act, 2008 & the Insolvency and Bankruptcy Code, 2016.

- responsible for regulation of Indian Enterprises in the Industrial & Services Sectors.

- Run by ICLS (Indian Corporate Law Service) civil servants. These are elected through the civil services Examination conducted by Union Public Service Commission.

- The Director General of Corporate Affairs (DGCOA) is the top post.

(2) Ministry of Home Affairs (Girha Mantralaya) - Govt. of India Ministry.

- As an interior ministry, it manages internal security & Domestic policy.

- headed by Union Ministry of Home Affairs.

## Depths. of Ministry of Home Affairs

- Deptt. of Border Management

- Deptt. of Internal Security

- Deptt. of Jammu, Kashmir & Ladakh Affairs

- Deptt. of Home

- Deptt. of Official Language

- Deptt. of States

Central Translation Bureau

Central Hindi Training Institute

Directorate of Census Operations

(3) Ministry of Law & Justice - Cabinet Ministry of the Indian Govt.

- deals with the: • management of the legal affairs through the legislative Deptt.

• legislative activities through the Deptt. of legal affairs.

• administration of justice in India through the Deptt. of Justice.



- Deptt. of Legal Affairs advises central Govt. ministries
- Legislative Deptt. focuses on drafting principal legislation for the Central Govt.

### Deptt. of Ministry of Law & Justice

Deptt. of Legal Affairs

Legislative Deptt.

Deptt. of Justice

### The securities & exchange BOARD OF INDIA (SEBI)

- Estd. on April 12, 1988 as an executive body.
- Regulatory body for securities & commodity market in india.
- Gained statutory powers on Jan. 30, 1992, through the SEBI Act, 1992.
- Operates under the ownership of Ministry of finance within the Govt. of India.

### Reserve Bank of India

- Central Bank, regulates Indian Banking system.
- Owned by Ministry of finance, Govt. of India.
- Controls, issues & maintains indian rupee.
- Manages payments, promotes economy.
- 'Bhartiya Reserve Bank Note Mudran' prints & mints indian currency notes. Two printing presses of currency notes are Nashik (western India) and Dewas (Central India).
- Created National Payments Corporation of India to regulate the payments settlement systems in India.
- Estd. Deposit insurance & Credit Guarantee for providing insurance of deposits & guaranteeing of credit facilities to all Indian banks.

### The Insolvency and BANKRUPTCY BOARD OF INDIA (IBBI)

- Estd. Oct. 1, 2016
- is the regulator overseeing insolvency proceedings & entities like insolvency professional Agencies (IPA), Insolvency professionals (IP), and information utilities (IU) in India.



- Empowered by the Insolvency & Bankruptcy code passed on May 5, 2016 by Lok Sabha.
- Covers Individuals, companies, LLPs & Partnership firms.
- aims at the resolution process for stressed assets & simplifying the process of insolvency & Bankruptcy proceedings.
- Cases managed by two Tribunals:
  - National Company Law Tribunal (NCLT)
  - Debt Recovery Tribunal.

### STRUCTURE OF THE INDIAN JUDICIAL SYSTEM

- Indian Judicial System resolves disputes b/w citizens & Govt.
- Functions:
  - Regulation & Interpretation of the acts & codes.
  - Disputes Resolution
  - Promotion of fairness among the citizens of the land.
- In the Hierarchy of Courts, Supreme Court at the top, followed by High courts & District Courts.
- High court decisions binding within state, <sup>(helpful)</sup> persuasive elsewhere.
- Supreme court decisions binding on all High Courts under Article 141 and the decisions of supreme court is the final word on the matter.

(a) Supreme Court → Apex body, estd. → Jan. 26, 1950.

- Highest authority: Chief Justice of India (Under Article 129)
- Principal bench → 7 members, increased to 34 presently due to case workload.
- Individuals can seek relief via writ petition. (Under Article 32).  
→ A formal written order issued by a judicial authority

(b) High Court - Highest court of Appeal in each state & UT.

- Article 214 Mandates a High court in each state.
- High court has appellate, Original, and supervisory jurisdiction.
- Article 227 limits High court's supervisory power.
- 25 high courts in India, one for each state/UT, 6 states share a single High Court.
- Under Article 226, Individuals can seek remedies against fundamental rights violation by filing a writ.

→ The Calcutta High court is the oldest, estd. on July 2, 1862.

(c) District Court - Below High Courts.

- Deals with civil law matters i.e. contractual disputes and claims for damages etc.

- Courts of sessions handle criminal matters.

- Civil judges can try suits valuing up to rupees 2 crores.

- Jurisdiction means the power to control. It depends on the area where parties reside or the property under dispute is situated.

(d) Metropolitan Court - Estd. in metropolitan cities with population of ten lakh or more.

- Chief Metropolitan magistrate has powers like Chief Judicial Magistrate.

- Metropolitan magistrate has powers like a court of the magistrate of the first class.

→ ALL THE ARTICLES MENTIONED IN THIS CHAPTER

\* source - Chatgpt. openai

Article 32: You can go to the supreme court if your fundamental rights are in trouble.

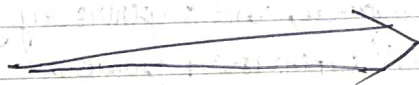
Article 141: Whatever the Supreme court decides, all other courts in India must follow.

Article 126: It's about appointing a temporary Chief Justice if the real one is away.

Article 214: This deals with High Courts in different states.

Article 226: High courts can help protect your fundamental rights by issuing orders.

Article 227: High courts have control over the courts under them.



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