

## Indian Regulatory framework

### • What is law ?

⇒ Law is a set of obligations and duties imposed by the government for securing welfare and providing justice to society. India's legal framework reflects the social, political, economic and cultural aspects of ~~our~~ our vast and diversified country.

### • Source of law.

⇒ The main source 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 and in some cases, established customs and usages.

### • Constitution of India, 1950.

⇒ It is the foremost law that deals with the framework within which our democratic system works, and our

Laws are made for the people, by the people. The Constitution also provides for and protects certain fundamental rights of citizens. It also lays down fundamental duties as well as the powers and duties of Governments, both Central and State. The laws in India are inter-connected with each other forming a hybrid legal system.

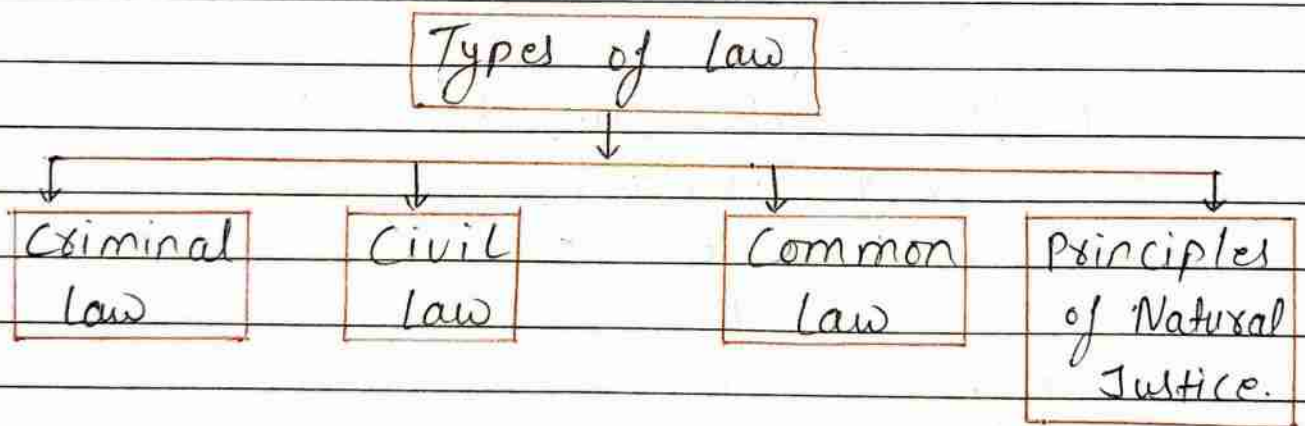
The people who wrote the Constitution decided to divide the law-making power between the Central Government and the various State Governments. So, the Indian Constitution has three lists viz., Central list, State list and Joint list.

### • The 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. Thereafter, it has to be passed in Rajya Sabha. It then has to be obtain the assent of the

President of India. Finally, the law will be notified by the govt. 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 in the Indian legal system.



- Criminal Law :-

⇒ Criminal law is concerned with laws pertaining to violations of the rule of law or public wrongs and punishment of the same. Criminal law is governed under the Indian Penal Code, 1860 (IPC), and the Code

of Criminal procedure, 1973 (Crpc). The Indian penal Code, 1860, defines the crime, its nature, and punishments whereas the criminal procedure Code, 1973, defines exhaustive procedure for executing the punishments of the crimes.

Murder, rape, theft, fraud, cheating and assault are some examples of criminal offences under the law.

### • Civil Law:-

⇒ Matters of disputes between individuals or organisations are dealt with under civil law. Civil Courts enforce the violation of certain rights and obligations through the institution of a Civil Suit. Civil law primarily focuses on dispute resolution rather than punishment.

The act of process and the administration of Civil law are governed by the Code of Civil Procedure, 1908 (CPC). Civil law can be further classified into law of contract, family law, property law and law of Tort.

Some examples of Civil offences are breach of contract, non-delivery of goods, non-payment of dues to lender or seller, defamation, breach of contract, and disputes between land lord and tenant.

### • Common law :-

⇒ A judicial precedent or a case law is common law. A judgment delivered by the Supreme Court will be binding upon the courts within the territory of India under Article 141 of the Indian Constitution. The doctrine of *Stare Decis* is the principle supporting common law. It is a Latin phrase that means "to stand by that which is decided". The doctrine of *Stare Decis* 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 or "on all four legs" with the earlier decision.

- Principles of Natural Justice :-

⇒ Natural justice, often known as *Jus natural* deals with certain fundamental principles of justice going beyond written law. *Nemo iudex in causa sua*, i.e. No one should be made a judge in his own cause, and it's a rule against prejudice, *audi alteram partem*, i.e. 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 number of Government ministries or Departments of State. A ministry is composed of employed officials, known as civil servants, and is 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.

- The ministry of Finance.

⇒ The ministry of finance (Vitta Mantralaya) is a ministry within the Govt. of India concerned with the economy of India, serving as the treasury of India. In particular, it concerns itself with taxation, financial legislation, financial institution, capital markets, centre and state finances, and the Union Budget. As a Chartered Accountant, many of your day-to-day work life will be impacted by this ministry and its proclamations. This ministry is so important that many ministers have preferred to hold the portfolio of finance minister also. One of the important functions of the finance ministry is the presentation of the Union Budget.

- Who presented the maximum number of Union Budgets as finance minister?

A. Shri. Morarji Desai during his stint as finance minister between 1962 and 1969 has presented 10 Union Budgets making it the highest. The next on the list is Shri. P. Chidambaram at 9, followed by Shri. Pranab Mukherjee at 8. Shri. Yashwanth Sinha and Dr. Manmohan Singh have presented 8 and 6 budgets respectively.

### • Constitution of Ministry Finance.

- is the apex Controlling authority.
- of four Central Civil Services, namely:
  - Indian Revenue Service
  - Indian Audit and Accounts Services.
  - Indian Economic Service and
  - Indian Civil Accounts Service.
- Also, the apex Controlling authority of one of the Central Commerce Services namely Indian Cost and Management Accounts Services.



## • Department of Ministry Finance.

- (a) Department of Economic Affairs.
- (b) Department of Expenditure.
- (c) Department of Revenue.
- (d) Department of Financial Services.
- (e) Department of Public Enterprise.
- (f) Department of Investment and Public Asset Management.

## • Ministry of Corporate Affairs.

- is an Indian Government ministry.
- Primarily 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.
- responsible mainly for the regulation of Indian enterprise in the industrial and services sector.
- The ministry is mostly run by civil servants of the ICS cadre.
- These officers are elected through the Civil Services Examination conducted by Union Public Service Commission.
- The highest post, Director General of Corporate Affairs (DGCoA), is fixed at Apex scale for the ICS.

- Ministry of Home Affairs (Ghar Mantralaya)

- is a ministry of the Government of India.
- As an interior ministry of India, it is mainly responsible for the maintenance of internal security and domestic policy.
- The Home Ministry is headed by Union Minister of Home Affairs.

- Department of Ministry of Home Affairs.

- (a) Department of Border Management.
- (b) Department of Internal Security.
- (c) Department of Jammu, Kashmir and Ladakh Affairs.
- (d) Department of Home.
- (e) Department of official language.
- (f) Department of States.

- Ministry of Law and Justice.

- in the Government of India is a cabinet ministry.
- deals with the
  - > Management of the legal affairs through Department of legal Affairs.
  - > legislative activities through the legislative Department.

➤ 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 principal legislation for the Central Govt.

### • The Securities and Exchange Board of India (SEBI).

- ⇒
- is the regulatory body.
  - for ~~securities~~ securities and commodity market in India.
  - 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.

### • Reserve Bank of India. (RBI).

- ⇒
- 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, Govt. 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.
- Bhartiya Reserve Bank Mudran (BRBNM) Note.

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 Corporation of India as one of its specialised divisions to regulate the payment and settlement systems in India.
- Deposit Insurance and Credit Guarantee Corporation was established by RBI as one of its specialised divisions for the purpose of providing insurance of deposits and guaranteeing of credit facilities to all Indian banks.

- Insolvency and Bankruptcy Board of India (IBBI).
- ⇒ • is the regulator for overseeing insolvency proceedings and entities like Insolvency Professional Agencies (IPA), Insolvency Professional (IP) and Information Utilities (IU) in India.
- It was established on 1 October 2016 and given statutory powers through the insolvency and Bankruptcy Code, which was passed by Lok Sabha on 5<sup>th</sup> May 2016.
- It covers Individuals, Companies, limited liability, Partnerships and Partnership firms. The new code will speed up the resolution process for stressed assets in the country.
- It attempts to simplify the process of insolvency and bankruptcy proceedings.
- It handles the cases using two tribunals like NCLT (National Company Law Tribunal) and Debt Recovery Tribunal.

## • Functions of Judiciary System of India.

- Regulation of the interpretation of the Acts and Codes.

- Dispute Resolution between Citizens or between Citizens and the Govt.
- Promotion of fairness among the Citizens of the land.
- Hierarchy of Courts :-

- (i) Supreme Court
- (ii) High Court
- (iii) District Court

- Supreme Court :-

- ⇒
- apex body of the judiciary.
  - Chief Justice of India is the highest authority.
  - Principal bench of the Supreme Court consists of 7 members including the Chief Justice of India.
  - Presently, the number has increased to 34 including the Chief Justice of India due to the rise in the number of cases and workload.
  - An individual can seek relief in the Supreme Court by filing a writ petition.

## • High Court :-

- ⇒
- Highest Court of appeal in each State and union territory.
  - There must be a High Court in each State.
  - It has appellent, original jurisdiction, and Supervisory jurisdiction.
  - An Individual can seek remedies against violation of fundamental rights in High Court by filing a writ.

## • Which is the oldest High Court in India?

⇒ The oldest high court in the Country is the Calcutta High Court, established on 2nd July, 1862.

## • District Court :-

- ⇒
- Below the High Courts.
  - The Courts of District Judge deal with Civil law matters.
  - Civil Judge can try suits valuing not more than Rupees 2 Crore.
  - 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.

### • Metropolitan Courts :-

- ⇒ • Established in metropolitan cities in consultation with the High Court where the population is 10 lakh or more.
- Chief Metropolitan Magistrate has powers as Chief Judicial Magistrate.
- Metropolitan Magistrate has powers as the Court of a Magistrate of the first class.