

# BUSINESS LAW

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2018 WEDNESDAY JANUARY

# 03

## INDIAN REGULATORY FRAMEWORK...

'Code of Hammurabi': Oldest law (Written)  
 Rule of King Hammurabi : 1792 BC to 1758 BC

### What is law :-

A set of obligation and duties imposed by government for securing welfare and providing justice.

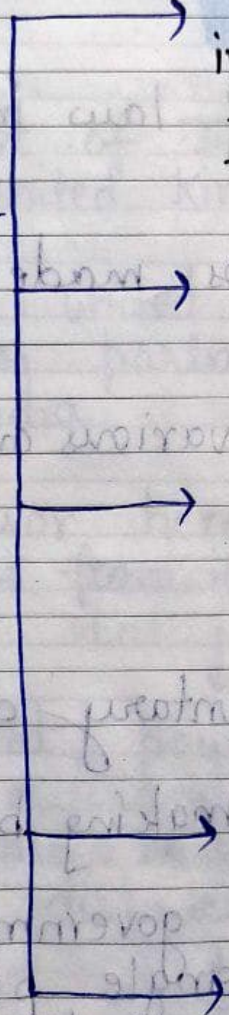
Its purpose is to maintain order & protect individual rights.

Laws can originate from different sources such as statutes, regulations, common laws or constitutional provisions.

Also include criminal and civil matters.

Enforced by govt. authorities through legal systems like courts and law enforcement agencies.

Law





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In short :-

Law is a Rule (Or set of rule) which is made by Govt / Legal authority.

जो है किसी Govt / Legal authority से बना है।

## SOURCES OF LAW :-

- The main sources of law in India are

Sources [ → the constitution ✓  
 → the statutes or laws made [by parliament ✓  
 State Assemblies - ✓  
 Made by [ → Precedents ✓  
 → Judicial Decisions of various courts ✓  
 → Customs & usages ✓

Remember

India is a → Parliamentary democracy ✓

Parliament → law-making body ✓

[ Unitary → A kind of government system in which a single power which is known as the central govt, controls the whole government ✓



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Federal govt : It is a system of govt. that decides the powers between a large central govt. and the local and regional govt. were established by the constitution.

The Govt. of India Act 1935 is passed by (United Kingdom parliament)

And the united kingdom is usually a precursor parliament for constitution of India

Precursor here means something that develops from it or is influenced by it



After that powers distributed between Centre and state to provide eligible results and not having disputes...



Then in 1937, federal court was established.

It had jurisdiction of appellate, original, advisory.



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Let's understand the terms :-

1. Appellate Jurisdiction: Refers to the power of the court to hear appeals from lower courts.

2. Original Jurisdiction: Hears cases from beginning.

Acc to Article 131, Superiority is that India is federal system, under this center or state is divided into different parts.

so if Centre v/s state or state v/s state has some disagreement issues, then

07 Acc to Article 131 (A) supreme court has original jurisdiction in govt. of India and one or more state.

Exception -> विवाद का निराकरण के लिए कानून बनाने का अधिकार नहीं है।



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### 3. Advisory Jurisdiction :

Supreme court has the power to give advice and opinion in two matters

1. If the question is related to public importance but will be of law.

2. If there is any dispute that arises out of preconstitution agreements, instruments etc.

### 4. Writ Jurisdiction :

Supreme court has the power to issue writs for the enforcement of fundamental rights of its citizen.

Writs : A legal document issued by the court that orders a person or entity to perform a specific act or to cease performing a specific action or deed.



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★ • Constitution of India, 1950 is the foremost law.

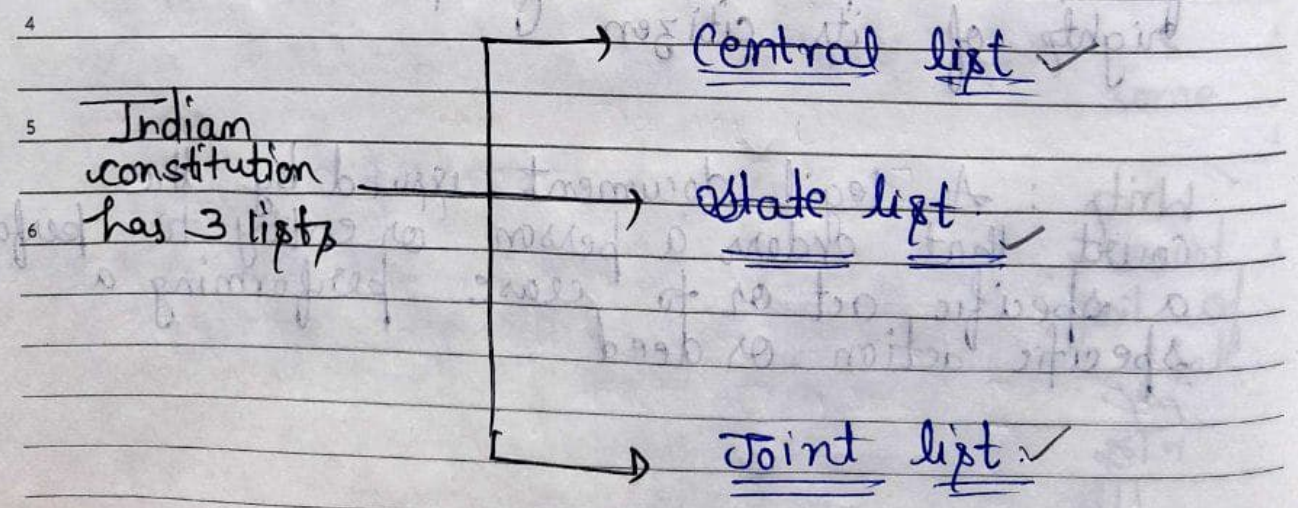
• It deals with framework within our democratic system works.

★ Laws are made for the people, by the people.

• The Constitution provides certain fundamental rights of citizens.

• It brings down duties of both govt. (Central as well as state) govt.

★ The laws in India are interconnected with each other forming a hybrid legal system.





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## PROCESS OF MAKING A LAW

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



Then this law is passed in lok sabha ✓



Then it has to be passed in Rajya Sabha.



Then it has to obtain the assent of the president of India.



Then the law will be notified by the govt. in the publication called "official Gazette of India".



Then the law will become applicable ✓



Once it is notified and effective, it is called an [Act of parliament.]



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## Types of laws in the Indian Legal System:

- Criminal law
- Civil law
- Common law
- Principles of natural justice

### ★ 1. Criminal law :-

→ Concerned with laws pertaining to violations of law or public wrongs and punishments of the same.

→ Governed under Indian Penal code 1860, and the code of Criminal Procedure, 1973

Indian Penal code: Defines crime, its nature and punishment. [1860]

Code of criminal procedure: Defines exhaustive procedures for executing the punishments of the crimes. [1973]

for eg: Murder, rape, assault, fraud etc.

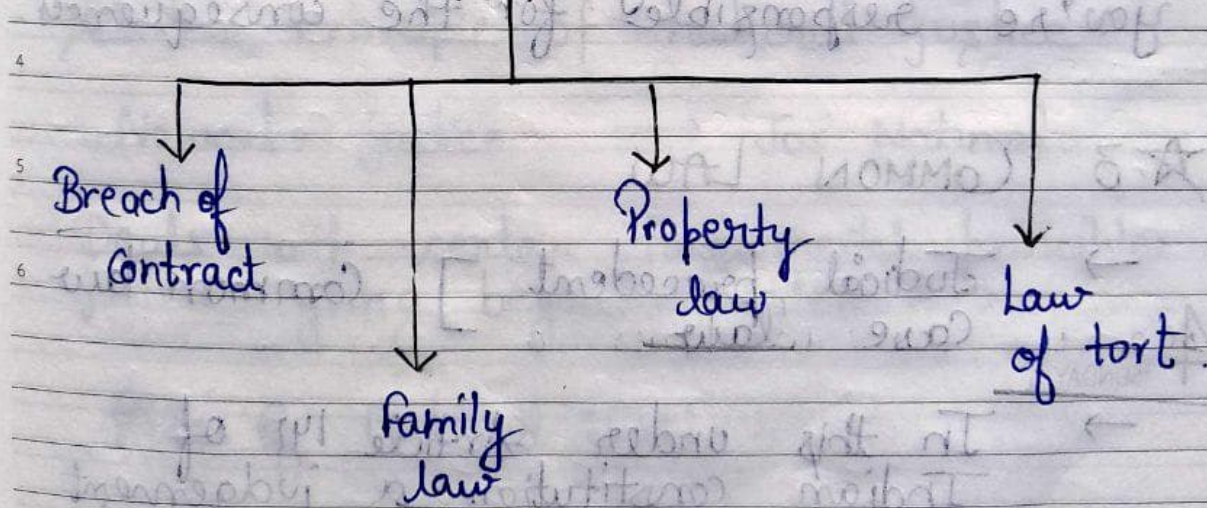


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## ★ 2. Civil law ÷

- Deals with the matters of disputes between individuals or organisations.
- Enforces the violation of certain rights and obligation through the institution of a civil suit.
- focuses on dispute resolution rather than punishment.
- Governed by code of Civil procedure (1908)

### → Classification



1. **Breach of contract**: It occurs when one party fails to fulfill the terms and obligations specified in a contractual agreement.



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## 2. Family law :

Family law deals with legal issues within families such as marriage, divorce and child custody.

## 3. Property law :

Property law governs ownership and dealings with real estate and personal belongings.

## 4. Law of tort :

Tort law : When you harm someone, you're responsible for the consequences.

## ★ 3 COMMON LAW

→ Judicial precedent ] Common law  
Case law

14 SUNDAY

→ In this under (Article 141) of Indian constitution a judgement delivered by the supreme court will be binding upon the courts within the territory of India.



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→ Principle that supports common law:-

9 Doctrine of Stare decisis → Latin phrase → Means "to stand by what, which is decided"

- 10 • 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 or "on all four legs" with the earlier decision.

11 ★ 4. Principle of natural justice :-

12 Natural justice → Jus Natural.

1 Deals with certain fundamental principles of justice going beyond written law.

2 Rules of Natural Justice :-

1. Nemo Jurex in causa sua: "No one should be made a judge in his own cause, and it is a rule against prejudice."



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2. Audi alteram partem → hear the other party or give the other party a fair hearing

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

### \* ENFORCING THE LAW :-

After a law is passed in the parliament

↓  
Somebody should monitor the law (i.e. the job of the executive)

↓  
Then law is checked —→ State law  
Central law

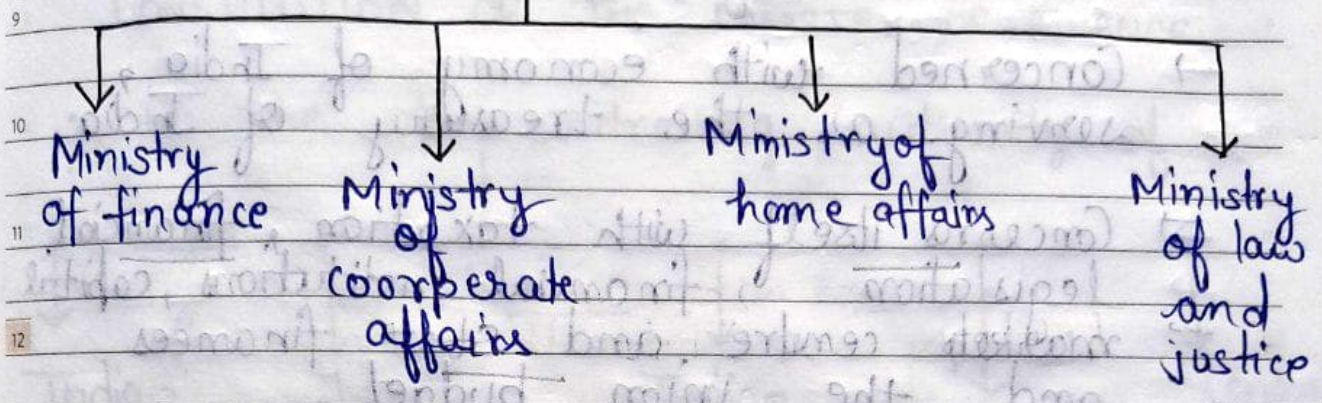
↓  
Depending on whether a law is state law or central law, central or state govt. will be the enforcing authority.

↓  
For this functions or partial purpose govt. fr. are followed



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# Examples of some popular ministries



☆☆☆

A ministry is composed of employed officials known as civil servants.

Politically accountable through a minister.

Major ministries are handled by Cabinet Ministers

who sits in union council of ministers

He is typically supported by a team of junior ministers called [Ministers of state]



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## 1. The Ministry of Finance :-

→ Concerned with economy of India, serving as the treasury of India.

→ Concerns itself with taxation, financial legislation, financial institutions, capital markets, central and state finances and the union budget.

→ This ministry prefers to hold the portfolio of finance minister.

→ Finance ministry presents the 'Union budget'.

Remember :-

✓ Shri Morarji Desai [between 1962 & 1969]  
(finance minister)

↓  
Presented 10 union budgets making it to the highest.

Next on list is

Shri P Chidambaram : 9 ✓

Shri Pranab Mukherjee : 8 ✓

Shri Yashwant Sinha : 8 ✓

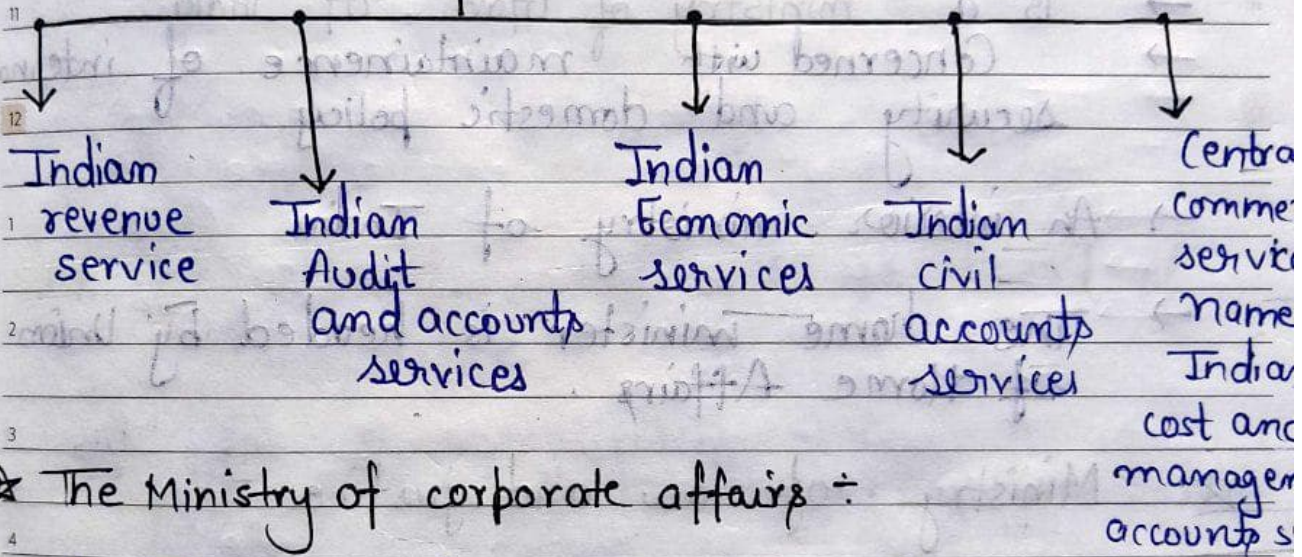


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Shri Manmohan Singh : 6

## CONSTITUTION OF THE MINISTRY OF FINANCE

is the apex controlling authority of



★ The Ministry of corporate affairs :-

→ Is an Indian Govt. Ministry

- Concerned with
- Companies Act 2013 ✓
  - Companies Act 1956 ✓
  - Limited liability partnerships 2008 ✓
  - Insolvency and bankruptcy code 2016 ✓

→ Run by civil servants of ICLS cadre.

ICLS → Indian corporate law service :-



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→ The highest post, Director General of corporate affairs is fixed at Apex Scale for ICLS.

★ Ministry of home affairs.

→ is a "ministry of Govt. of India".

→ Concerned with maintenance of internal security and domestic policy.

→ An interior ministry of India.

→ The home minister is headed by Union of Home Affairs.

★ Ministry of law and justice :-

→ Cabinet Ministry

★ It deals with

→ Management of legal affairs

Through

↓  
legislative department.

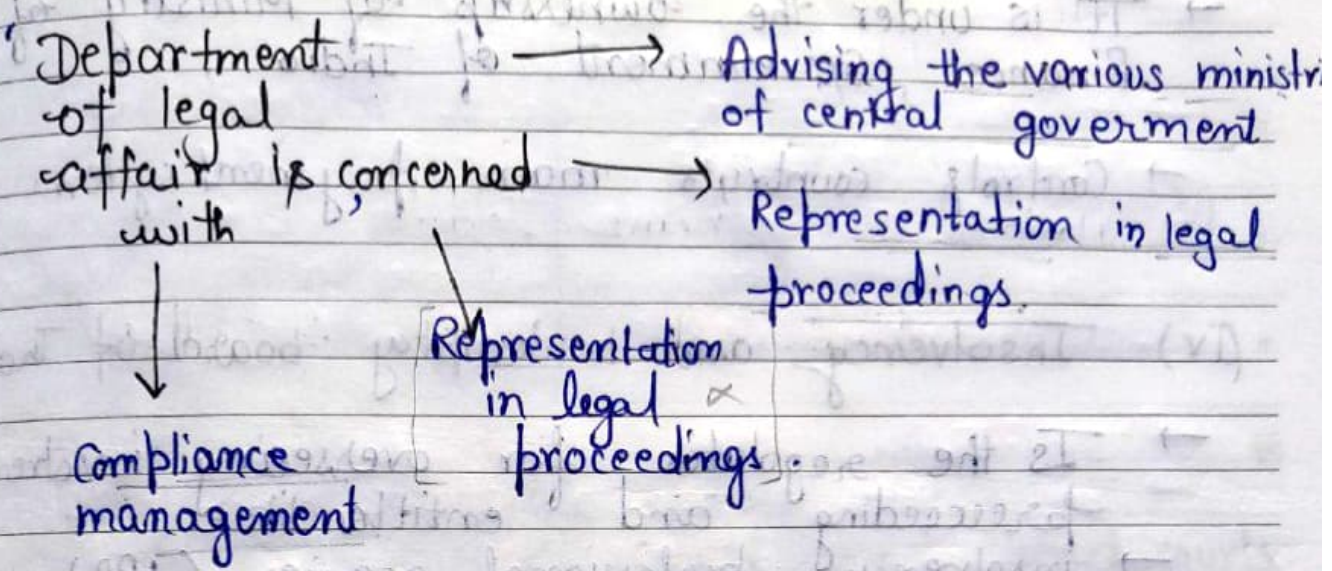
→ legislative activities through the dept. of legal affairs.

→ Administration of justice in India through Department of Justice.



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ii) The securities and exchange board of India (SEBI)

- Is a regulatory body for securities and commodity market in India.
- Under the ownership of Ministry of Finance.
- Established on 12 April, 1988
- Given statutory powers on 30 Jan 1992 under SEBI Act, 1992

(iii) Reserve Bank of India...

- India's central Bank (other name)
- Responsible for Indian Banking system.



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→ It is under the ownership of Ministry of Finance, Government of India.

→ Controls country's main payment systems

(iv) Insolvency and bankruptcy board of India:

→ Is the regulator for overseeing insolvency proceedings and entities like

→ insolvency professional agencies (IPA)

→ Insolvency professionals (IP)

→ Information utilities (IU) in India

→ It was established on 1 Oct, 2016

→ Given statutory powers through Insolvency or Bankruptcy code which was passed on 5<sup>th</sup> May 2016.

Handles the cases using

NCLT ✓

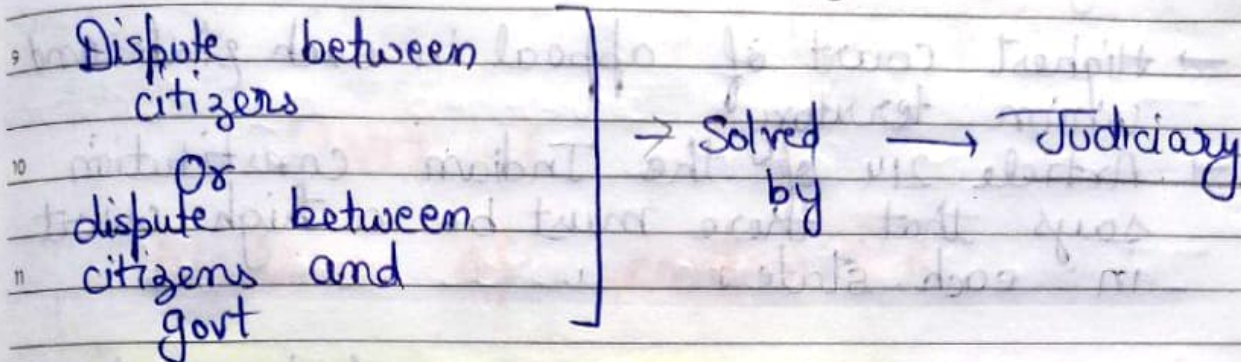
(National company law tribunal)

Debt recovery tribunal.



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## Structure of Indian judicial system



Top → Supreme court followed by High court and district courts.

### ① Supreme court :

- Apex body of the judiciary
- Established on 26<sup>th</sup> January, 1950
- Highest authority appointed under Article 126 as Chief Justice of India.
- An individual can seek relief in the Supreme court by filing writ petition under Article 32.

Writ petition : A formal letter/order issued by a judicial authority who possesses the authority to do so.



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2 → High court :

→ Highest court of appeal in each state and union territory.

→ Article 214 of the Indian constitution says that there must be a high court in each state.

→ In India there are 25 high courts  
→ Six states share a single high court.

→ The high court has appellate, original jurisdiction, and supervisory jurisdiction.

3 → District court -

→ Below the high courts  
→ Delegate and deals with civil law.

∴ Courts of District judge

→ The courts of sessions deals with criminal matters.

4 → Metropolitan courts :

→ Established in metropolitan (countries) cities

→ With consultation of high court where population is ten lakh or more.

→ Chief Metropolitan magistrate : Chief Judicial Magistrate

→ Metropolitan magistrate - Court of a magistrate of first class