

LAW OF BANKING



Introduction

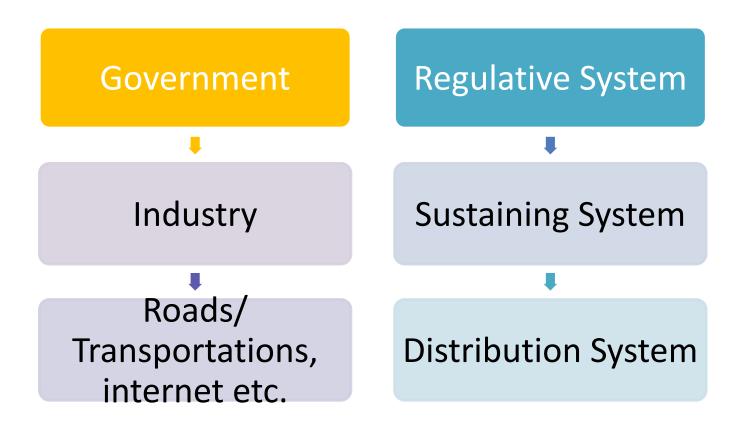
- "The evolution of modern banking system coincides with the evolution of money " Mike Thorton
- Difference between money and currency
 - Money an umbrella term measure, medium, standard and store
 - Fiat currency



Relevance of "Evolution of Banking"

- "If we are seeking to understand the functioning of contemporary institutions, it is necessary to look at their origins and the often accidental and contingent forces that brought them into being" Francis Fukuyama
- Herbert Spencer Darwin's Theory of Evolution
 - Society was like a living organism in that will evolve and change over time







- \circ World
- \circ England
- \circ India

Evolution of Banking Law

EnglandIndia



• World/ England

- Written records of Banking ancient mesopotamia, Egypt, Rome, India (18th century)
- Bank comes from latin word <u>Bancus/ Banque -</u> <u>Bench</u>
 - Jews of Lombardy broken bench on bankruptcy
 - Macleod German word joint stock fund
- 2000 BC Babylonians used temples as Banks
- Emergence of Merchant Banks and Knights Templar
- Disruption of Religion led to the destruction of public sense of security of depositing money in Temple which eventually led to financial makeshifts
- Prof Ramchandra Rao "....would trace history of banking in Europe from Middle Ages"



• <u>World/ England</u>

- Story of Goldsmith Medieval Europe
 - Use of Gold becomes mainstream
 - Difficult to transact
 - People/ merchants want a place to keep their money secure, therefore they would approach private vaults of a goldsmith
 - Claim Cheques/ goldsmith notes as signed receipts against the large sums of money left which embodied an undertaking to return the money to the depositor or to the bearer on demand – led to two developments
 - 1. Early beginning of Issue & Deposit Banking
 - 2. Eventually goldsmith began with the Idea of lending with an interest



• <u>World/ England</u>

- Royal Abuse of Banking
 - Strength of banking institutions grew at the attention of Monarchs
 - Rulers would borrow heavily from the private goldsmith banks to fund wars and support their lavish lifestyle. <u>India</u>
- Earliest payment instruments were coins punch marked/ silver or copper
- Ancient India India had loan deed forms <u>rnapatra</u> <u>or rnalekhya</u> –
 - Name of the creditor
 - Name of the debtor
 - Amount of loan
 - Interest
 - Condition and time of repayment



• India

- Mauryan Period <u>Adesha</u> an order of the banker desiring to pay money of a note to third person – definition of bills of exchange (in spirit)
- Mughal Period <u>Dastawez</u>
 - Payable on demand
 - Payable on stipulated time
- Most important <u>HUNDIS</u> (Sanskrit word Hund = to collect)
 - Oldest surviving form of credit instruments
 - Instruments used for collection of Debts
 - Bills of exchange (for trade transactions); borrow money; remittance instruments
 - Kinds-
 - 1. Darshani Hundi payable at sight
 - 2. <u>Miadi/ Muddati Hundi</u> Payable at specified period of time
 - 3. <u>Shah Jog Hundi</u> Payable by drawee



Evolution of Banking Law

- England
 - Lex Mercatoria Banking Law
 - Post Industrial revolution banking law was largely judge made law - Rulings of Lord Mansfield are considered most authoritative
 - <u>Tonnage Act</u> raise money for William III finance war – established Bank of England 1694 – gave monopoly for note issuance but circulation was limited.
 - <u>Peel's Act 1844</u> monopoly of issuing notes to Bank of England – gradual extinction of the right to other banks –this led to growth of deposit banking and Cheque currency.



Evolution of Banking Law

- <u>India</u>
 - Britishers
 - English Law applied to Europeans
 - Respective Law applied to Hindus/ Mohammadens
 - Law/ Usage of defendant when different parties
 - Post Independence.
 - Imperial Bank TO- SBI- TO- RBI
 - RBI in 1934
 - 1949 Banking Companies Act 1949 Comprehensive and formal structure of banking regulation in India
 - Bank Nationalisation (to be discussed in detail later)