

Indian Regulatory framework

Question & Answer

① Why is the awareness of law essential to CA?

=> CA should be aware of LAW for the following reasons :->

- * They need this knowledge as a member.
- * Awareness of law is essential since there are first level of contact on many legal matters
- * So that they can advice management & clients on legal matters @ threshold level.

* To later specialize in subjects like taxation since tax law is also a law.

* To have basic awareness of legal and regulatory framework of country.

② What is the purpose of a legal and regulatory framework and how has law evolved?

⇒ Purpose of legal regulatory framework :-> To provide set of uniform rules and regulations. These in turn govern the conduct of people interacting personally or at Business levels.

Evolution :-> * As man evolved from hunter and gatherer to agricultural and then industrial society

This complex social framework need law to guide right course of conduct, punishing and violations.

★ In Ancient law "Code of Hammurabi" is oldest written law.

King Hammurabi ruled Babylon from 1792 BC to 1758 BC and carried laws on stone slabs. Also placed those across the city for public to see them.

★ In 450 BC → 12 bronze tables in Rome has laws engraved on them called "12/twelve tables" this is the most detailed code. Its purpose was to protect public rights & give remedy for wrongs.

③ what is law and what are the various sources of law in India?

⇒ Defination of law :->

- * A set of obligations & Duties.
- * Imposed by government
- * To secure welfare and provide Justice to the Society.

Source of law in India

- * The Constitution since India is a parliamentary democracy.
- * Statutes or laws made by parliament & state assemblies.
- * Precedents or Judicial decisions of courts.
- * Established customs & usages.

In India, we elect our representatives to parliament & legislative assemblies of states. They make laws which is then applied throughout India.

④ Explain the constitution of India, 1950

⇒ Constitution of India, 1950 :->

① It is a foremost law which deals with a framework within which our democratic system works and our laws are made for the people, By the People.

* It provides for and protect fundamental rights of citizen.

* Pt also lays down fundamental duties, power of government.

* Indian law is interconnected and forms of hybrid legal system.

(b) law making power is divided b/w CG and various SG's via 3 lists

* Central list

* State list

* Joint list

(c) Prior to this,

* U.K. Parliament has passed the Gov. of India Act 1935. This is precursor of Constitution of India.

* It defined the characteristics of govt. from unitary to federal.

★ To avoid disputes, powers were distributed between central & State govt.

① In 1937, federal court was established which had the Jurisdiction of Appellate, original and advisory. Their power extended as below :->

★ Appellate :-> civil & criminal case.

★ Advisory Jurisdiction :-> Advice govt.
general in public opinion matters.

★ This court operated for 12 years and heard roughly 157 cases.

★ Now federal court is replaced by Supreme Court of India.

⑤ Explain the three list within the Indian Constitution.

⇒ The Constitution of India has 3 lists. This was done to ensure that the law making power is divided between Central & State governments. Depending on list in which a matter falls. It will become the subject for that respective govt.

The Three list are :->

- * Central list
- * State list
- * Joint list

for Example :->

* Income tax is a central subject
So far that we have 1 Income
tax law throughout India,
By central govt. to ministry of
finance.

* Stamp duty governing laws
falls under Both central &
state government matters.

⑥ What is the detailed process of
making laws in India?

=> The detailed process of making law
in India :->

* A bill :-> when law is merely
proposed in parliament.

* Discussion and debates happen and
then its passed in Lok Sabha

* Thereafter its passed in rajya Sabha

* Assent of president has to be finally given.

* Govt. finally notifies in the publication called official Gazette of India and law becomes applicable from date mentioned in notification
→ called effective date.

* finally the bill has become an Act.

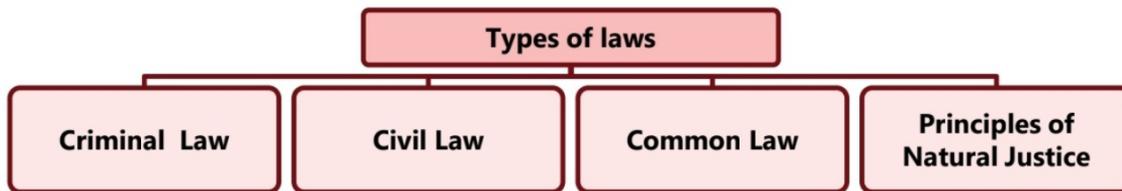
⑦ Explain the types of law in the legal system of India.

⇒ The four types of law in the Indian legal system are: →

PLS refer book pg 1.5 try to learn all highlighted part and write in a mix format of points & long sentences

Types of laws in the Indian Legal System

The laws in the Indian legal system could be broadly classified as follows:



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, 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 landlord 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 Decisis* is the principle supporting common law. It is a Latin phrase that 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 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 judex in causa sua* (Literally meaning "No one should be made a judge in his own cause, and it's a Rule against Prejudice), *audi alteram partem* (Literally 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.

(8) After a law is passed in parliament, what is the enforcing authority of law in India?

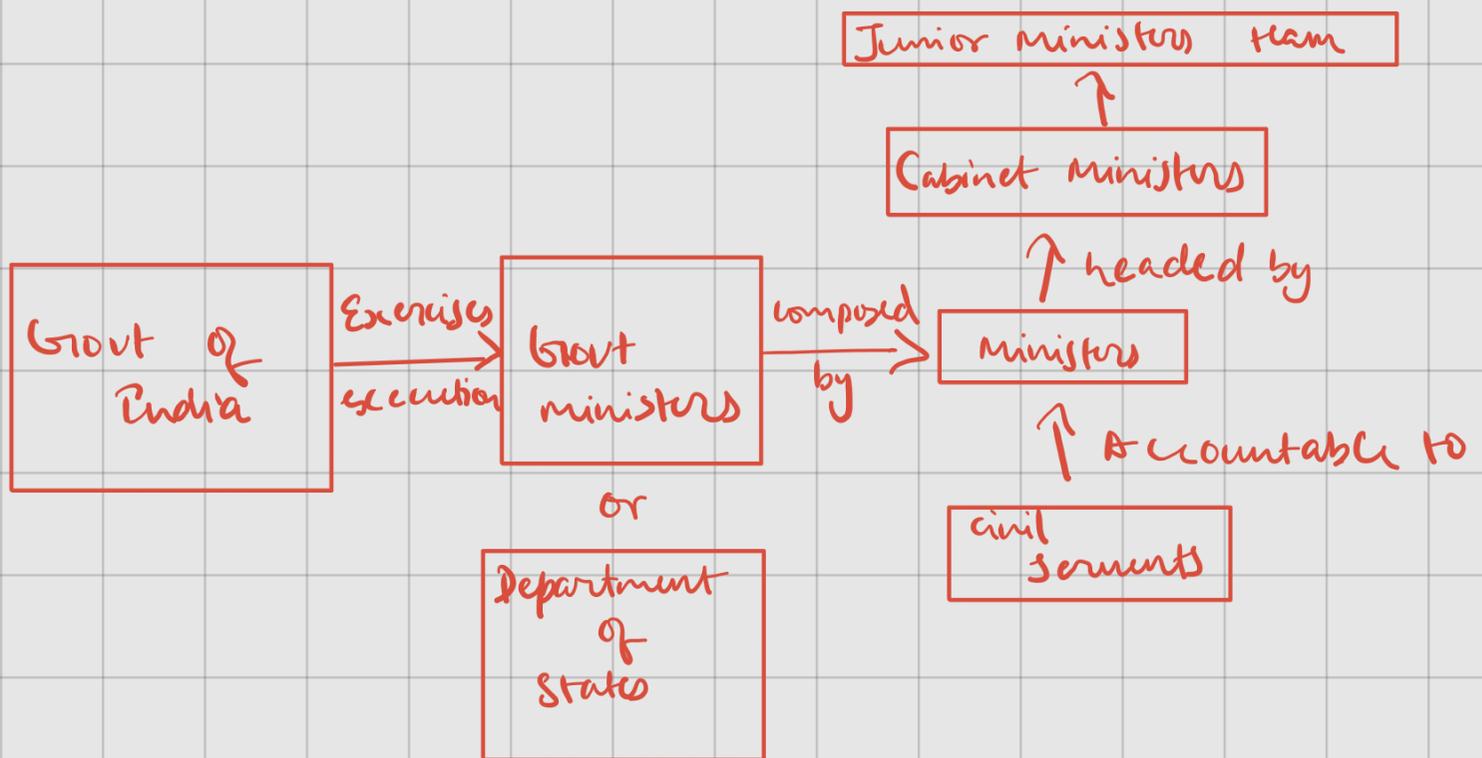
=> Enforcement of law :->

* Once law is passed in parliament it has to be monitored to know whether it's being followed or not. This is done by an executive.

* The enforcing authority will fall under central or state law depends on whether the law is central law or state law.

* Various ministers like minister of finance, minister of cooperative affairs, MHA, MOCJ etc are allotted this work. They have a number of IAS and other services officials.

The structure is somewhat like this:



Example:

ministry of finance

↓ Through

Central Board of Direct taxes

[Department of]
revenue]

↓ Implementing

Income tax
Act

↓ Administers

IRS officers