



# INDIAN REGULATORY FRAMEWORK

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## CHAPTER

# INDIAN REGULATORY FRAMEWORK

### Q.1 What is law and what are the sources of Law? What is the procedure for making a law?

**Ans.** Law refers to the set of rules, regulations and principles which intend to regulate human behaviour and conduct. Law is a set of obligations and duties imposed by the government for securing welfare and providing justice to society. India's legal system has evolved over centuries from the religious prescriptions to the current framework that vividly reflects the socio-economic, the political and the cultural aspects of our vast and diversified country. Law is a broad term which encapsulates within its fold Acts, Statutes, Rules, Regulations, Orders, Ordinances, Decrees/Orders of the Court, Rules of Jurisprudence etc.

#### Sources of Law:

The main sources of law in India are the Constitution of India, Legislation – *i.e.* the statutes or laws made by Parliament and State legislative assemblies, Judicial Precedents /Decisions of various Courts, established Customs & Usages/ Customary Law & the natural principles of Fairness and Justice & Equity.

The people who drafted the Constitution provided for the division of the law-making power between the Central Government and the State Governments. The Indian Constitution provides for three lists namely- Central List, State List and Joint List. Further depending on the list in which it figures, a matter would become the subject for Central law or a State law or may be dealt with by both the Central / State Government if it is a part of Joint list.

#### The Process of making the Law:

The Law- making process in India goes through distinct stages of a bill becoming an act after being approved by both the houses of the parliament and thereafter receiving the assent of the President.

A Bill is a draft statute / a proposed legislation. On the identification of the need for a new legislation or an amendment to an existing legislation the concerned ministry drafts the text/language of the proposed law. After the Cabinet approves the same, the bill is introduced in the Parliament for the purpose of approval in both the Houses of the Parliament. Once a bill is passed in both the Houses of

the Parliament then it is presented to the President of India for her/his assent. After the President gives her/his assent the bill becomes an Act and is notified in the Official Gazette as an Act.

### **Q.2 What are the various types of Laws under the Indian Legal System?**

**Ans.** The Indian Legal System primarily consists of –

- (i) **Criminal Law:** Criminal Law is governed under the provisions of the Indian Penal Code, 1860 and the Criminal Procedure Code, 1973. Criminal law is concerned with the laws related to violations and offences against the society as a whole or public wrongs and encompasses crimes such as murder, theft, rape, assault and other acts which are detrimental to public order and safety. The Indian Penal Code, 1860, defines the crime, its nature, types and punishments whereas the Criminal Procedure Code, 1973, defines the comprehensive procedure for executing the punishments of the crimes.
- (ii) **Civil Law:** Civil Law deals with disputes and rights / liabilities arising out of the relationships between parties, whether individuals or entities. It encompasses within its fold matters relating to breach of contract, property matters, family law, torts etc. Thus, civil law does not involve criminal matters focuses more on dispute resolution and compensation 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.
- (iii) **Common Law:** Common Law or case law is derived from judicial decisions or precedent set by the Courts/Tribunals. Thus, common law is based on the precedents set in the prior rulings of the courts and is made applicable to the future trials based on similar facts and circumstances of the case. A judgment delivered by the Supreme Court shall be binding upon the courts within the territory of India. The doctrine of '*Stare Decisis*' supports the common law system which means "to stand by that which is decided", *i.e.* the courts are under an obligation to follow the same judgment established by previous decisions while giving a ruling in respect of current cases of similar nature.
- (iv) **Principles of Natural Justice:** The principles of natural justice is related to Common Law, sensibility, reasonability and fairness. Natural justice, often known as '*Jus Natural*' deals with 2 fundamental principles - '*Nemo judex in causa sua*' *i.e.* "No one should be made a judge in his own cause" *i.e.* a Rule against Prejudice/Bias, '*Audi alteram partem*'-meaning "hear the other party *i.e.* the rule of fair hearing, and reasoned decision are the rules of Natural Justice. A judgment can override or alter a common law, but it cannot override or change the statute.



### Q.3 What is the law enforcing framework under Indian Legal System?

**Ans.** Once a law is passed in Parliament, the Executive is responsible for implementing and enforcing the same effectively. The Central Government is responsible for enforcing the Central Laws whereas the State Government is responsible for enforcing the State Laws. The task of enforcement is distributed between multiple ministries like: the Ministry of Finance, the Ministry of Corporate Affairs, the Ministry of Home Affairs, the Ministry of Law and Justice and others. These Ministries are headed by a Cabinet minister, who is usually assisted by junior ministers called Ministers of State along with several employees, officers of Indian administrative and other services.

Some of the major Ministries responsible for law enforcement are:

- (1) **Ministry of Finance:** The Ministry of Finance (*Vitta Mantralaya*) is a Ministry within the Government of India concerned with the economy of India, serving as the Treasury of India. It is primarily concerned with taxation, financial legislation, financial institutions, capital markets, centre and state finances, and the Union Budget.

Ministry of Finance is the apex controlling authority of four Central Civil Services, namely:

Indian Revenue Service, Indian Audit and Accounts Service, Indian Economic Service and Indian Civil Accounts Service. It is also the apex controlling authority of one of the central commerce services namely Indian Cost and Management Accounts Service.

Departments under the Ministry of Finance are :

- ◆ Department of Public Enterprises
- ◆ Department of Investment and Public Asset Management
- ◆ Department of Financial Services
- ◆ Department of Revenue
- ◆ Department of Economic Affairs
- ◆ Department of Expenditure

- (2) **Ministry of Corporate Affairs:** It is an Indian Government Ministry that is 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.

It is responsible mainly for the regulation of Indian enterprises in the industrial and services sector. The Ministry is mostly run by civil servants of the ICLS cadre, who are elected through the Civil Services Examination conducted by UPSC. The highest post, Director General of Corporate Affairs (DGCoA), is fixed at Apex Scale for the ICLS.

- (3) **Ministry of Home Affairs (Grha Mantralaya):** It is a ministry of the Government of India which is mainly responsible for the maintenance of internal security and domestic policy.

The Home Ministry is headed by Union Minister of Home Affairs. Departments of Ministry of Home Affairs consists of:

- ◆ Department of Jammu, Kashmir and Ladakh Affairs
- ◆ Department of States
- ◆ Department of Border Management
- ◆ Department of Home
- ◆ Department of Internal Security
- ◆ Department of Official Language

(4) **Ministry of Law and Justice:** It is a Cabinet Ministry in the Government of India which deals with the management of the legal affairs, legislative activities and administration of justice. It has three departments:

- ◆ The Department of Legal Affairs which is concerned with advising Ministries of the Central Government,
- ◆ The Legislative Department is concerned with drafting of principal legislation for the Central Government, and
- ◆ The Department of Justice is responsible for performance of various administrative functions with relation to appointment of judges at various courts, their terms of appointment and other related areas.
- ◆ Other entities entrusted with enforcement of framework with respect to business/commerce are—

**SEBI:** SEBI is the apex body, for regulation of securities and commodity market in India. Established on 12 April, 1988, it is an executive body operating under the ownership of Ministry of Finance and was given statutory powers on 30 January, 1992 through the SEBI Act, 1992.

**RBI:** RBI is the Central Bank of India and is the regulatory body responsible for regulation of the Indian banking system. It falls under the ownership of Ministry of Finance. It is responsible for the control, issue and maintaining supply of the Indian rupee and also management of the country's main payment systems and works to promote its economic development. Bharatiya Reserve Bank Note Mudran (BRBNM) 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). National Payments Corporation of India, established by RBI is one of its specialised division to regulate the payment and settlement systems in India. Deposit Insurance and Credit Guarantee Corporation was established by RBI as one of its specialised division for the purpose of providing insurance of deposits and guaranteeing of credit facilities to all Indian banks.

**IBBI:** Established on 1<sup>st</sup> October 2016, IBBI is the regulator for overseeing insolvency proceedings and entities like Insolvency Professional Agencies (IPA), Insolvency Professionals (IP) and Information Utilities (IU) in India. It was given statutory powers through the Insolvency and Bankruptcy Code, which was passed by Lok Sabha on 5th May 2016 and it covers Individuals, Companies, Limited Liability, Partnerships and Partnership firms. The new code intends to



speed up the resolution process for stressed assets in the country, to simplify the process of insolvency and bankruptcy proceedings. It handles the cases through two tribunals like NCLT (National company law tribunal) and Debt recovery Tribunal.

#### **Q.4 What is the function and hierarchy of Judiciary in India?**

**Ans.** Disputes between citizens or between citizens and the Government, are resolved by the judiciary.

The functions of judiciary system of India are to regulate the interpretation of the Acts and Codes, resolution of disputes and to promote fairness among the citizens of the land.

In the hierarchy of courts, the Supreme Court is at the top, followed by the High Courts and District Courts. Decisions of a High Court are binding in the respective state but are only persuasive in other states. Decisions of the Supreme Court are binding on all High Courts and is regarded as the final word on the matter under consideration:

- (i) **Supreme Court:** The Supreme Court, established on 26<sup>th</sup> January, 1950, is the apex body of the judiciary. The Chief Justice of India is the highest authority appointed under the Constitution. The principal bench of the Supreme Court consists of seven members including the Chief Justice of India. Presently, the number has increased to 34 including the Chief Justice of India. An individual can seek relief in the Supreme Court by filing a writ petition under Article 32.
- (ii) **High Court:** The highest court of appeal in each State and Union Territory is the High Court. The Indian Constitution provides for the establishment of a High Court in each State. The High Court has appellate, original jurisdiction, and limited supervisory jurisdiction. In India, there are twenty-five High Courts, one for each State and Union territory, and one for each State and Union territory. Six states share a single High Court. An individual can seek remedies against violation of fundamental rights in High Court by filing a writ under Article 226.
- (iii) **District Court:** The District Courts lie below the High Courts in the judicial hierarchy. The Courts of District Judge deal with Civil law matters whereas the Courts of Sessions deals with Criminal matters. Jurisdiction means the power to control. 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.
- (iv) **Metropolitan courts:** Metropolitan courts are established in metropolitan cities in consultation with the High Court where the population is ten lakh or more. Chief Metropolitan Magistrate has powers as Chief Judicial Magistrate and Metropolitan Magistrate has powers as the Court of a Magistrate of the first class.



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