

CHAPTER 1

INDIAN REGULATORY FRAMEWORK

LEARNING OUTCOMES

After studying this Chapter, you will be able to understand:

- Meaning of Law and its sources
- Types of laws in the Indian Legal System
- Enforcement of Law
- Introduction of Major Regulatory Bodies such as Ministry of Finance, MCA, SEBI, RBI, IBBI and Ministry of Law and Justice.

Basics of Law

What is Law?	<ul style="list-style-type: none"> • Law is a set of obligations and duties • imposed by the government • For securing welfare and providing justice to society.
Why Study of Law is required in C.A	<ol style="list-style-type: none"> 1 We should possess knowledge of law so that we can advise our management and clients on legal matters 2 You may later wish to specialise in a subject called taxation. Remember tax laws are also laws 3 To govern the conduct of people interacting with each other in personal as well as business relationships. 4 to guide us on the right course of conduct as well as to identify violations and punish them 5 protect the rights of public and to provide remedy for wrongs
<p><i>A Chartered Accountant should be aware of law because (module)</i></p> <ol style="list-style-type: none"> <i>a. He has to be an expert in law</i> <i>b. He has to argue in High court and Supreme court</i> <i>c. He has to advice management and clients on legal matters at a basic or threshold level.</i> <i>d. None of the above.</i> 	
Source Of law	<p>The main sources of law in India are the</p> <ul style="list-style-type: none"> ✓ Constitution, ✓ the statutes or laws made by Parliament and State Assemblies, ✓ Precedents or the Judicial Decisions of various Courts ✓ Customs and Usages.
<p><i>Which of the following is not a MAIN source of law in India? (module)</i></p> <ol style="list-style-type: none"> <i>a. Legal text books</i> <i>b. The Parliament</i> 	

c. State Assemblies

d. The Constitution

2. The Constitution of India was adopted in (module)

a. 1947

b. 1949

c. 1950

d. 1951

PROCESS OF MAKING LAWS

- 1 When a law is proposed in parliament it is called a **Bill**.
- 2 After discussion and debate, the law is **passed in Lok Sabha**.
- 3 Thereafter, it has to be **passed in Rajya Sabha**.
- 4 It then has to obtain the **assent of the President** of India.
- 5 Finally, the law will be **notified** by the Government in the publication called the **Official Gazette** of India.
- 6 The law will become **applicable** from the **date mentioned in the notification** as the effective date.
- 7 Once it is notified and effective, it is called an **Act of Parliament**.

Note –

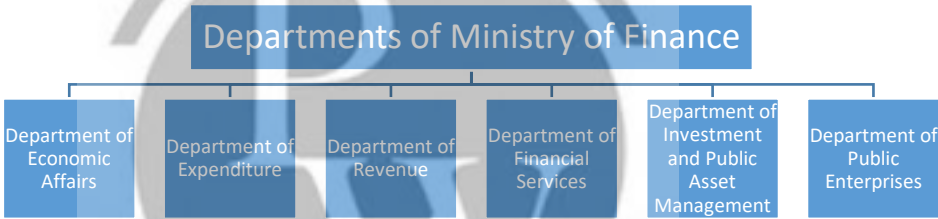
- ❖ The laws passed by parliament may apply throughout all or a portion of India, whereas the laws passed by state legislatures apply only within the borders of the states concerned.
- ❖ The people who wrote the Constitution decided to divide the law-making power between the Central Government and the various State Governments. So, the Indian Constitution has three lists Viz., Central List, State List and Joint List.
- ❖ Depending on the list in which it figures a matter would become the subject for Central law or a State law.
- ❖ For example, Income Tax is a Central subject. So, throughout India we have only one law for Income Tax which is implemented by the Central Government through the Ministry of Finance.
- ❖ We also have matters for which both Central as well as State Governments can pass laws. Levy of stamp duty is such an example. Both Central Government and State Government have laws governing Levy of stamp duty.

In India we follow the federal system of Government. This means that (module)

- a. All the power is with the President of India*
- b. Powers are distributed between Centre and States*
- c. All the power is with the Centre*
- d. There are no restrictions on the power of States.*

<p>Income Tax Act, 1961 is a part of the (module)</p> <ul style="list-style-type: none"> a. Central list b. State list c. Joint list d. None of the above <p>3. When a law is proposed in Parliament it is called (module)</p> <ul style="list-style-type: none"> a. Act b. Statute c. Bill d. Notification 	
Types Of laws	<pre> graph TD A[Types of laws] --> B[Criminal Law] A --> C[Civil Law] A --> D[Common Law] A --> E[Principles of Natural Justice] </pre>
Criminal Law	<ul style="list-style-type: none"> • 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.
<p>The law concerned with violation of the rule of law and punishment of the same is called - (module)</p> <ul style="list-style-type: none"> a. Family law b. Criminal law c. Civil law d. Property law 	
Civil Law	<ul style="list-style-type: none"> • 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.

	<ul style="list-style-type: none"> • 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.
<p>Which of the following is NOT an example of Civil law? (module)</p> <p>a. Breach of contract</p> <p>b. Non-delivery of goods</p> <p>c. Traffic offenses</p> <p>d. Non-payment of dues</p>	
<p>Common Law</p>	<ul style="list-style-type: none"> • 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 with the earlier decision.
<p>Principles of Natural Justice</p>	<ul style="list-style-type: none"> • 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
<p>Enforcing the Law</p>	<ul style="list-style-type: none"> • This is the job of the executive. • Depending on whether a law is a Central law or a State law the Central or State Government will be the enforcing authority. • For this purpose government functions are distributed to various ministries. • These Ministries are headed by a minister and run by officers of the Indian administrative and other services. • 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. • For example, the Income Tax Act is implemented and enforced by the Ministry of Finance through the Central Board for Direct Taxes coming under the Department of Revenue and is administered by the officers of the Indian Revenue Service.

<p>The Ministry of Finance</p>	<ul style="list-style-type: none"> • 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. • In particular, it concerns itself with taxation, financial legislation, financial institutions, capital markets, centre and state finances, and the Union Budget. • One of the important functions of the Finance Ministry is the presentation of the Union Budget. <p>Constitution of the Ministry of Finance-</p> <ul style="list-style-type: none"> • is the apex controlling authority • of <i>four</i> Central Civil Services, namely: <ul style="list-style-type: none"> ○ Indian Revenue Service ○ Indian Audit and Accounts Service ○ 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 Service. <p>Departments under the Ministry of Finance-</p>  <pre> graph TD A[Departments of Ministry of Finance] --> B[Department of Economic Affairs] A --> C[Department of Expenditure] A --> D[Department of Revenue] A --> E[Department of Financial Services] A --> F[Department of Investment and Public Asset Management] A --> G[Department of Public Enterprises] </pre>
<p>4. Which of the following is NOT a department of the Ministry of Finance? (module)</p> <ol style="list-style-type: none"> <i>Department of Economic Affairs</i> <i>Department of Expenditure</i> <i>Department of States</i> <i>Department of Revenue</i> 	
<p>Ministry of Corporate Affairs</p>	<ul style="list-style-type: none"> • 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 enterprises in the industrial and services sector. • The Ministry is mostly run by civil servants of the ICLS (Indian Corporate Law service cadre). • The highest post, Director General of Corporate Affairs (DGCoA), is fixed at Apex Scale for the ICLS.
<p>Ministry of Home Affairs (Gṛha Mantralaya)</p>	<ul style="list-style-type: none"> • 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.

	<pre> graph TD A[Departments of Ministry of Home Affairs] --> B[Department of Border] A --> C[Management Department of Internal Security] A --> D[Department of Jammu, Kashmir and Ladakh Affairs] A --> E[Department of Home] A --> F[Department of Official Language] A --> G[Department of States] </pre>
<p>Ministry of Law and Justice</p>	<ul style="list-style-type: none"> deals with the management of the legal affairs, through the Legislative Department legislative activities through the Department of Legal Affairs 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 Government. <pre> graph TD A[Departments of Ministry of Law and Justice] --> B[Department of Legal Affairs] A --> C[Legislative Department] A --> D[Department of Justice] </pre>
<p>The Securities and Exchange Board of India (SEBI)</p>	<ul style="list-style-type: none"> is the regulatory body for 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.
<p>Reserve Bank of India (RBI)</p>	<ul style="list-style-type: none"> 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, Government 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. 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). RBI established the National Payments Corporation of India as one of its specialised division to regulate the payment and settlement systems in India.

	<ul style="list-style-type: none"> • 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.
--	--

STRUCTURE OF THE INDIAN JUDICIAL SYSTEM

Functions	<p>When there is a dispute between citizens or between citizens and the Government, these disputes are resolved by the judiciary.</p> <p>The functions of judiciary system of India are:</p> <ul style="list-style-type: none"> • Regulation of the interpretation of the Acts and Codes, • Dispute Resolution, • Promotion of fairness among the citizens of the land.
hierarchy of courts	<p>(i) Supreme Court</p> <ul style="list-style-type: none"> ✓ The Supreme Court is the apex body of the judiciary. It was established on 26th January, 1950. ✓ The Chief Justice of India is the highest authority appointed under Article 126. ✓ 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 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 under Article 32. ✓ Decisions of the Supreme Court are binding on all High Courts under Article 141 of the Indian Constitution. ✓ In fact, a Supreme Court decision is the final word on the matter. ✓ <p>(ii) High Court</p> <ul style="list-style-type: none"> ✓ The highest court of appeal in each state and union territory is the High Court. ✓ Article 214 of the Indian Constitution states that there must be a High Court in each state. ✓ The High Court has appellant, original jurisdiction, and 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. ✓ Decisions of a High Court are binding in the respective state but are only persuasive in other states. <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p>Which is the oldest High Court in India?</p> <p>The oldest high court in the country is the Calcutta High Court, established on 2nd July, 1862.</p> </div>

	<p>(iii) District Court</p> <p>Below the High Courts are the District Courts. The Courts of District Judge deal with Civil law matters i.e. contractual disputes and claims for damages etc., The Courts of Sessions deals with Criminal matters.</p> <p>Under pecuniary jurisdiction, a civil judge can try suits valuing not more than Rupees two crore.</p> <p>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.</p> <p>(iv) Metropolitan courts</p> <p>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.</p>
<p>5. Courts get territorial limits based on (module)</p> <ul style="list-style-type: none">a. The local limits within which the party residesb. The local limits within which the property under dispute is locatedc. either a or bd. None of the above	