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Direct Theory Question

What is Law? IMPORTANT!

Law is a set of obligations and duties imposed by the government for securing welfare and providing justice to society. India's legal framework reflects the social, political, economic and cultural aspects of our vast and diversified country.

Process of making Law.



- 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, it has to be notified by the Government in the Official Gazette of India.
- 6) It is applicable from the date mentioned in the notification as the effective date.
- 7) Once it is notified and effective, it is called as an Act of Parliament.

Sources of Law

The main sources of Law in India are :

- 1) The Constitution
- 2) The Statutes or Laws made by Parliament and State Assemblies
- 3) The Precedents or Judicial Decisions of various Courts and
- 4) in some cases, established Customs and Usages.

The Elected representatives to the Parliament and Legislative Assemblies of various States make laws in the Parliament or in the State Assemblies.

The laws passed by parliament may apply throughout all or a portion of India, whereas the law passed by state legislature apply only within the borders of the states concerned.

The Govt of India is characterised from "unitary" to "federal". Powers were distributed between Centre and State to avoid any disputes. Federal Courts were established and had the jurisdiction of appellate, original and advisory. (Operated for 12 years and heard roughly 151 cases)
The Federal court was supplanted (replaced) by

India's apex court, The Supreme Court of India.

The constitution of India, 1950 is the ^{highest} foremost law that deals with the framework (model) within which our democratic system works, and our laws are made for the people and by the people.

The constitution also protects certain Fundamental Rights of citizens.

It also lays down fundamental powers and duties of Governments, both Central and State.

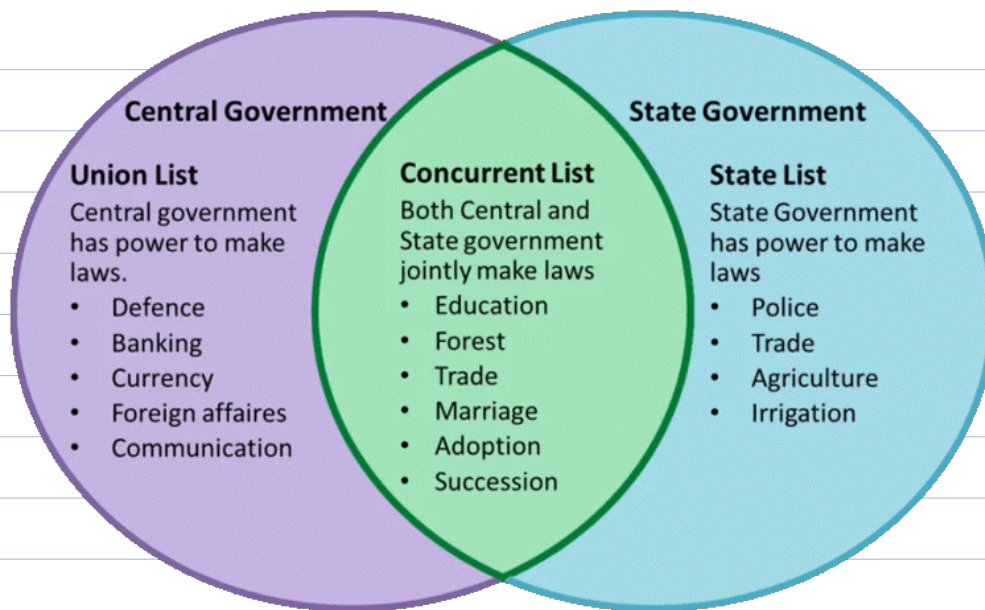
The laws in India are interconnected with each other forming a hybrid legal system.

The people who wrote the constitution decided to divide the law-making power between the Central Govt & the various State Govts.

So, the Indian Constitution has 3 lists -

- 1) Central List
- 2) State List
- 3) Joint List.

A matter would become the subject matter for Central law or a State law depending on the List.



Types of laws in the Indian Legal System

1. Criminal Law
2. Civil Law
3. Common Law
4. Principles of Natural Justice

1) Criminal Law

- Concerned with laws pertaining to violations of the rule of law or public wrongs and punishment of the same.
- Governed under the Indian Penal Code, 1860 and the Code of Criminal Procedure, 1973.
- IPC defines the crime, its nature, punishments whereas the CrCP defines exhaustive procedure for executing the punishments of the crimes.
eg. Murder, rape, assault, fraud

IPC ⇒ Bharatiya Nyaya Sanhita Bill, 2023
CrPC ⇒ Bharatiya Nagarik Suraksha Sanhita, 2023

2) Civil Law

- Matters of disputes between individuals or organisations are dealt with under Civil law.
- Enforces the violation of certain rights & obligations through civil suit.
- Primarily focus on dispute resolution rather than punishment.
- Administration of civil law are governed by the Code of Civil Procedure, 1908 (CPC)
- Further classified into Law of Contract, Family Law, Property Law, Law of Tort.

3) Common Law

- Judicial precedent or a case law is common law.
- Judgement by the Supreme Court will be binding upon the Courts in India. (Article 141)
- Doctrine of Stare Decisis is the principle supporting common law, means "to stand by that which is decided."
- It reinforces the obligation of courts to follow

The same principle or judgement. Provided by previous decisions if facts are similar or "on all four legs" with earlier decision.

↳ Principles of Natural Justice

- Often known as **Jus Natural**, deals with certain fundamental principles of justice going beyond written law.
- **Nemo iudex in causa sua** i.e. "No one should be made a judge in his own cause, and its a Rule against prejudice
- **Audi alteram partem** i.e. "hear the other party or give the other party a fair hearing.
- **Reasoned decision** are the rules of Natural Justice.
- **Judgement can override or alter a common law**, but it **cannot override or change the statute**.

Enforcing the Law

Once a law is passed by Parliament, its **enforceability** is the **responsibility of Executives**. Enforcement depends on whether its a **Central or State law**, and the relevant government becomes the **enforcing authority**.

For this purpose, Govt. functions are divided among various ministries. Some of the popular ministries are MoF, MCA etc.

These ministries are headed by Ministers and run by officers of Indian Administrative and other services.

A ministry is composed of employed officials, known as civil servants and is politically accountable through a minister.

Major ministries are headed by a Cabinet Minister and supported by junior ministers called the Ministers of State.

Ministries of Central Government

1. The Ministry of Finance

- Ministry within the Government of India concerned with the economy of India, serving as the Treasury of India.
- It concerns with taxation, financial legislation, financial institutions, capital markets, centre and state finances, and the Union Budget.
- As a CA, your work life will be impacted by this ministry and its proclamations.
- This Ministry is so important that many ministers have preferred to hold the portfolio of Finance Minister also.
- One of the important functions of the Finance Ministry is the

presentation of the Union Budget.

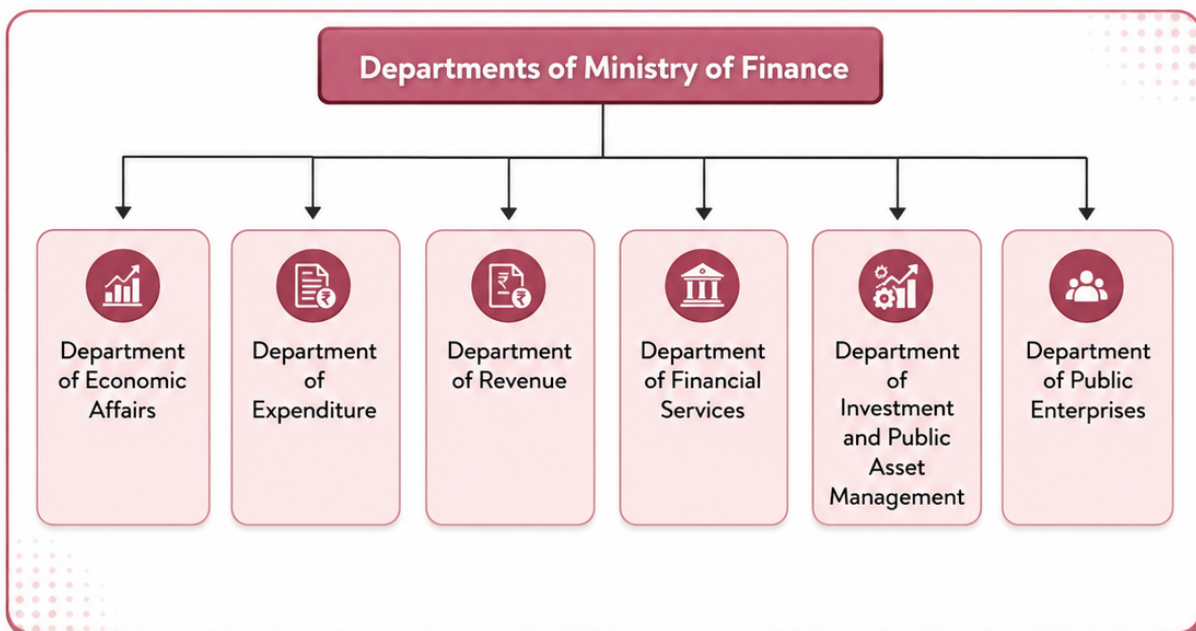
- This annual event is eagerly awaited by professionals and the common man as it provides for the rates of taxes and budget allocations for the ensuing year.

Constitution of the Ministry of Finance :

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.
- 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-



2. Ministry of Corporate Affairs (MCA)

(i) Ministry of Corporate Affairs (MCA)

Ministry of Corporate Affairs

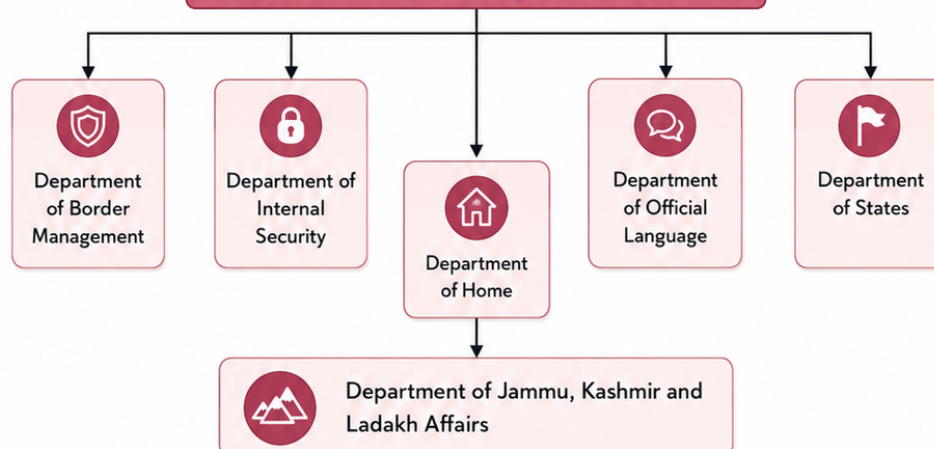
- is an Indian Government Ministry.
- primarily concerned with administration of the Companies Act 2013, the Companies Act 1956, the Limited Liability Partnership Act, 2008, and the Insolvency and Bankruptcy Code, 2016.
- responsible mainly for the regulation of Indian enterprises in the industrial and services sector.
- The Ministry is mostly run by civil servants of the ICLS cadre. #
- These officers are elected through the Civil Services Examination conducted by Union Public Service Commission. (UPSC)
- The highest post, Director General of Corporate Affairs (DGCoA), is fixed at Apex Scale for the ICLS.

Indian Corporate Law Service Group

3. Ministry of Home Affairs (Griha Mantralaya)

- is a ministry of the Government of India.
- 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.

Departments of Ministry of Home Affairs



4. Ministry of Law and Justice

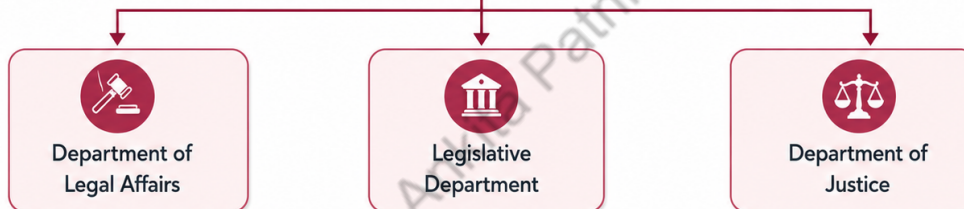


Ministry of Law and Justice

Ministry of Law and Justice

- in the Government of India is a Cabinet Ministry
- 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.

Departments of Ministry of Law and Justice



Statutory Authorities

1. SEBI

• The Securities and Exchange Board of India (SEBI) •

The Securities and Exchange Board of India (SEBI)

- 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.

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2.RBI



Reserve Bank of India (RBI)

Reserve Bank of India-

- 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.
- 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.

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3.IBBI



Insolvency and Bankruptcy Board of India (IBBI)-

Insolvency and Bankruptcy Board of India (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 established on 1 October 2016 and given statutory powers through the Insolvency and Bankruptcy Code, which was passed by Lok Sabha on 5th May 2016.
- It covers Individuals, Companies, Limited Liability, Partnerships and Partnership firms. The new code will speed up the resolution process for stressed assets in the country.
- It attempts to simplify the process of insolvency and bankruptcy proceedings.
- It handles the cases using two tribunals like NCLT (National company law tribunal) and Debt recovery tribunal.

STRUCTURE OF THE INDIAN JUDICIAL SYSTEM

- When there is a dispute between citizens or between citizens and the Government, these disputes are resolved by the judiciary(courts).
- The functions of judiciary system of India are :
 - 1) Regulation of the interpretation of the Acts and Codes,
 - 2) Dispute Resolution,
 - 3) Promotion of 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 under Article 141 of the Indian Constitution. In fact, a Supreme Court decision is the final word on the matter.

(i) Supreme Court

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.

(ii) High Court

- 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 appellate, original jurisdiction, and Supervisory jurisdiction.

- However, Article 227 of the Indian Constitution limits a High Court's supervisory power.
- 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.

Q. Which is the oldest High Court in India ?

Answer : The oldest high court in the country is the Calcutta High Court, established on 2nd July, 1862.

(iii) District Court

- 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.
- Under pecuniary jurisdiction, a civil judge can try suits valuing not more than Rupees two crore.
- 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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