

Indian Regulatory Framework

Why to read Law?

Awareness is important to become a CA as CA's are the first level of contact on legal matters. We have to advise our clients on many legal matters.

Purpose of Indian Regulatory Framework?

To provide a set of uniform (same) rules and regulations that will govern the conduct of people interacting with each other in personal as well as business relationships.

History of Law?

"Code of Hammurabi" is known for oldest law in written form. He carved the code on bulky stone slabs.

"Twelve Tables" is known as a set of laws was engraved on 12 bronze tablets in Rome which is considered as first most detailed code of any of the civilisations. Purpose of these tables was to protect the rights of public and to provide remedy for wrongs

What is Law & Process of Making It?

Law - It 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 A Law

When a law is proposed in parliament it is called a Bill

After discussion and debate, the law is passed in Lok Sabha

Thereafter, it has to be passed in Rajya Sabha

It then has to obtain the assent of the President of India.

Finally, It will be notified by the Government in the publication called Official Gazette of India

It is applicable from the date mentioned in the notification as the effective date

Once it is notified and effective, it is called an Act of Parliament.

Sources of Law

Main sources (4 points) - Constitution, statutes or laws made by Parliament and State Assemblies, Precedents or the Judicial Decisions, established Customs and Usages.

Types of laws in the Indian Legal System

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, 1860, defines the crime, its nature, and punishments whereas the Crpc, 1973, defines exhaustive procedure for executing the punishments of the crimes.
- Example - Murder, rape, theft, fraud, cheating and assault

2 - Civil Law

- Matters of disputes between individuals or organisations are dealt with under Civil Law
- Enforces the violation of certain rights and obligations through civil suit.
- Primarily focuses 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, and Law of Tort.
- Example - breach of contract, non-delivery of goods, non-payment of dues.

3 - Common Law

- Judicial precedent or a case law is common law.
- Judgment 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.

4 - Principles of Natural Justice

- Often known as Jus Natural, deals with certain fundamental principles of justice going beyond written law.
- Nemo judex in causa sua ("No one should be made a judge in his own cause, and it's a Rule against Prejudice),
- Audi alteram partem ("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 statute.

Enforcing the Law

Once a law is passed by Parliament, it's enforceability is the responsibility of executives.

Enforcement depends on whether it's a Central or State law, and the relevant government becomes the enforcing authority.

To manage this, functions are divided among various ministries. Each ministry is led by a Cabinet Minister and supported by junior ministers and civil servants.

Ministries of Central Government

1 - Ministry of Finance

- concerned with the economy of India, serving as the Treasury of India.
- Concerns with taxation, financial legislation, financial institutions, capital markets, centre and state finances, and the Union Budget.
- CA's day to day life is highly impacted with this ministry
- Ministers preferred MoF as their portfolio
- MIMP function of MoF is presentation of Union Budget which is eagerly awaited as it provides rate of taxes and budget allocations.
- It is the apex controlling authority of four civil services namely -
Indian Revenue Service, Indian Audit & Account service, Indian Economic Service & Indian Civil Accounts Service.
- Also, Apex authority of Indian Cost and Management Accounts Service

Departments Under MoF

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

2 - Ministry of Corporate Affairs (MCA)

- Primarily concerned with administration of the Companies Act 2013, Companies Act 1956, the LLP Act, 2008, and the Insolvency and Bankruptcy Code, 2016.
- Responsible mainly for the regulation of Indian enterprises in the industrial and services sector.
- Run by civil servants of the ICLS cadre which 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

- An interior ministry of India
- Mainly responsible for the maintenance of internal security and domestic policy
- Headed by Union Minister of Home Affairs

Departments Under MoF

- Border Management
- Internal Security
- Jammu, Kashmir and Ladakh Affairs
- Home
- States
- Official Language - Central Translation Bureau, Central Hindi Training Institute, Directorate of Census Operations.

4 - Ministry of Law and Justice

- Is a cabinet ministry, which deals with the
- management of the legal affairs, through the Department of Legal Affairs
- legislative activities through the Legislative Department
- administration of justice in India through the Department of Justice
- Concerned with advising the various Ministries of the CG.
- Legislative Department is concerned with drafting of principal legislation for the CG.

Departments Under MoF

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| ○ Department of legal affairs | ○ Legislative Department | ○ Department of Justice |
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Statutory Authorities

1) Securities & Exchange Board of India (SEBI)

- Regulatory body for securities and commodity market in India
- Under the ownership of MoF within Government of India
- Established on 12/04/1988 as an Executive body and was given Statutory powers on 30/01/1992 through SEBI Act, 1992.

2) Reserve Bank of India (RBI)

- India's Central Bank & regulatory body responsible for regulation of Indian banking system.
- Ownership of MoF, Government of India.
- Responsible for the control, issue and maintaining supply of the Indian rupee.
- Manages the country's main payment systems and works to promote its economic development.

Divisions Under RBI

- Bharatiya Reserve Bank Note Mudran (BRBNM) - prints and mints Indian currency notes (INR)
Two currency printing presses - Nashik (Western India) & Dewas (Central India)
- National Payments Corporation of India - Regulate the payment and settlement systems.
- Deposit Insurance and Credit Guarantee Corporation - providing insurance of deposits and guaranteeing of credit facilities to all Indian banks.

3) Insolvency and Bankruptcy Board of India (IBBI)

- Regulator for overseeing insolvency proceedings and entities like Insolvency Professionals(IP), Insolvency Professional Agencies (IPA), Information Utilities (IU) in India.
- Established on 1 October 2016, statutory powers through the IBC, 2016.
- Covers Individuals, Companies, LLP's, Partnerships and Partnership firms.
- It will speed up the resolution process for stressed assets in the country.
- Attempts to simplify the process of insolvency and bankruptcy proceedings.
- Handles cases through two tribunals - NCLT & Debt recovery tribunal.

The Indian Judicial System

When there is a dispute between citizens or between citizens and the Government, these disputes are resolved by the judiciary.

Functions of The Indian Judicial System

- Regulation of the interpretation of the Acts and Codes
- Dispute Resolution
- Promotion of fairness among the citizens of the land

Hierarchy of courts

Supreme Court is at the top, followed by High courts and District courts.

Decisions of High court - Binding on respective states only

Decisions of Supreme court - Binding on all High courts under Article 121 of constitution.

Decision of Supreme court is final decision on the matter.

1) Supreme Court

- apex body of the judiciary
- Established on 26th January, 1950.
- Chief Justice of India is the highest authority (Article 126)
- Principal bench consist of 7 members including CJI.
- Presently - 34 members including CJI due to rise in no. of cases.
- Individual can Seek relief in SC by writ petition under Article 32.

2) High Court

- Highest court of appeal in each state and UT.
- There must be a HC in each state (Article 214)
- HC has has appellant, original jurisdiction, and Supervisory jurisdiction
- Article 227 limits a HC's power.
- Currently 25 High courts & 6 states share single HC.
- Individual can seek remedies against violation of fundamental rights by writ (Article 226)
- Oldest HC - Calcutta HC

3) District Court

- Below the High Courts are DC's.
- Civil Judge deal with Civil law matters i.e. contractual disputes & claim for damages.
- Courts of Sessions deals with Criminal matters.
- Pecuniary jurisdiction, can try suits valuing not more than Rupees two crore.
- 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.

4) Metropolitan Court

- Established in metropolitan cities in consultation with the HC where the population is ten lakh or more.
- Chief Metropolitan Magistrate has powers as Chief Judicial Magistrate
- Metropolitan Magistrate has powers as the Court of a Magistrate of the first class.