

CA Foundation

Paper 2 - Business Law

Chapter 1 (IRF)

Indian Regulatory Framework

Notes by - CA Chaitanya Jain

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What are the questions we are going to answer through this chapter -

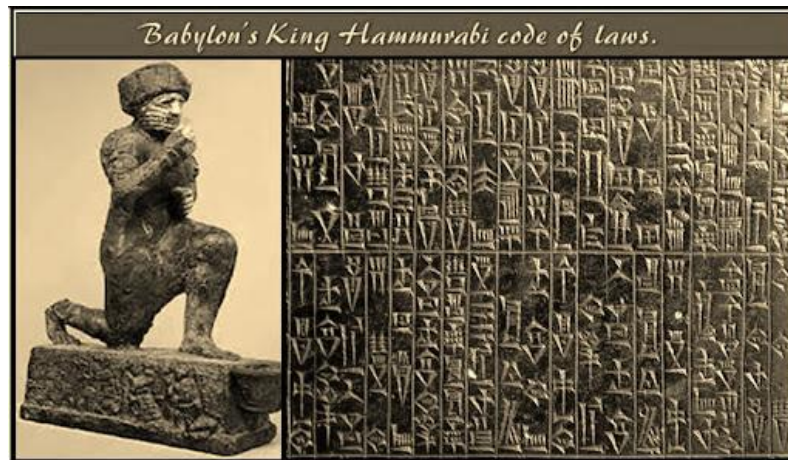
1. What is Law ?
2. Why should we study law in CA Foundation ?
3. What are the Sources of Law ?
4. Who has the power to make Law in India and what is the process ?
5. What are the types of Law ?
6. How to enforce or implement law in the country ?
7. What are the different Ministries and Departments in India ?

INTRODUCTION

Have you ever wondered why you are studying this subject called law?

- Awareness of law is essential to become a full-fledged Chartered Accountant.
- This is because a Chartered Accountant is the first level of contact on many legal matters.
- So, we should possess knowledge of law so that we can advise our management and clients on legal matters at a basic or threshold level.
- Tax laws are also laws. In order to become an expert in taxation you should possess a basic awareness of the legal and regulatory framework of our country.
- The purpose of a regulatory framework is to provide a set of uniform rules and regulations that will govern the conduct of people at personal as well as business relationships.
- HISTORY -
 - Down the ages, mankind has evolved from a hunter- gatherer society through agriculture and industrial revolution to a complex social framework.
 - If we talk about ancient law, on the basis of information available from different sources "Code of Hammurabi" is known for oldest law in written form.

King Hammurabi ruled Babylon for the period from 1792 BC to 1758 BC.



- He carved the code on bulky stone slabs and ordered to place those stones on different places all over the city so that the public may have the knowledge of codes.
- He also appointed judges to check whether public is following the laws or not.
- In 450 BC, 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 and called Twelve Tables.
- The purpose of these tables was to protect the rights of public and to provide remedy for wrongs. All the citizens of Rome were supposed to have the knowledge of these tables.

THE ROMAN LAWS OF THE TWELVE TABLES, c.449 BCE (A REPRESENTATIVE SELECTION)					
 I PROCEEDINGS BEFORE TRIAL Accused must attend court In case of age/sickness accuser shall grant transportation A witness can stand in for the accused Evading court can lead to forced appearance. If both parties are present proceedings end at sunset.	 II TRIAL PROCEDURES Severe illness of any party may delay trial Party needing witness or evidence may call the home of the witness every 3rd day.	 III JUDGMENT ON DEBT 30 days allowed for confessed debt payment If unpaid, creditor can keep debtor in chains (no lighter than 15 pounds) 60 days allowed to reach compromise Unresolved debt leads to debtor's execution or sale into slavery across the Tiber	 IV PATRIARCHAL POWERS Deformed child shall be killed at birth Father has authority over children's lives Son becomes free if sold into slavery 3 times by the father Husband can divorce wife by instructing her to take her belongings and leave.	 V INHERITANCE & GUARDIANSHIP Women (excl. Vestal Virgins) always under guardianship due to frivolity of character Reckless spenders can't manage his possessions. Nearest male relative has authority over insane individuals Estate of one without direct male heir goes to nearest male relative in the male lineage.	 VI OWNERSHIP & POSSESSION Verbal promises are binding Continuous cohabitation for 1 year is considered marriage Open and continuous land use for 2 years grants ownership claim (1 year for other things)
 VII LAND RIGHTS Disrepair allows travelers to choose alternate route on road built by someone on his land Fallen tree from neighbor's farm can be rightfully removed Fruits falling from one's trees onto neighbor's land can be kept by the neighbor	 VIII LAWS OF INJURY Singing or creating harmful incantations leads to execution Injuring another results in reciprocal injury or compensation False testimony leads to being thrown from the Tarpeian Rock Nighttime gatherings within the city are prohibited	 IX PUBLIC LAW Laws must not be made or decided secretly or exclusively. Laws of personal exceptions and privileges are forbidden Judges accepting bribes for decisions face execution No one should be executed without proven guilt in court.	 X FUNERAL RITES No burial or burning of dead in the city No gathering of bones for second funeral, except for death in battle or abroad Prohibition on excessive drinking and displays of wealth Adorning corpse with gold is forbidden, excluding existing gold dental work	 XI SUPPLEMENT: MARRIAGE Intermarriage of plebeians and patricians prohibited Soldiers must delay marriage until completing training Regulations set for permissible days of legal proceedings and judgments	 XII SUPPLEMENT: PUNISHMENTS Decisions and enactments by the Roman people are legally binding False accusers face double penalty or death Eight forms of punishment: fines, shackles, flogging, Lex talionis (reciprocal injury), public humiliation, exile, enslavement and execution

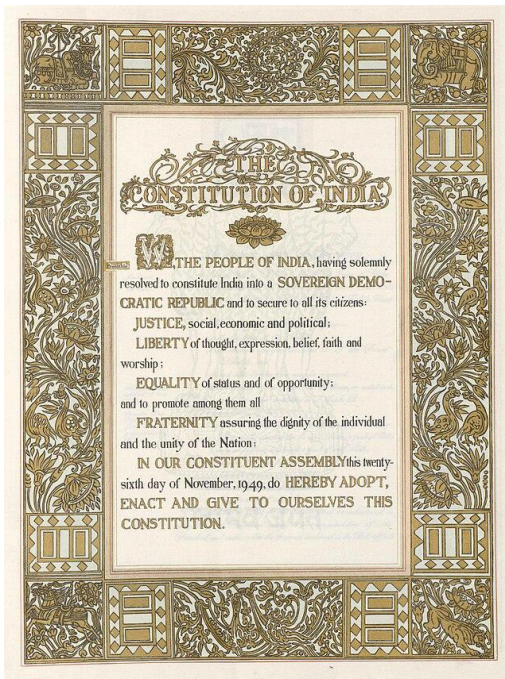
1 ► Indian Regulatory Framework

WHAT IS LAW?

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.

SOURCES OF LAW



The main sources of law in India are -

The Constitution,

The statutes or laws made by Parliament and State Assemblies,

Precedents or the Judicial Decisions of various Courts and

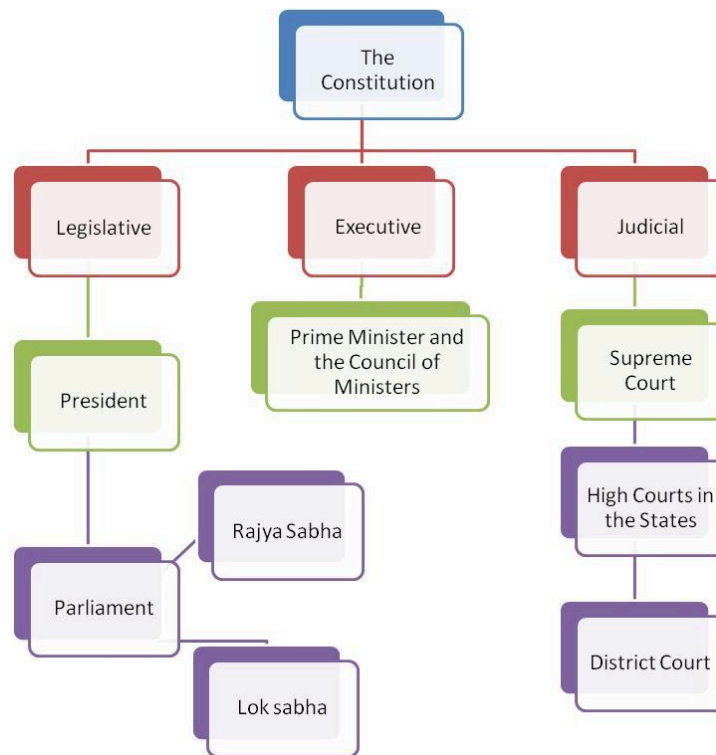
In some cases, established Customs and Usages.

India is a **parliamentary democracy**.

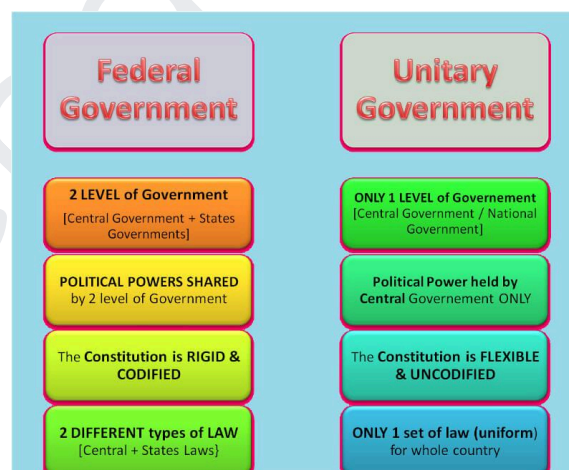
We have a constitution which is the basis and source for all laws.

We **elect** our **representatives** to the **parliament** as well as to the **legislative assemblies** of various **States**.

- These representatives of the people make laws in parliament or in their state assemblies as the case may be.
- So, Parliament is the ultimate law-making body.
- 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.



- India's government is federal in structure, but it also has some unitary features, and is sometimes called a quasi-federal system (A hybrid legal system)

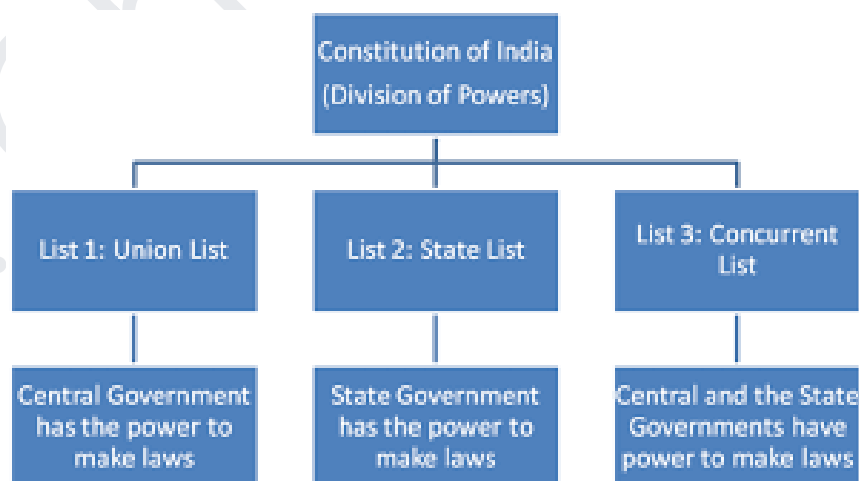


- The Government of India Act, 1935**, passed by the Parliament of the United Kingdom is the precursor for the Constitution of India. It defined the characteristics of the Government from

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“unitary” to “federal”.

- In 1937, Federal Court was established and had the jurisdiction of appellate, original and advisory. Powers were distributed between Centre and State to avoid any disputes.
- The Federal Court operated for 12 years and heard roughly 151 cases.
- The Federal Court —————>> India's current Apex Court - The Supreme Court of India.
- The Constitution of India, 1950 is the foremost law that deals with the framework within which our democratic system works, and our laws are made for the people, by the people.
- The Constitution also provides for and protects certain Fundamental rights of citizens. It also lays down Fundamental duties as well as the powers and duties of Governments, both Central and State.
- 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.



- Income Tax ---->> Central subject implemented by the Central Government through the Ministry of Finance.
- Levy of stamp duty ---->> both Central Government and State Government.

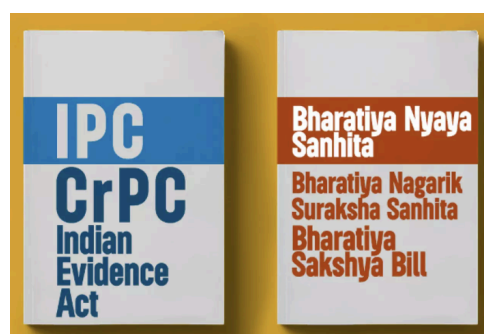
Union list	State List	Concurrent List
• Defence and armed Forces • Atomic Energy and Mineral Resources • Foreign Affairs • National Highways • Railways • Census • Banking • Currency • Organisations such as RBI, CBI	• Local Government bodies • Agriculture • Tourism of a state • Toll taxes and Land Revenue • State Pension • Public Debt of the State • Elections of a particular state • Salaries and Allowances to Ministers of State	• Forests • Population Control • Education • Trade Unions • Religious Institutes • Electricity • Inland Waterways • Economic and Social Planning

THE 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, the law will be **notified** by the **Government** in the **publication** called the **Official Gazette** of **India**.
- The law will become **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**

TYPES OF LAWS IN THE INDIAN LEGAL SYSTEM

A. Criminal Law



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- 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.

- Examples -

Murder, rape, theft, fraud, cheating and assault are some examples of criminal offences under the law.

Before	Now	Nature of work
IPC 1860	भारतीय न्याय संहिता	Crime, Nature and Punishments
CRPC, 1973	भारतीय नागरिक सुरक्षता संहिता	Procedure for executing the punishment

B. 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.

- Examples -

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

KEY WORDS TABLE		
Primarily focuses on	Dispute resolution rather than punishment	Matters of disputes between individuals or organisations
Code of Civil Procedure, 1908		Law of Contract,

KEY WORDS TABLE		
(CPC)		Family Law, Property Law, and Law of Tort
CRPC, 1973	भारतीय नागरिक सुरक्षता संहिता	Procedure for executing the punishment

C. 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
- where the facts are similar or “on all four legs” with the earlier decision.

KEY WORDS TABLE		
A case law is common law.	Article 141 Supreme Court will be binding upon the courts within the territory of India	stand by that which is decided.”
Courts to follow the same - Principle or judgement established by previous decisions		Where the facts are similar or “on all four legs” with the earlier decision.

D. 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.

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- A judgement can override or alter a common law, but it cannot override or change the statute.

KEY WORDS TABLE		
Fundamental principles of justice going beyond written law	No one should be made A judge in his own cause	Hear the other party or give the other party a fair hearing
A judgement can override or alter a common law, but it cannot override or change the statute (ACT)		

ENFORCING THE LAW

- After a law is passed in parliament it has to be **enforced (IMPLEMENT AND MONITOR)**
- 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**.

Some of the popular Ministries are -

Ministry of Finance (F - First पहले)	Ministry of Corporate Affairs (Corporate - Office)	Ministry of Home Affairs (Home - घर)
Ministry of Law and Justice and so on. (यही जीवन का LAW है - क्या है JUSTICE है ?)		
Ministries are headed by a minister and Run by officers of the Indian administrative and other services (Civil servants)		

- 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.

- Example -
 - ACT - The Income Tax Act
 - MINISTRY - Implemented and enforced by the Ministry of Finance
 - DEPT. - Department of Revenue
 - BODY - the Central Board for Direct Taxes
 - Administered by - the officers of the Indian Revenue Service.

1. The Ministry of Finance - Vitta Mantralaya

- The Ministry 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 - One of the important functions

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.

Who presented the Maximum number of Union Budgets as Finance Minister?

- **10** - Shri. Morarji Desai - As Finance Minister between 1962 and 1969 has
- **9** - Shri. P Chidambaram
- **8** - Shri. Pranab Mukherjee AND Shri. Yashwant Sinha and
- **6** - Dr. Manmohan Singh

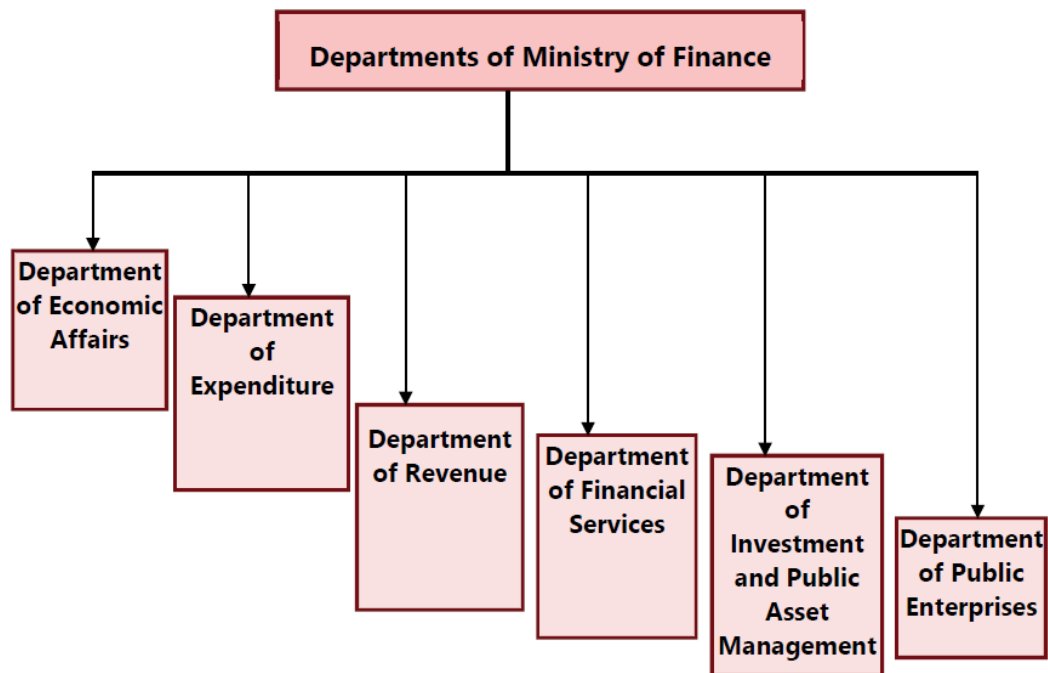
Constitution of the Ministry of Finance

Apex controlling authority FOR CENTRAL CIVIL SERVICES			
Indian Revenue Service (Revenue)	Indian Audit and Accounts Service (Audit & Accounts)	Indian Economic Service (Economics)	Indian Civil Accounts Service. (Accounts)

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CENTRAL COMMERCE SERVICES
Indian Cost and Management Accounts Service.
(Cost & Management)

Departments under the Ministry of Finance-



Key to learn Department names in Ministry of Finance

- Economics - Finance में रहना है तो Economics पढ़ो और समझो
- Expenditure - खर्चे कम करो
- Revenue - कमाओ ज़्यादा - कैसे ?
- Fin. Services - प्रोवाइड करो लोगो को
- Investment / Assets - तब बनेंगे Assets
- Public Enterprise (Co.) - और ऐसे बनती है बड़ी public companies

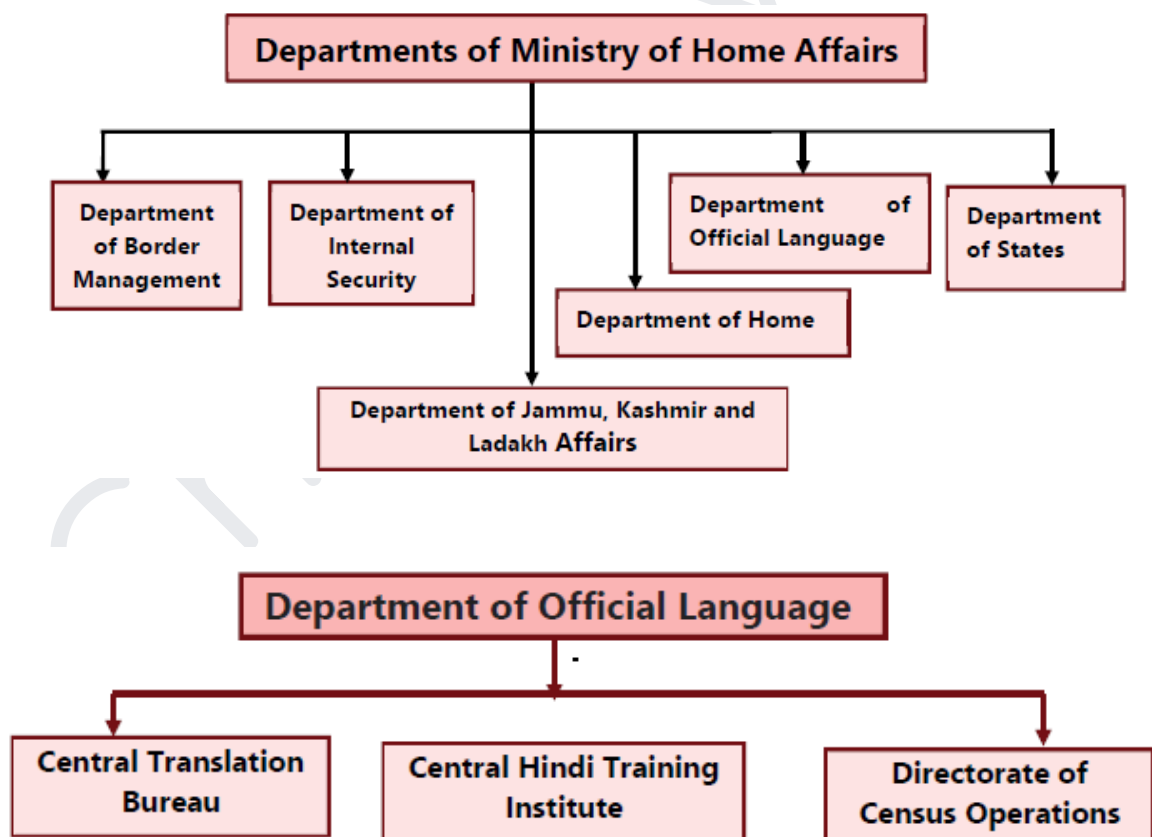
2. Ministry of Corporate Affairs (MCA)

- Primarily concerned with administration of -
 - The Companies Act 2013, (TCA)
 - The Companies Act 1956, (TCA)
 - The Limited Liability Partnership Act, 2008, (LLP)

- The Insolvency and Bankruptcy Code, 2016. (IBC)
- Responsible mainly for the **regulation** of **Indian** enterprises in the **industrial** and **services** sector.
- The Ministry is mostly run by civil servants of the **Indian Corporate Law Service (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.

3. Ministry of Home Affairs (Gṛha Mantralaya)

- 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**.



Key to learn Department names in Ministry of Home Affairs

- Border - HOME में अंदर आते ही

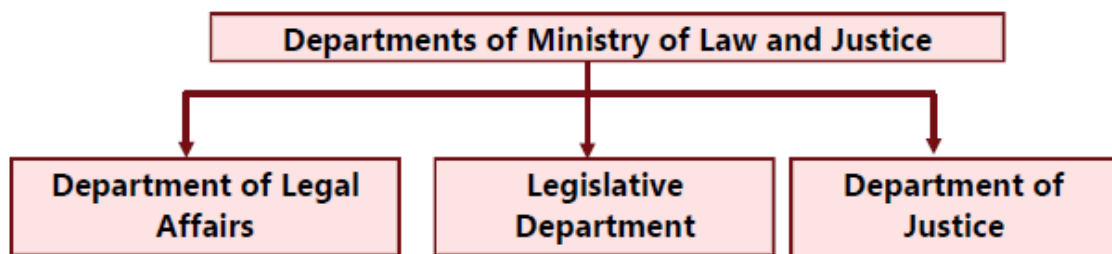
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Key to learn Department names in Ministry of Home Affairs

- Internal Security - Wife की Security के under
- J&K - जैसा माहोल - शांति का
- Official language - प्यार की - Translation की ज़रूरत नहीं / कुछ भी बोलो Hindi में ही सुनाई देता है / किसी से भी पूछ लो - Census (Vote करवालो)
- States - एकदम TWO States

4. Ministry of Law and Justice

- Ministry of Law and Justice is a Cabinet Ministry
- Deals with the -
 - *Department of Legal Affairs* - Managing legal affairs and Advising the various Ministries of the Central Government
 - *Legislative Department* - Drafting of principal legislation for the Central Government
 - *Department of Justice* - Administration of justice in India



MAJOR REGULATORY BODIES

1. The Securities and Exchange Board of India (SEBI)

- 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.

KEY WORDS			
Security & Commodity Market	ESTD. 1988	POWERS in 1992	SEBI Act, 1992

2. Reserve Bank of India (RBI)

- India's Central Bank
- 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.

KEY WORDS
• Central Bank - सब काम एक जगह से centrally • Indian banking system - पूरे indian बैंकिंग का • Control, issue and maintaining supply of Indian rupee - सब कंट्रोल इनके पास ही है • Payment systems - National Payments Corporation of India - पेमेंट का • Bharatiya Reserve Bank Note Mudran (BRBNM) - prints and mints Indian currency - यह तक की मुद्रण भी यही कर रहे हैं • Deposit Insurance and Credit Guarantee Corporation - बताओ अब ? deposit लेना है यह आओ - Insurance तो यह आओ - Credit के लिए भी

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3. Insolvency and Bankruptcy Board of India (IBBI)

- 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 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 handles the cases using two tribunals like NCLT (National company law tribunal) and Debt recovery tribunal.

KEY WORDS			
Insolvency proceeding For Individuals, Co. , P.Firms, LLP	Agency, Professional & Utilities	IBC, 2016	NCLT & DRT

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.

- The functions of judiciary system of India are:
 - Regulation of the **interpretation** of the Acts and Codes,
 - **Dispute Resolution**,
 - **Promotion** of **fairness** among the citizens of the land.
- 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.**

1. 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.

KEY WORDS				
Apex Body	1950	Chief Justice of India Article - 126	7 members Now 34 Including CJI	File a writ under Article 32

2. 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 appellant, original jurisdiction, and Supervisory jurisdiction.
- However, Article 227 of the Indian Constitution limits a High Court's supervisory power. (Means it has the power only to oversee subordinate courts, no power to review or change the decisions)
- In India, there are twenty-five High Courts, 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.

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KEY WORDS				
Highest In each state and UT	Article 214 HC in each state	Article 227 Supervisory power only	25 HC	File a writ Under Article 226

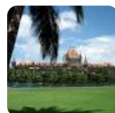
Which is the oldest High Court in India?

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



Gauhati High Court

Has jurisdiction over Assam, Arunachal Pradesh, Nagaland, and Mizoram. It was originally called the High Court of Assam and Nagaland, but was renamed in 1971.



Bombay High Court

Has jurisdiction over Maharashtra, Goa, Dadra and Nagar Haveli, and Daman and Diu.



Kolkata High Court

Has jurisdiction over Kolkata and Andaman and Nicobar.



Kerala High Court

Has jurisdiction over Kerala and Lakshadweep.



Madras High Court

Has jurisdiction over Madras and Pondicherry.



Punjab & Haryana High Court

Has jurisdiction over Punjab, Haryana, and Chandigarh.

3. 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.
- 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.

KEY WORDS				
Civil Law matter	Criminal Matters in Session courts	Max - 2 Crores	Territorial Limits	Local limits where parties reside or property under dispute
Contractual disputes				
Claim for damages				

4. 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

INDICATIVE LIST OF ARTICLES COVERED IN THE CHAPTER

Article	Description
245	Power of parliament to make laws
246	Three list - Central, State and Joint
141 (SC)	SC - Final decision, binding on all
126 (SC)	CJI - Highest Authority
214 (HC)	There shall be HC in every state & UT
227 (HC)	HC has only Supervisory powers
32 (SC)	Writ in SC
226 (HC)	Writ in HC

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“ PROBLEM KYA HAI ? ”

Question Bank for the Chapter

This section is complied with questions and suggested answers for the chapter

- ❖ *ICAI Study material*
- ❖ *Previous year Question Papers (PYQPs)*
- ❖ *Mock Test Papers (MTPs)*
- ❖ *Revision Test Papers (RTPs)*

Compiled by - CA Chaitanya Jain

Question 1

What do you understand by Indian Judicial System and what are its various functions?

(RTP Jun'24)

Answer 1

Indian Judicial System is a branch which through the enforcement of Law resolves dispute between citizens or between citizens and the Government.

The functions of judiciary system of India are:

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

Indian Judicial System performs his functions through the hierarchy of courts, the Supreme Court is at the top, followed by the High Courts, District Courts and Metropolitan 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.

MULTIPLE CHOICE QUESTIONS

1. A Chartered Accountant should be aware of law because
 - a. He has to be an expert in law
 - b. He has to argue in High court and Supreme court
 - c. He has to advice management and clients on legal matters at a basic or threshold level.
 - d. None of the above.
2. Which of the following is not a MAIN source of law in India?
 - a. Legal text books
 - b. The Parliament
 - c. State Assemblies
 - d. The Constitution

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3. In India we follow the federal system of Government. This means that
 - 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
4. The Constitution of India was adopted in
 - a. 1947
 - b. 1949
 - c. 1950
 - d. 1951
5. Income Tax Act, 1961 is a part of the
 - a. Central list
 - b. State list
 - c. Joint list
 - d. None of the above
6. The law concerned with violation of the rule of law and punishment of the same is called -
 - a. Family law
 - b. Criminal law
 - c. Civil law
 - d. Property law
7. Which of the following is NOT an example of Civil law?
 - a. Breach of contract
 - b. Non-delivery of goods
 - c. Traffic offenses
 - d. Non-payment of dues

8. When a law is proposed in Parliament it is called
- a. Act
 - b. Statute
 - c. Bill
 - d. Notification
9. Which of the following is NOT a department of the Ministry of Finance?
- a. Department of Economic Affairs
 - b. Department of Expenditure
 - c. Department of States
 - d. Department of Revenue
10. Courts get territorial limits based on
- a. The local limits within which the party resides
 - b. The local limits within which the property under dispute is located
 - c. either a or b
 - d. None of the above