

# INDIAN REGULATORY FRAMEWORK

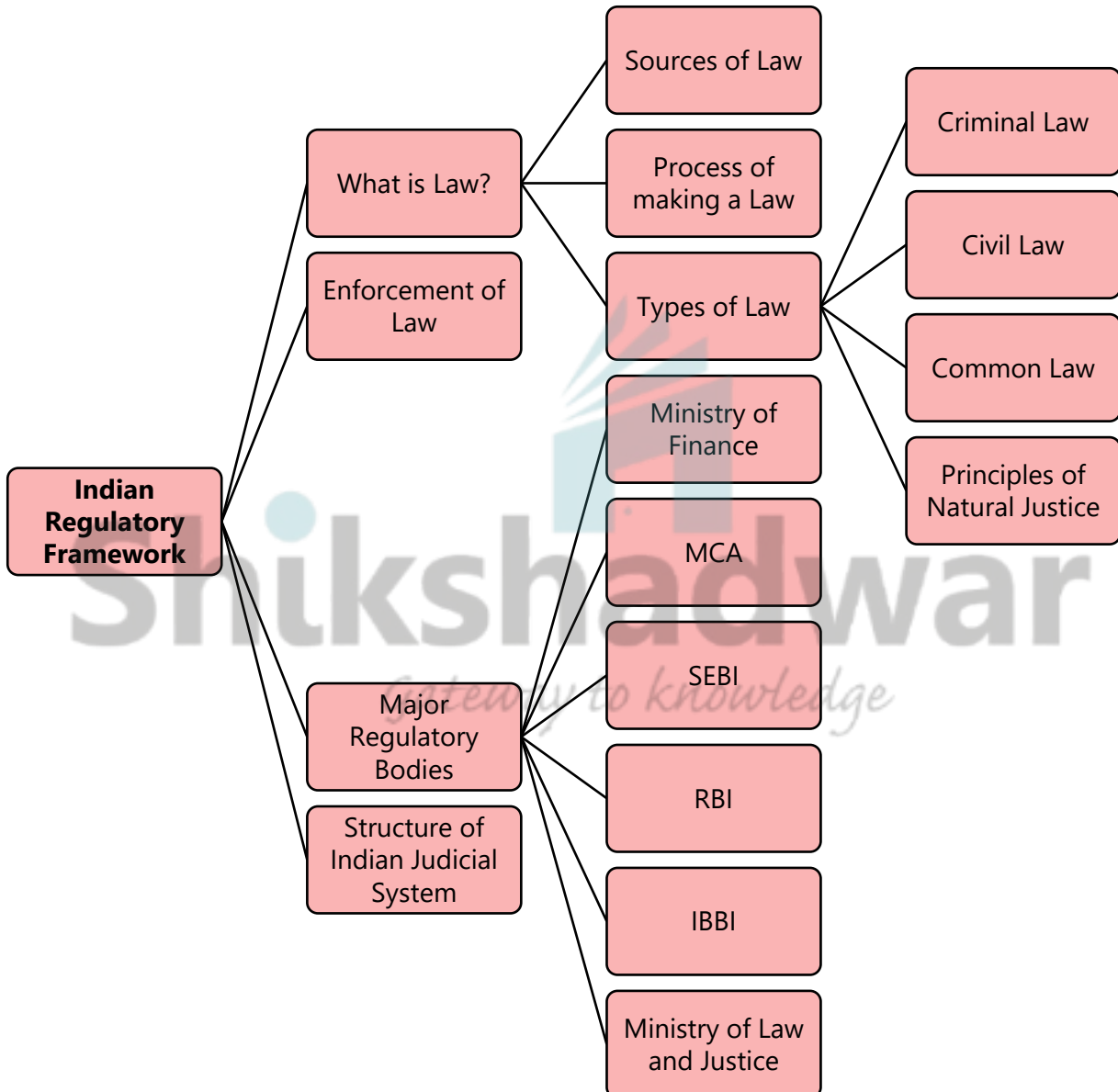


## LEARNING OUTCOMES

**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.

## CHAPTER OVERVIEW



## 1. INTRODUCTION

Have you ever wondered why you are studying this subject called law? Is it only because it has been prescribed in the syllabus or is it because you will need this knowledge as a member of the Institute of Chartered Accountants of India?

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.

The purpose of a regulatory framework is to provide a set of uniform rules and regulations that will govern the conduct of people interacting with each other in personal as well as business relationships.

Down the ages, mankind has evolved from a hunter-gatherer society through agriculture and industrial revolution to a complex social framework. Throughout this journey, we have always needed laws and regulations to guide us on the right course of conduct as well as to identify violations and punish them.

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. Over the time, many amendments were done in these laws as per the requirements.

In this subject, you will be introduced to many laws. Therefore, in this chapter we will first understand how these laws are made and how they are implemented.

## 2. 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.

### 3. 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.

You must be aware that 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.

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 "unitary" to "federal". Powers were distributed between Centre and State to avoid any disputes. In 1937, Federal Court was established and had the jurisdiction of appellate, original and advisory. The powers of Appellate Jurisdiction extended to civil and criminal cases whereas the Advisory Jurisdiction was extended with the powers to Federal Court to advise Governor-General in matters of public opinion. The Federal Court operated for 12 years and heard roughly 151 cases. The Federal Court was supplanted by 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 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 Government and the various State Governments. So, the Indian Constitution has three lists Viz., Central List, State List and Joint List.

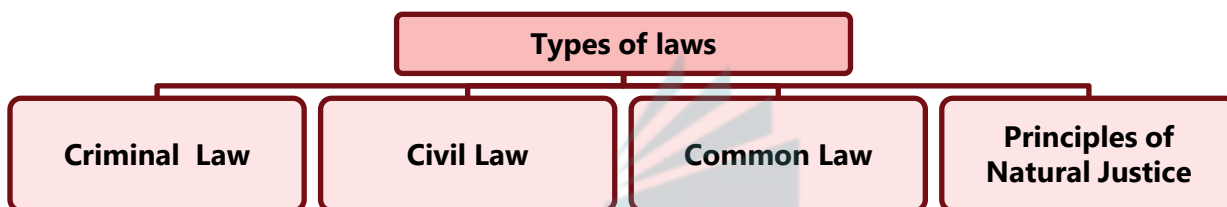
Depending on the list in which it figures a matter would become the subject for Central law or a State law. For example, Income Tax is a Central subject. So, throughout India we have only one law for Income Tax which is implemented by the Central Government through the Ministry of Finance. We also have 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.

## 4. 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

The laws in the Indian legal system could be broadly classified as follows:



#### Criminal Law

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.

#### 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.

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.

## 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 while ruling a case where the facts are similar or "on all four legs" with the earlier decision.

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



## 5. ENFORCING THE LAW

After a law is passed in parliament it has to be enforced. Somebody should monitor whether the law is being followed. 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. Some of the popular Ministries are the Ministry of Finance, the Ministry of Corporate Affairs, the Ministry of Home Affairs, the Ministry of Law and Justice and so on. These Ministries are headed by a minister and run by officers of the Indian administrative and other services.

The Government of India exercises its executive authority through a number of Government Ministries or Departments of State. A Ministry is composed of employed officials, known as civil servants, and is politically accountable through a minister. 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. We will see some of the major Ministries and the laws which are enforced by them:

### (1) The Ministry of Finance

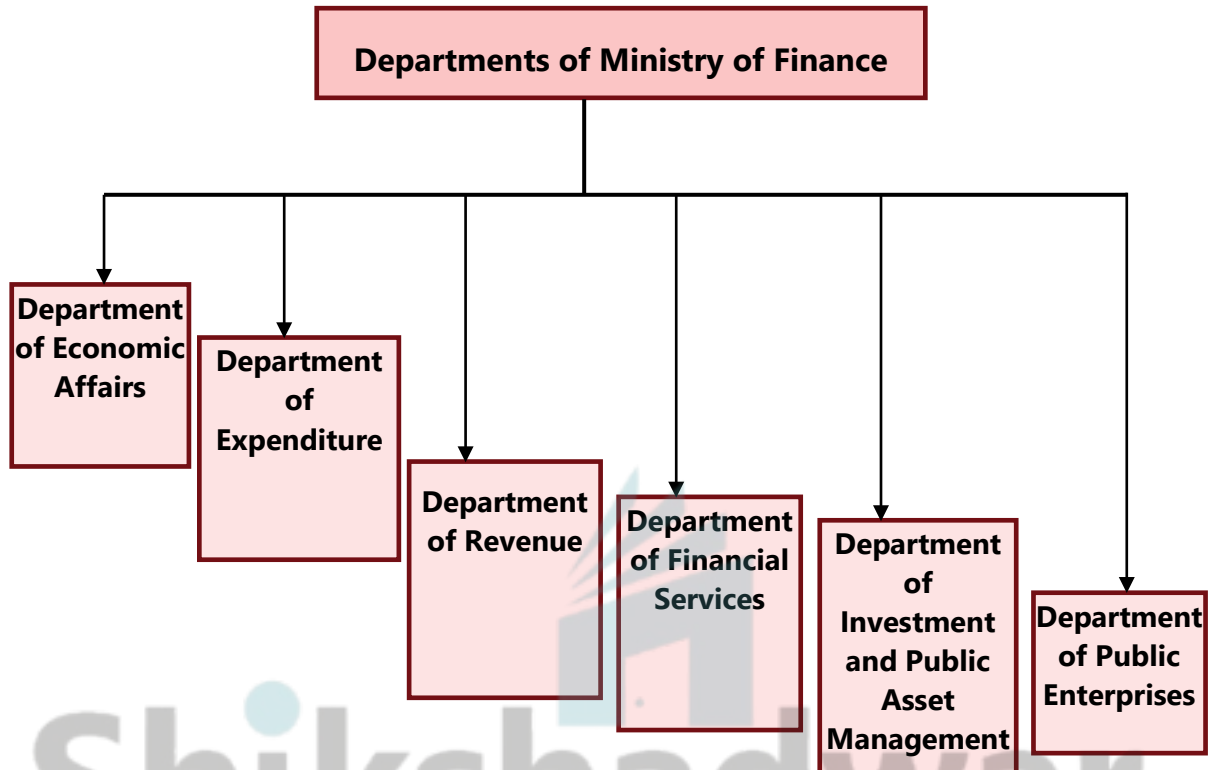
The Ministry of Finance (Vitta Mantralaya) is a Ministry within the Government of India concerned with the economy of India, serving as the Treasury of India. In particular, it concerns itself with taxation, financial legislation, financial institutions, capital markets, centre and state finances, and the Union Budget. As a Chartered Accountant, many of your day-to-day 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-



### (i) Ministry of Corporate Affairs (MCA)

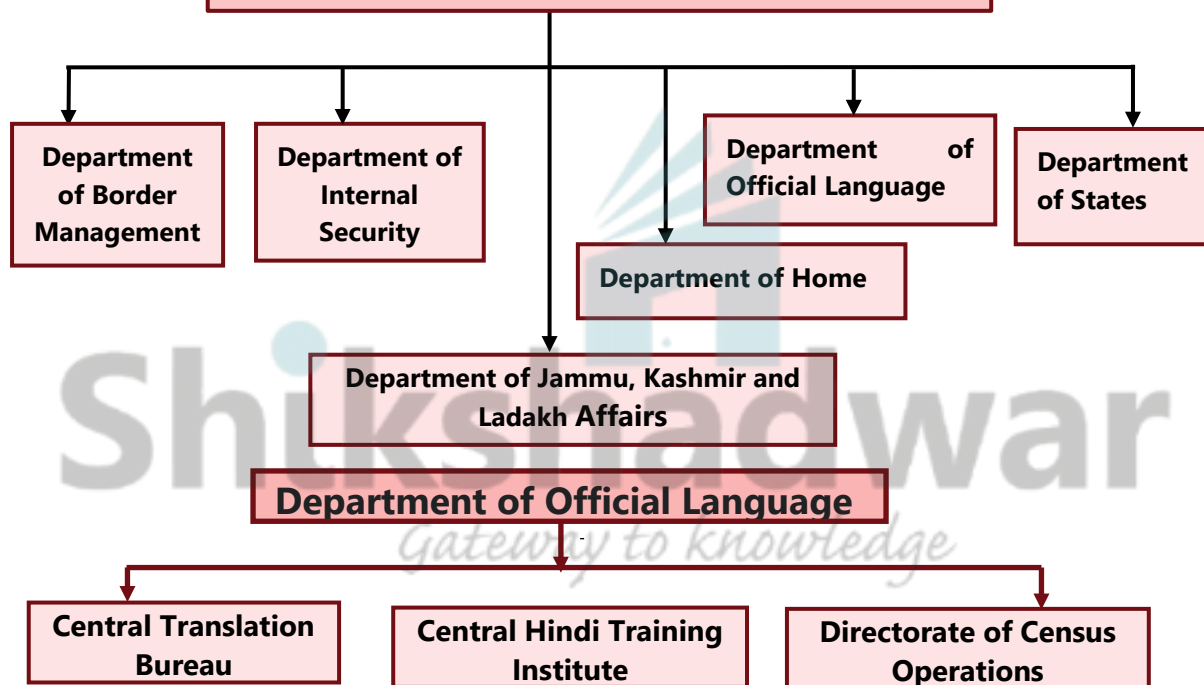
#### Ministry of Corporate Affairs

- 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.
- The highest post, Director General of Corporate Affairs (DGCoA), is fixed at Apex Scale for the ICLS.

**Ministry of Home Affairs (Gṛha 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.

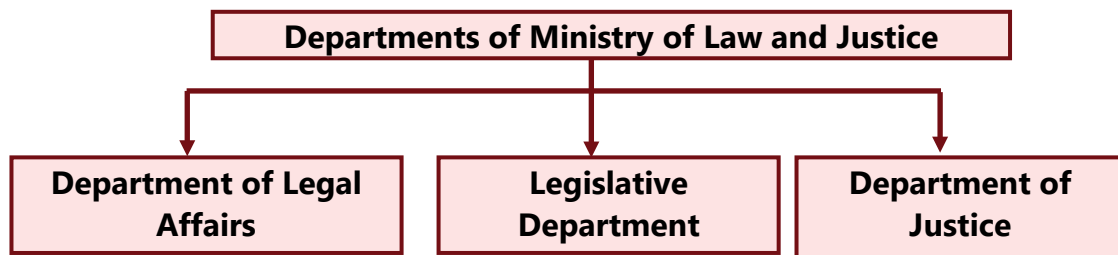
**Departments of Ministry of Home Affairs**



**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 Department of Legal Affairs
  - > legislative activities through the Legislative Department
  - > 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.



(ii) **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.

(iii) **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.

**(iv) 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.

 **6. 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.

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.

### **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.

## **(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.

## TEST YOUR KNOWLEDGE

### 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
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. 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*
6. 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*
7. When a law is proposed in Parliament it is called
- (a) *Act*
- (b) *Statute*
- (c) *Bill*
- (d) *Notification*
8. 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*
9. 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*

### **Descriptive Questions**

1. What is the significance of the Supreme Court and High Court in the Indian judiciary?
2. What do you understand by Law? Also, elaborate the procedure for making a Law.

## ANSWER/HINTS

### Answers to MCQs

1.	(c)	2.	(a)	3.	(b)	4.	(c)	5.	(b)	6.	(c)
7.	(c)	8.	(c)	9.	(c)						

### Answers to the Descriptive Questions

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2. **Meaning of 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.

**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.
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