

CA FOUNDATION BUSINESS LAWS



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Chapter 1

Indian Regulatory Framework

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 Indian 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.

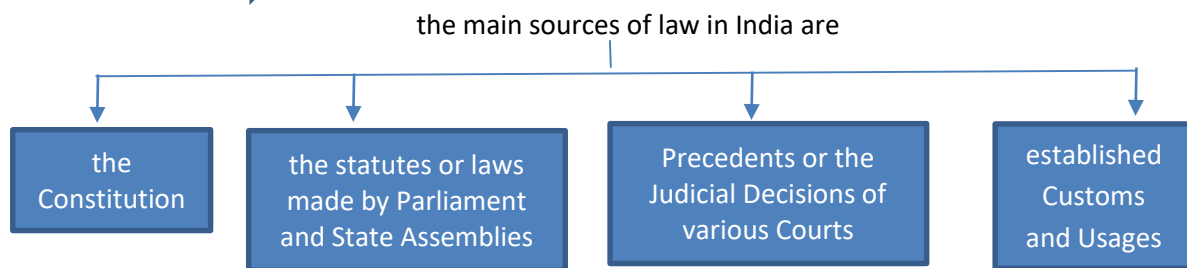
If we talk about ancient law, on the basis of information available from different sources “Code of Hammurabi” is known for oldest law in written form. King Hammurabi ruled Babylon for the period from 1792 BC to 1758 BC. He carved the code on bulky stone slabs and ordered to place those stones on different 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.

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 Government of India Act, 1935, passed by the Parliament of the United Kingdom has 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.

- Federal court had the jurisdiction of appellate, original and advisory.
- The powers of Appellate Jurisdiction extended to civil and criminal cases
- 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.

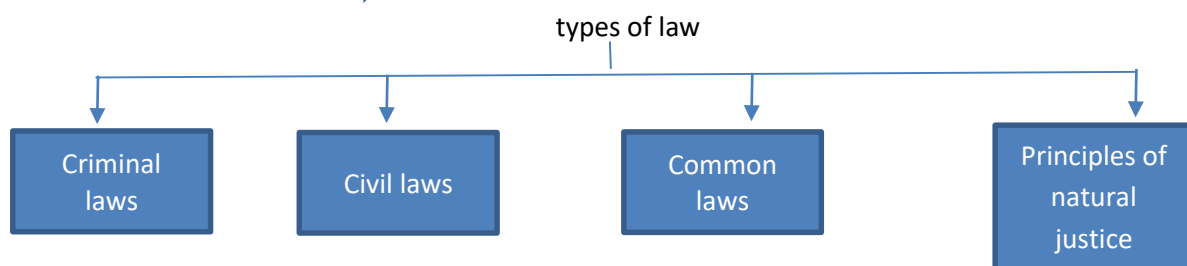
The Constitution divides the law-making power between the Central Government and the various State Governments. So, the Indian Constitution has three lists Viz., Central List, State List and Joint List.

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.

Process of making Law

- Law **proposed in parliament** is called a **Bill**.
- After discussion and debate, the law is passed in Lok Sabha.
- After being passed at Lok Sabha, **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**.

Process of making Law



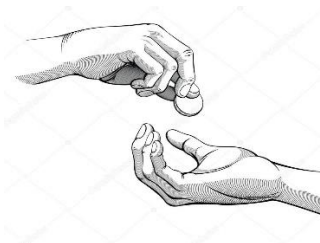
Criminal Law:



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* (“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), and
- *reasoned decision*

are the rules of Natural Justice. A judgment can override or alter a common law, but it cannot override or change the statute.

Enforcing the Law

The law passed by the Parliament is enforced by 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 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.

Ministry of Finance



The Ministry of Finance (Vitta Mantralaya) is a Ministry 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.

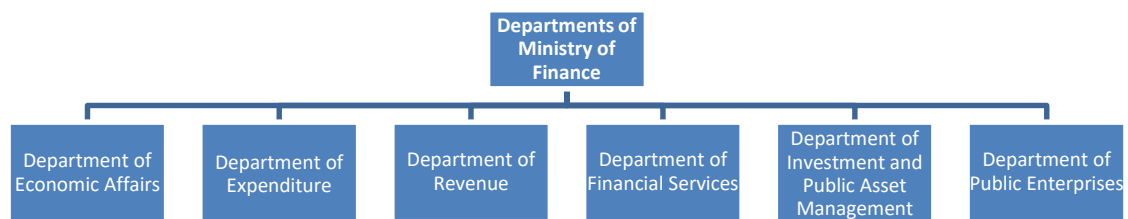
One of the **important functions** of the Finance Ministry is the **presentation of the Union Budget**. This annual event is eagerly awaited by professionals and the common man as it provides for the rates of taxes and budget allocations for the ensuing year.



Shri. Morarji Desai during his stint as Finance Minister between 1962 and 1969 has presented 10 Union Budgets making it the highest. The next on the list is Shri. P Chidambaram at 9, followed by Shri. Pranab Mukherjee at 8. Shri. Yashwant Sinha and Dr. Manmohan Singh have presented 8 and 6 budgets respectively.

Constitution of the Ministry of Finance

- is the apex controlling authority of four Central Civil Services, namely:
 - i. Indian Revenue Service
 - ii. Indian Audit and Accounts Service
 - iii. Indian Economic Service and
 - iv. Indian Civil Accounts Service.
- It is also the apex controlling authority of one of the central commerce services namely Indian Cost and Management Accounts Service.



Ministry of Corporate Affairs (MCA)

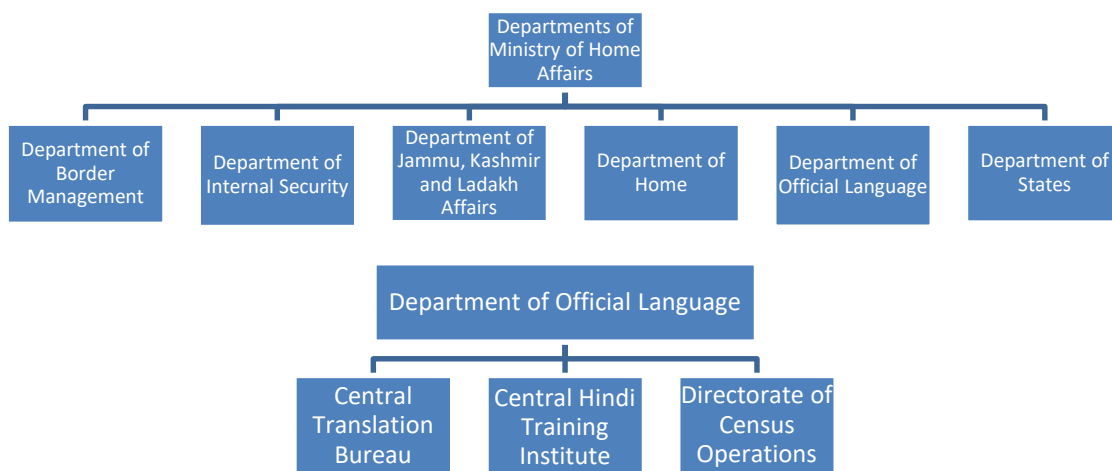


- Is an Indian Government Ministry primarily concerned with **administration of the Companies Act 2013, the Companies Act 1956, the Limited Liability Partnership Act, 2008, and the Insolvency and Bankruptcy Code, 2016.**
- Responsible mainly for the **regulation of Indian enterprises** in the **industrial 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 (Grha Mantralaya)



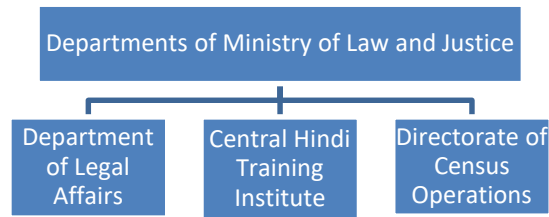
- Is a ministry of the Government of India.
- As an interior ministry of India, it is mainly responsible for the maintenance of internal security and domestic policy.
- The Home Ministry is headed by Union Minister of Home Affairs.



Ministry of Law and Justice



- 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.



Securities and Exchange Board of India



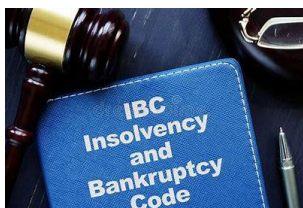
- Is a **regulatory body for securities and commodity market** in India under the ownership of Ministry of Finance within the Government of India.
- It was established on **12th April, 1988** as an **executive body** and was **given statutory powers** on **30th January, 1992** through the SEBI Act, 1992.

Reserve Bank of India



- It 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 and 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**.

Insolvency and Bankruptcy Code



It was established on **1st October 2016** and given **statutory powers** through the Insolvency and Bankruptcy Code, which was passed by Lok Sabha on 5th May 2016.

- Is the regulator for overseeing insolvency proceedings and entities like Insolvency Professional Agencies (IPA), Insolvency Professionals (IP) and Information Utilities (IU) in India.
- 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.

Indian Judicial System and its structure



Disputes between

- Person and person
- Person and state

The functions of judiciary system of India are:

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

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.

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.
- 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.



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

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.

Metropolitan court

- 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**

Chapter 2

Indian Contract Act, 1872

The need to enter into contracts has been an intrinsic part of our lives since time immemorial. So much is their relevance that we are entering into contracts day in and day out. Be it everyday tasks like the purchasing of groceries and vegetables or using services like telephones and public transport, the word Contract has become synonymous with all these acts and transactions. As times evolved, the need arose to bind the parties involved into agreements and/or promises.

Hence, to put these acts into perspective and to subsequently provide a legal framework, the Indian Contract Act came into force on the first day of September 1872. The Act applies to the whole of India other than the state of Jammu and Kashmir. The Act is divisible into two parts. The first part (section 1-75) deals with the general principles of the law of contract and therefore applies to all types of contracts irrespective of their nature. The second part (section 124-238) deals with certain special kinds of contracts.

The Law of Contract is the most important branch of Mercantile or Commercial Law. The Act is not a complete and exhaustive law and contains only the general principles on all types of contracts. Being a law on general principles it merely provides certain elementary conditions under which a contract becomes binding on the parties. It does not deal with all the branches of the law of contract. They are dealt with under separate Acts.

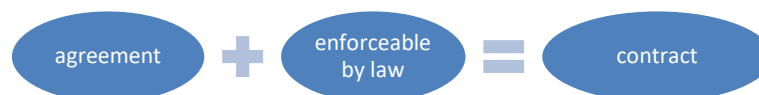
Unit 1: Nature of Contracts

1.	Definitions
2.	Consensus ad idem
3.	Jus in rem and jus in personam
4.	Types of contract
5.	Essentials of a valid contract

Definitions:

Contract 2(h)

The term —contract as defined under section 2(h) of the Indian Contract Act, 1872 means —an **agreement enforceable by law**. Thus the definition of contract can be divided into two parts:



Agreement 2(e)

As per section 2(e) agreement is —every **promise** and every **set of promises** forming **consideration for each other**. Enforceable by law to become a contract an agreement must give rise to a legal obligation.

Promise 2(b)

As per section 2(b), a promise is —a **proposal when accepted** becomes a promise.

Thus agreement can be said to be:



Proposal 2(a)

As per section 2(a) —when one person signifies to another his **willingness to do or to abstain from doing** anything, with a **view to obtaining the assent** of that other to such acts or abstinence he is said to make a proposal.

Acceptance 2(b)

As per section 2(b) —when the **person to whom the proposal is made signifies** his **assent** thereto, the proposal is said to be accepted. An agreement comes into existence when one party makes a proposal or offer to the other party and that other party signifies his assent thereto.

Hence an agreement is a sum total of offer and acceptance.

$$\text{Agreement} = \text{Offer} + \text{Acceptance}$$

The person **making** the proposal is called the **Offeror** and the person **to whom** the offer is made is called the **Offeree**. When the proposal is accepted the person making the proposal is called the Promisor and the person accepting is called the Promisee.

Agreement is a wide ranging term which encompasses a social agreement, a domestic agreement and a legal agreement.

Example A father agrees to pay 5,000 as pocket money to his son. But later on, he changes his mind and refuses to pay. The son cannot sue his father as this is just a domestic agreement and does not confer any legal rights on either of the parties.

However, if the **agreement is legal it becomes a contract.**

Example A agrees to sell his car to B and B agrees to purchase it for `1, 00,000. This agreement gives rise to an obligation on the part of A to deliver the car and on the part of B to pay the price. Thus this agreement creates a legal obligation and hence it is a contract.

Therefore, it can be said that —all agreements are not contracts but all contracts are agreements.

Difference between agreement and contract

Agreement	Contract
Every promise and every set of promises forming consideration for each other	Agreement enforceable by law
Agreement may be social, domestic or legal	Contracts are only legal
An agreement need not be enforceable by law	A contract must always be enforceable by law
An agreement must have only offer and acceptance	A contract must have all the essentials
All agreements are not contracts	All contracts are agreements.

Concept capsule 1: Mr.Ramamurthy invited Alisa to his house for dinner which she accepted. When Alisa went to Mr.Ramamurthy's house at the appointed time leaving all her work involving 10 lakhs, she found Mr. Ramamurthy's house locked and none was there. Alisa claimed compensation from Mr. Ramamurthy who on the other hand contended that there was no contract. What will be the legal consequences?

Answer:

Consensus-ad-idem

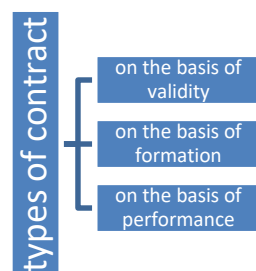
The essence of every agreement is consensus-ad-idem i.e., **meeting of the minds**. This means that when two parties form a contract they should **agree to the same thing in the same sense**.

Example A has two cars, a red car and a white car. Believing that he will sell the red car to B he makes an offer to B and B, believing that he will purchase the white car accepts the offer. The agreement is not valid as both of them are not agreeing to the same thing

Concept capsule 2: Arun has two cars- one of white colour and another of red colour. He offers to sell one of his cars to Basu thinking that he is selling the car which is white in colour. Basu agrees to buy the car thinking that Arun is selling the car which is red in colour. Is there a valid contract between Arun & Basu ?

Answer:

Types of contract



Types of contract