



ICAI & NFRA

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Institute of Chartered Accountants of India (ICAI)

The Institute of Chartered Accountants of India (ICAI) is the national professional accounting body of India. It was established to regulate the profession of Accountancy.

- It is the only licensing cum regulating body of the financial audit and accountancy profession in India.
- It recommends the accounting standards to be followed by companies in India to National Advisory Committee on Accounting Standards (NACAS).

What is the Historical Background of ICAI?

- Companies Act, 1913 passed in pre-independent India prescribed various books which had to be maintained by a Company registered under that Act.
- It also provided for the appointment of a formal Auditor with prescribed qualifications to audit such records. In order to act as an auditor a person had to acquire a restricted certificate from the local government upon such conditions as may be prescribed.
- In 1932, an Accountancy board was developed called as **Indian Accountancy Board** to **advise the Governor General in Council of India** on the points of Accountancy and the required conduct along with qualification standards of the auditors.
- The expert committee appointed in 1947, recommended that a separate autonomous association of accountants should be formed to regulate the profession.
- Government of India accepted the recommendation and passed the **Chartered Accountants Act in 1949**.
- **Under Section 3 of the said Act**, ICAI is established as a statutory body.
- It functions under the administrative control of the Ministry of Corporate Affairs, Government of India.
- Affairs of the ICAI are managed with the provisions of the Chartered Accountants Act, 1949 and the **Chartered Accountants Regulations, 1988**.
- ICAI is one of the founder members of the International Federation of Accountants (IFAC, 1977), South Asian Federation of Accountants (SAFA, 1984), and Confederation of Asian and Pacific Accountants (CAPA, 1957).

What are the Functions of ICAI?

- **ICAI Council:** Affairs of the Institute is undertaken by a Council constituted under the Chartered Accountants Act, 1949.
 - The Council constitutes of 40 members of whom 32 are elected by the Chartered Accountants and remaining 8 are nominated by the Central Government generally representing the CAG, SEBI, Ministry of Corporate Affairs, Ministry of Finance and other stakeholders.
 - The elected members of the council are elected under the single transferable vote system by the members of the institute.

- The Council functions through its **4 Standing Committees and 37 Non-Standing Committees**.
- **Membership:** Members of the Institute are known as **Chartered Accountants (CA)**. Becoming a member requires passing the prescribed examinations, three years of practical training and meeting other requirements under the Act and Regulations. Functions of CA are following:
 - Chartered Accountants enjoy a statutory monopoly in audit of financial statements under the Companies Act, 2013, Income Tax Act, 1961.
 - **Areas of expertise** include Financial Reporting, Auditing and Assurance, Corporate Finance, Investment Banking, Financial Modelling, Equity Research, Fund Management, Credit Analysis, Capital Markets, Arbitration, Risk Management, Economics, Strategic/Management Consultancy, Management Accounting, Information Systems Audit, Corporate Law, Direct Tax, Indirect Tax and valuation of businesses.
- **Accounting Research Foundation (ARF):** ICAI Accounting Research Foundation (ICAI ARF) has undertaken and completed various basic and applied research projects.
 - It also provides financial assistance to researchers / scholars for undertaking basic research projects of contemporary national/ international significance in the aforesaid areas.
 - ICAI provides technical advice and necessary inputs on matters of economic relevance and alike to various Ministries such as Ministry of Corporate Affairs, Ministry of Commerce & Industry, Ministry of Finance, Ministry of Railways etc.
 - ICAI also provides technical advice to various bodies such as - Comptroller and Auditor General of India, Controller General of Accounts, Reserve Bank of India, Securities and Exchange Board of India, Central Board of Direct Taxes, Central Board of Excise & Customs, GST Council, Insurance Regulatory & Development Authority etc.
- It has provided comprehensive suggestions at **each stage of GST implementation**, be it Constitutional Amendment Bill, Model GST Law, Revised Model GST Law, Draft GST Rule or Post implementation of GST.
- **Indian Institute of Insolvency Professionals of ICAI (IIPI)**, a wholly owned subsidiary of the ICAI, is a **Section 8 Public Company** established to enrol and regulate insolvency professionals as its members in accordance with the **Insolvency and Bankruptcy Code, 2016** read with regulations and rules incidental thereto.
- **Quality Review Board:** Under **Section 28A** of the Chartered Accountants Act, 1949, as inserted by the **Chartered Accountants (Amendment) Act, 2006**, the Central Government is empowered to constitute a Quality Review Board consisting of a Chairperson and ten other members.
 - The Board reviews and recommends to the Council of the ICAI with regard to the quality of services provided by the members of Institute including audit services.
- **Disciplinary Mechanism: The Disciplinary Directorate, the Board of Discipline, and the Disciplinary Committee** form the foundation of the disciplinary process of the ICAI. These entities are quasi-judicial and have substantial powers like that of a Civil Court to summon and enforce attendance or require discovery and production of documents on affidavit or otherwise.
- **International Affairs:** The **International Affairs Committee of ICAI** has the multi fold objective of positioning brand Indian CA at the global level by establishing Qualification Recognition Arrangements with accounting bodies (like The Institute of Chartered Accountants in England and Wales(ICAEW), Certified Public Accountants of Australia(CPA Australia) etc.).

National Financial Regulatory Authority (NFRA)

- **NFRA** is an Indian body provided in Companies Act 2013 for the establishment and enforcement of accounting and auditing standards and oversight of the work of auditors.
- As per the Companies Act, 2013 the NFRA is tasked with the job of recommending accounting and auditing standards, ensuring compliance with them and overseeing the quality of service of the accounting and audit professions.
- It has also been given the power to investigate matters of professional misconduct by chartered accountants or CA firms, impose penalty and debar the CA or firm for up to 10 years.

How did NFRA Evolve?

- The world over more than 50 countries have moved away from **self-regulatory professional accountant bodies** (like ICAI) and created independent audit regulators (like NFRA).
 - In India, the move to set up a new oversight body for the accounting and audit professions was approved by a parliamentary panel.
 - **After the Satyam scandal** took place in 2009, the **Standing Committee on Finance** proposed the concept of the National Financial Reporting Authority (NFRA) for the first time.
 - Indian Parliament passed The Company Act 2013 (amendment) with inclusion of NFRA (section 132).
- Act states that “no other institute or body shall initiate or continue any proceedings in such matters of misconduct where the NFRA has initiated an investigation.”
- **ICAI**, a self-regulatory body, has **had the monopoly** on training and qualifying chartered accountants, giving them license to practice and regulating them including scrutinising audit quality. **Establishment of NFRA was a case of departing of powers from ICAI.**
- Opposition by the ICAI has been a key reason why the government has delayed notifying the NFRA rules.

What are the Provisions related to the Constitution of NFRA (Section 132 of Companies Act, 2013)?

- Central Government may, by notification, constitute a National Financial Reporting Authority (NFRA) to provide for matters relating to accounting and auditing standards under this Act.
- Notwithstanding anything contained in any other law for the time being in force, the National Financial Reporting Authority shall
 - Make recommendations to the Central Government on the formulation and laying down of accounting and auditing policies and standards for adoption by companies or class of companies or their auditors.
 - Monitor and enforce the compliance with accounting standards and auditing standards in such manner as may be prescribed;
 - Oversee the quality of service of the professions associated with ensuring compliance with such standards, and suggest measures required for improvement in quality of service.
- It shall consist of a **chairperson**, who shall be a person of eminence and having expertise in accountancy, auditing, finance or law to be appointed by the Central Government and three full-time members and nine part-time members.
- It shall have the **power to investigate, either suo motu or on a reference made to it by the Central Government**, for such class of bodies corporate or persons, into the matters of professional or other misconduct committed by any member or firm of chartered accountants, registered under the Chartered Accountants Act, 1949.
 - Provided that no other institute or body shall initiate or continue any proceedings in such matters of misconduct where the NFRA has initiated an investigation under this section.
- It shall have the **same powers as are vested in a civil court** under the Code of Civil Procedure, 1908, while trying a suit in matters of:
 - discovery and production of books of account and other documents;
 - summoning and enforcing the attendance of persons and examining them on oath;
 - Inspection of any books, registers and other documents.
- Any person aggrieved by any order of the NFRA, may prefer an appeal before the Appellate Authority constituted under section 132(6) of Companies Act 2013.
- The Central Government may, by notification, constitute, an **Appellate Authority** consisting of a chairperson and not more than two other members, for hearing appeals arising out of the orders of the NFRA.
- The qualifications for appointment of the chairperson and members of the Appellate Authority, the manner of selection, the terms and conditions of their service and the requirement of the supporting staff and procedure to be followed by the Appellate Authority shall be such as may be prescribed by Parliament.
- NFRA shall **prepare its annual report** giving a full account of its activities during the financial

year and forward a copy thereof to the Central Government and the Central Government shall cause the annual report to be laid before each House of Parliament.

What was the Standing Committee on Finance (2014-15)?

- It noted that Constitution of NFRA (section 132 of Companies Act 2013) is a result of the recommendation of the Standing Committee on Finance which examined the Companies Bill, 2009.
- The Committee desired that the Ministry may ensure that in the process of constituting NFRA, it does not create two parallel jurisdictions, governing the same issue. So it favours ICAI on function overlapping.
 - This aspect may be addressed, when the rules governing NFRA are finalised by the Ministry.

What Arguments were put Forth by ICAI?

- NFRA shall result in Multiple regulatory bodies,
- ICAI is a world-class regulator,
- NFRA will be a costly affair,
- Unavailability of adequate competent personnel.

How did MCA (Ministry of Corporate Affairs) Counter ICAI to Favour the creation of NFRA?

- In many countries outside auditors perform the important gatekeeper function.
- Number of independent audit regulators worldwide is up from 18 in 2006 to 51 in 2018.
- **NITI Aayog**, in a separate matter, **criticised the self-regulatory structure** of such professional bodies.
- An international consultant engaged by SEBI said “the ICAI’s oversight is passive in nature and with limited focus on active investigations”.
- **ICAI’s disciplinary mechanism:** Of the 1,972 cases taken up by the Disciplinary Committee/Board of Discipline of the ICAI, only in the matter relating to Satyam Computers have the members been permanently removed. Penalties of one year or more have been imposed on members in only 14 of these cases.

What did the SC hold in **S. Sukumar v/s The Secretary, Institute of Chartered Accountants of India), 2018?**

- SC ordered the Government of India to constitute a committee to look and deliberate into the aspects of audit system in India in Feb, 2018.
- The Committee was formed in April 2018 by MCA and thereafter submitted its report in October, 2018.
 - Within a span of a little over two weeks from the submission of the Report, the Ministry of Corporate Affairs, on November 13, 2018, notified the **National Financial Reporting Authority Rules, 2018 (Rules)** to lay down the powers, jurisdiction, roles, and duties of the NFRA.

NFRA as the regulator to curb the audit mishaps and to bring in stronger audit framework in India is analysed along with recommendations of committee:

- **As a middle path**, the ICAI recommended setting up an independent quality review board under the Chartered Accountants Act, 1949 to refine the quality of attestation of audits.
- Section 132 of the Companies Act, 2013 has given the NFRA the **over-riding powers to establish its supremacy over other laws**, with respect accounting and auditing standards, compliance with accounting and auditing standards, investigation into professional misconducts by chartered accountants, empowered with powers of civil court similar to trying a suit, and for imposing penalties and debarment.
 - **This indicates that there is intent to overhaul the regulatory regime in India for the audit and auditors.**

- NFRA is also empowered to impose heavy monetary penalties and debarring.
 - Debarring the member or the firm from engaging himself or itself from practice as member of the ICAI for a minimum period of **six months or for such higher period not exceeding ten years** as may be decided by the National Financial Reporting Authority.
- **Absence of network liability in the Rules:** Committee has acknowledged the concept of auditor and audit firm operating in India as a member/part of an international network, and in view of the same, it made two noteworthy recommendations, as listed below, however, these recommendations have not found **any place in the Rules**.
- **Monetary penalties on international network/entity:** The Committee recommended imposition of civil liability in the form of **monetary penalties on the international network/entity** with whom/which the Indian audit firm has entered into networking/membership, if any audit failure or fraud is found to have been caused due to any faulty methodology being followed by that particular network.
- **Jurisdiction of the NFRA:** Primarily, the NFRA's jurisdiction encompasses public companies (with certain prescribed thresholds) and listed companies; however, the reach of the NFRA seems very wide and intends to also cover entities outside India as well. The Rules have also left the discretion with the Central Government to refer any entity to the NFRA in public interest.
- **Private companies irrespective of their turnover, or net worth or income, have been left outside** the jurisdiction of the NFRA along **with public unlisted companies below the prescribed thresholds**.
- The Central Government seems to have been given the discretion to make a referral to the NFRA of even private companies or such unlisted public companies, in public interest.
- **Publication of findings of non-compliances in public domain:** The "name shame" approach has **found its way in the Rules**. This is one of the key powers given to the NFRA to publish its findings on its website which are available in public domain regarding the non-compliances with accounting and auditing standards.
- **Suo moto review of financial statements:** NFRA is empowered to review the financial statements of the companies or body corporate falling within its jurisdiction for the purpose of monitoring and enforcing compliance with accounting standards.

Conclusion

As an independent audit regulator, it will be expected that the NFRA enhances an investor's confidence and bring more transparency and accountability in the auditing profession. As we see more complex and multi-layered structures and increased corporate governance, it will be interesting to see whether the NFRA will be able to act as the watchdog to protect the public interest and the interests of investors, creditors and others associated with the companies or bodies corporate falling within its purview.