



INDIAN LEGAL SYSTEM

SHERON.PARMAR

20LL8A

CONTENTS

- Introduction
- Hindu Law
- History of ancient Law
- Sources of Hindu Law
- Indian Legal system
- Classification of legal system
- Judiciary system
- Conclusion

Introduction

- India has a Federal Constitution but does not have a dual court system.
- While there are State courts, they decide both Federal and State issues.
- The Constitution provides for a High Court in each State, although Parliament may by law establish a common High Court for two or more States.
- The Supreme Court, which has 18 judges including the Chief Justice, has original jurisdiction over disputes between the Government of India and States and States inter se and also has the power to issue writs and enforce Fundamental Rights.

Hindu Law

- Hindu law, as a historical term, refers to the code of laws applied to Hindus, Buddhists, Jains and Sikhs in British India.
- Hindu law, in modern scholarship, also refers to the legal theory, jurisprudence and philosophical reflections on the nature of law discovered in ancient and medieval era Indian texts.
- It is one of the oldest known jurisprudence theories in the world.

Hindu Law, "An Introduction."

From thousands of years people living in the Indian subcontinent have been leading their lives by following the guidelines and concepts given in the Vedas. These guidelines have evolved into rules followed by the people and enforced by the rulers and have thus become de facto law. In this modern times, the same laws have been retrofitted to suit present conditions and have been codified in the form of several acts of which the important ones are - Hindu Marriage Act 1955, Hindu Adoption and Maintenance Act 1956, Hindu Minority and Guardianship Act 1956, and Hindu Succession Act 1956.

History of Hindu Law

- The ancient term in Indian texts is Dharma, which means more than a code of law, though collections of legal maxims were compiled into works such as the Nāradaśmṛti.
- The term "Hindu law" is a colonial construction, and emerged after the colonial rule arrived in South Asia, and when in 1772 it was decided by British colonial officials, that European common law system would not be implemented in India, that Hindus of India would be ruled under their "Hindu law" and Muslims of India would be ruled under "Muslim law" (Sharia).

- In ancient Hindu jurisprudence texts, a number of Sanskrit words refer to aspects of law.
- Some of these includes Niyama (rule), Nyasa (justice), Yuktata (justice), Samya (equality and impartiality in law), Vidhi (rule), Vyavastha (regulation), Sambhasa (contract or mutual engagement), Prasamvida-Patra (written contract), Vivadayati (dispute), Adhivakta (lawyer), Nyayavadi (male lawyer), Nyayavadini (female lawyer), Nyayadata (judge), Danda (punishment / penalty), among others.

Sources of Hindu Law

Ancient Sources

Shruti

Smiriti

Diegest & Commentaires

Custom & Usage

Modern Sources

Equity, Justice & Good Conscience

Precedent

Legislation

Classification of Hindu Law

◦ Hindu law can be divided into three categories:

✓ The Classical Hindu Law

✓ The Anglo Hindu Law

✓ Modern Hindu Law.

Indian Legal System

- India has a federal judicial system which is primarily based on mixed law i.e. based on parliamentary legislature, court laws, customary & religious laws as well.
- The Indian Judicial System is developed by judges through their decisions, orders, and judgments.
- In the constitution of India, every citizen has been given several rights and since the rights are provided, there will be infringement of those rights as well.

Classification of Legal system

- There are five types of legal system i.e. **civil law; common law; customary law; religious law and mixed law.**
- In Indian Judicial System there are four types of law.
- The Criminal law is enforced by the police.

Civil law

- As the name suggests, Civil Law comprises of set of rules and regulations which helps in resolving disputes which are non-criminal in nature.
- The law in India is primarily governed by the Code of Civil Procedure, 1908 (CPC) which is a procedural law pertaining to administration of civil proceedings in India.



Common Law



- Common law, also known as case law, is law developed by judges through decisions of courts and similar tribunals.
- A "common law system" is a legal system that gives great precedential weight to common law, on the principle that it is unfair to treat similar facts differently on different occasions.

Customary Law

- Customary rights are specifically excluded from the purview of the Indian Easement Act, 1882.
- When the courts in India recognised customary rights based on long usage, they become customary laws.
- These customary laws were the creation of Indian courts.
- Customary law is a set of customs, practices and beliefs that are accepted as obligatory rules of conduct by indigenous peoples and local communities.
- Customary law forms an intrinsic part of their social and economic systems and way of life.

Religious Law

- Freedom of religion in India is a fundamental right guaranteed by Article 25-28 of the Constitution of India.
- Modern India came into existence in 1947 and the Indian constitution's preamble was amended in 1976 to state that India is a secular state.
- Religion is the very basis of human life which is not just following a belief but it is also a the way of living because the followers of a particular religion follows a definite kind of livelihood and with this moral duty



Mixed Law

- India maintains a hybrid legal system with a mixture of civil, common law and customary, Islamic ethics, or religious law within the legal framework inherited from the colonial era and various legislation first introduced by the British are still in effect in modified forms today.
- India has a federal judicial system which legal system based on mixed law i.e. based on parliamentary legislature, court laws, customary & religious laws as well.
- Mixed legal systems refer to legal systems where two or more of the above legal systems work together.

Judiciary System

- The Judiciary is the system of courts that adjudicates legal disputes/disagreements and interprets, defends, and applies the law in legal cases.
- The judiciary can also be thought of as the mechanism for the resolution of disputes.
- The judiciary generally does not make statutory law or enforce law but rather interprets, defends, and applies the law to the facts of each case. However, in some countries the judiciary does make common law.
- Courts with judicial review power may annul the laws and rules of the state when it finds them incompatible with a higher norm, such as primary legislation, the provisions of the constitution, treaties or international law.
- Judges constitute a critical force for interpretation and implementation of a constitution, thus in common law countries creating the body of constitutional law.

Conclusion

- The judiciary has done itself proud and the people of India can rightly claim that the very independence of the judiciary is sufficient proof of the success of democracy in the country.
- India maintains a hybrid legal system with a mixture of civil, common law and customary, Islamic ethics, or religious law within the legal framework inherited from the colonial era and various legislation first introduced by the British are still in effect in modified forms today.