

INDIAN LEGAL SYSTEM

NAME: VIDHI PATEL

GROUP NO: 20LL5A

INDIAN LEGAL SYSTEM:

- INDIAN LAW REFERS TO THE SYSTEM OF LAW WHICH OPERATES IN INDIA.
- IT IS LARGELY BASED ON ENGLISH COMMON LAW.
- VARIOUS ACTS INTRODUCED BY THE BRITISH ARE STILL IN EFFECT IN MODIFIED FORM TODAY.
- MUCH OF CONTEMPORARY INDIAN LAW SHOWS SUBSTANTIAL EUROPEAN AND AMERICAN INFLUENCE.

INDIAN LEGAL SYSTEM



HISTORY OF INDIAN LAW:

- ANCIENT INDIA REPRESENTED A DISTINCT TRADITION OF LAW.
- INDIA HAD AN HISTORICALLY INDEPENDENT SCHOOL OF LEGAL THEORY AND PRACTICE.
- THE ARTHASHASTRA, DATING FROM 400 BC, AND THE MANUSMRITI, FROM 100 AD, WERE INFLUENTIAL TREATISES IN INDIA.
- MANU'S CENTRAL PHILOSOPHY WAS TOLERANCE AND PLURALISM, AND WAS CITED ACROSS SOUTHEAST ASIA.

PERIODS ; TYPES

- INDIAN LEGAL HISTORY IS DIVIDED INTO **FOUR** PERIODS I.E.
- 1) THE ANCIENT HINDU PERIOD;
- 2) THE MUSLIM PERIOD;
- 3) THE BRITISH PERIOD; AND
- 4) THE POST- INDEPENDENCE PERIOD

SOURCE OF LAW:

□ PRIMARY SOURCE:

- a) THE PRIMARY SOURCE OF LAW IS THE ENACTMENTS PASSED BY THE PARLIAMENT OR THE STATE LEGISLATURES.
- b) THE PRESIDENT AND THE GOVERNOR HAVE LIMITED POWERS TO ISSUE ORDINANCES.
- c) THESE ORDINANCES LAPSE SIX WEEKS FROM THE RE-ASSEMBLY OF THE PARLIAMENT OR THE STATE LEGISLATURE.

□ SECONDARY SOURCE:

- a) SECONDARY SOURCE OF LAW IS THE JUDGEMENTS OF THE SUPREME COURT, HIGH COURTS AND SOME OF THE SPECIALIZED TRIBUNALS.
- b) THE CONSTITUTION PROVIDES THAT THE LAW DECLARED BY THE SUPREME COURT SHALL BE BINDING ON ALL COURTS WITHIN INDIA.

HISTORY OF PRECEDENT

- INDIAN LAW IS LARGELY BASED ON ENGLISH COMMON LAW BECAUSE OF THE LONG PERIOD OF BRITISH COLONY INFLUENCE DURING THE BRITISH RAJ. PRECEDENTS BECAME A SOURCE OF LAW ONLY DURING THE BRITISH RULE IN INDIA. THE GOVERNMENT OF INDIA ACT 1935 ESTABLISHED A FEDERAL COURT AND PRIVY COUNCIL WHOSE DECISIONS WERE BINDING ON ALL THE OTHER COURTS IN THE COUNTRY AND THIS WAS THE BEGINNING OF USING PRECEDENTS IN MAKING JUDGMENTS, SOON WITH PASSAGE OF TIME PRECEDENTS ACQUIRED A LOT OF IMPORTANCE.

MEANING OF PRECEDENT: A PRECEDENT IS AN EVENT OR AN ACTION THAT HAS OCCURRED EARLIER AND ACTS AS A GUIDE FOR SIMILAR SITUATIONS. ACCORDING TO BENTHAM PRECEDENTS ARE JUDGE MADE LAWS. ANY PARTICULAR PRECEDENT ESTABLISHES A PRINCIPLE OR A RULE THAT IS FOLLOWED WHILE TAKING SIMILAR DECISIONS

CONSTITUTION OF INDIA:

- THE CONSTITUTION DECLARES INDIA TO BE A SOVEREIGN SOCIALIST DEMOCRATIC REPUBLIC, ASSURING ITS CITIZENS OF JUSTICE, EQUALITY, AND LIBERTY.
- IT IS THE LONGEST WRITTEN CONSTITUTION OF ANY INDEPENDENT NATION IN THE WORLD.
- IT CONTAINS 470 ARTICLES AND 12 SCHEDULES, AS WELL AS 104 AMENDMENTS, FOR A TOTAL OF 1,46,385 WORDS IN THE ENGLISH LANGUAGE VERSION.

CONSTITUTION OF INDIA



Part IV

Directive Principles of State Policy

Definition.

36. In this Part, unless the context otherwise requires, 'the State' has the same meaning as in Part III.

Application of the principles contained in this Part.

37. The provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.

This is a new article for the governance of the people of the State.

38. The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

Directive Principles of Policy to be followed by the State.

39. The State shall, in particular, direct its policy towards securing—

- (a) that the citizens, men and women equally, have the right to an adequate means of livelihood;
- (b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;
- (c) that the operation of the economic system does not result in the concentration of wealth and means of production in the common detriment;
- (d) that there is equal pay for equal work for both men

FAMILY LAW:

- INDIAN CIVIL LAW IS COMPLEX, WITH EACH RELIGION HAVING ITS OWN SPECIFIC LAWS WHICH THEY ADHERE TO.
- AFTER INDEPENDENCE INDIAN LAWS HAVE ADAPTED TO THE CHANGING WORLD.
- THE MOST RECENT BEING THE DOMESTIC VIOLENCE ACT [2005].

CRIMINAL LAW:

- INDIAN PENAL CODE (IPC) PROVIDES A PENAL CODE FOR ALL OF INDIA INCLUDING JAMMU AND KASHMIR, WHERE IT WAS RENAMED THE RANBIR PENAL CODE (RPC).
- THE CODE APPLIES TO ANY OFFENCE COMMITTED BY AN INDIAN CITIZEN ANYWHERE AND ON ANY INDIAN REGISTERED SHIP OR AIRCRAFT.
- INDIAN PENAL CODE CAME INTO FORCE IN 1862 (DURING THE BRITISH RULE) AND IS REGULARLY AMENDED, SUCH AS TO INCLUDE SECTION 498-A.

CIVIL PROCEDURE CODE:

□ THE CIVIL PROCEDURE CODE (C.P.C.) REGULATE THE FUNCTIONING OF CIVIL COURTS.

□ IT LAYS DOWN THE:

- PROCEDURE OF FILING THE CIVIL CASE.
- POWERS OF COURT TO PASS VARIOUS ORDERS.
- COURT FEES AND STAMPS INVOLVED IN FILING OF CASE.
- RIGHTS OF THE PARTIES TO CASE (PLAINTIFF & DEFENDANT).
- JURISDICTION & PARAMETERS OF CIVIL COURTS FUNCTIONING.
- SPECIFIC RULES FOR PROCEEDINGS OF A CASE.
- RIGHT OF APPEALS, REVIEW OR REFERENCE.

INDUSTRIAL AND LABOUR LAWS:

- INDUSTRIAL DISPUTE ACT, 1947.
- WAGES ACT, 1948.
- EMPLOYEES STATE INSURANCE ACT, 1948.
- EMPLOYEES PROVIDENT FUND AND MISCELLANEOUS.
- PROVISIONS ACT, 1952.
- BEEDI AND CIGAR WORKERS ACT, 1974.
- EQUAL REMUNERATION ACT, 1976.
- CONTRACT LABOUR ACT, 1970.
- CHILD LABOUR ACT, 1986.
- BONDED LABOUR SYSTEM ACT, 1976.

INDIAN JUDICIAL SYSTEM:

- THE THREE-TIERED SYSTEM OF INDIAN JUDICIARY COMPROMISES OF SUPREME COURT (NEW DELHI) AT ITS HELM;
- HIGH COURTS STANDING AT THE HEAD OF STATE JUDICIAL SYSTEM;
- FOLLOWED BY DISTRICT AND SESSIONS COURTS IN THE JUDICIAL DISTRICTS, INTO WHICH THE STATES ARE DIVIDED.
- THE LOWER RUNG OF THE SYSTEM THEN COMPRISES OF COURTS OF CIVIL (CIVIL JUDGES) & CRIMINAL (JUDICIAL/METROPOLITAN MAGISTRATES) JURISDICTION.

INDIAN JUDICIAL SYSTEM



THE SUPREME COURT:

- ON THE 28TH OF JANUARY, 1950, THE SUPREME COURT CAME INTO BEING.
- THE JUDGES OF THE SUPREME COURT AT THE TIME OF INAUGURATION WERE CHIEF JUSTICE HARILAL J. KANIA AND JUSTICES SAIYID FAZL ALI, M. PATANJALI SASTRI, MEHR CHAND MAHAJAN, BIJAN KUMAR MUKHERJEE AND S.R.DAS.
- THE FIRST ATTORNEY GENERAL FOR INDIA WAS MR. M.C. SETALVAD.
- THE SUPREME COURT OF INDIA COMPRISES THE CHIEF JUSTICE AND NOT MORE THAN 25-30 OTHER JUDGES APPOINTED BY THE PRESIDENT OF INDIA.
- THE PROCEEDING OF THE SUPREME COURT ARE CONDUCTED IN ENGLISH ONLY.
- THE REGISTRY OF THE SUPREME COURT IS HEADED BY THE REGISTRAR GENERAL.
- THE ATTORNEY GENERAL FOR INDIA IS APPOINTED BY THE PRESIDENT OF INDIA UNDER ARTICLE 76 OF THE CONSTITUTION.
- THREE TYPES OF ADVOCATES: SENIOR ADVOCATES, ADVOCATES-ON-RECORD & OTHER ADVOCATES.

SUPREME COURT



THE HIGH COURTS:

- THE HIGH COURTS ARE GENERALLY THE LAST COURT OF REGULAR APPEAL.
- BESIDES, FOR INVOKING WRIT JURISDICTION, THE HIGH COURTS CAN BE APPROACHED FOR ENFORCEMENT OF OTHER RIGHTS.
- IT HAS THE POWER TO SUPERVISE THE SUBORDINATE COURTS FAILING WITHIN ITS TERRITORIAL JURISDICTION.
- THE HIGH COURTS ARE COURTS OF RECORD.
- THE HIGH COURTS ALSO EXERCISES ORIGINAL JURISDICTION UNDER THE COMPANIES ACT.
- THE HIGH COURT HEARS FIRST APPEALS FROM THE DECISIONS OF THE DISTRICT COURTS.
- SECTION 100 OF THE CODE OF CIVIL PROCEDURE PROVIDES FOR A SECOND APPEAL FROM APPELLATE DECREES.
- UNDER SECTION 115 OF THE CODE, THE HIGH COURT IS CONFERRED WITH REVISIONAL JURISDICTION.

THE HIGH COURTS:

- ❑ UNDER ARTICLE 227 OF THE CONSTITUTION ALSO, THE HIGH COURT IN THE EXERCISE OF ITS POWERS OF SUPERINTENDENCE ENTERTAINS REVISION PETITIONS TO CORRECT ERRORS ON THE PART OF LOWER COURTS AND TRIBUNALS IN JUDICIAL & QUASI JUDICIAL MATTERS.
- ❑ ON THE CRIMINAL SIDE, THE HIGH COURT HAS TO CONFIRM ALL SENTENCES OF DEATH PASSED BY COURTS OF SESSIONS AND HEAR REFERENCES IN THIS BEHALF.
- ❑ HIGH COURT HEARS CRIMINAL APPEALS FROM CONVICTIONS AWARDED BY SESSIONS JUDGES AND ADDITIONAL SESSIONS JUDGES OR FROM THE JUDGEMENT OF ANY OTHER COURT, WHERE A SENTENCE FOR MORE THAN SEVEN YEARS IMPRISONMENT HAS BEEN PASSED.
- ❑ THE HIGH COURT IS ALSO EMPOWERED TO ENTERTAIN APPEALS FROM ORDERS OF ACQUITTAL PASSED BY ANY COURT.
- ❑ HIGH COURT HAS ALSO BEEN CONFERRED WITH CRIMINAL REVISIONAL JURISDICTION.

HIGH COURT



THE SUBORDINATE COURTS:

- THIS SUBORDINATE COURTS ARE:
 - a) DISTRICT COURTS, EMPOWERED TO HEAR APPEALS FROM COURTS OF ORIGINAL CIVIL JURISDICTION BESIDES HAVING ORIGINAL CIVIL JURISDICTION.
 - b) SESSIONS COURT IS COURTS OF CRIMINAL JURISDICTION, HAVING THE SIMILAR SCOPE OF POWERS.
- THE COURTS OF SPECIFIC ORIGINAL JURISDICTION ARE COURTS OF CIVIL JUDGES, OF JUDICIAL MAGISTRATES; SMALL CAUSES COURTS & COURTS OF METROPOLITAN MAGISTRATES.

SUBORDINATE COURTS



CONCLUSION:

- INDIA MAINTAINS THE HYBRID LEGAL SYSTEM WITH A MIXTURE OF CIVIL ,COMMON LAW AND CUSTOMARY,ISLAMIC ETHICS OR RELIGIOUS LAW WITHIN THE LEGAL SYSTEM .
- CONCLUSION OF THE LAW REFERS TO A DECISION MADE BY A JUDGE REGARDING A QUESTION OF LAW.
- IT DETERMINES WHAT LAWS AND HOW THE LAWS APPLY TO A PARTICULAR CASE.