



INDIAN LAW SYSTEM

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Law

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.

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.

Source of Law

- **Primary Source:**

a. The primary source of law is in 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.

Source of Law Cont.

- **Secondary Source:**
 - a. Secondary source of law is the judgments of the Supreme Court, High Courts and some of the specialised Tribunals.
 - b. The Constitution provides that the law declared by the Supreme Court shall be binding on all courts within India.

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 395 articles and 12 schedules, as well as numerous amendments, for a total of 1,17,369 words in the English language version.

Preamble of the Constitution

- We, the people of india,
- Having solemnly resolved to constitute India into a sovereign socialist secular democratic republic and to secure to all its citizens:
 - Justice, social, economic and political;
 - Liberty of thought, expression, belief, faith and worship;
 - Equality of status and of opportunity;
- And to promote among them all:
 - Fraternity assuring the dignity of the individual and the unity and integrity of the nation.

Fundamental Rights

- Equality before the law.
- Freedom from discrimination on grounds of religion, race, caste, sex or place of birth.
- Equality of opportunity in matters of public employment.
- Freedom of speech and expression.
- Right to assembly peacefully without arms.
- Protection against deprivation of life and personal liberty.
- Freedom of conscience and the profession, practice and propagation of religion.
- To move freely through India, to reside and settle in any part of India.

Fundamental Duties

- Added to the Constitution in 1977.
- To abide by the Constitution.
- Respect its ideals and institutions, the National Flag and the National Anthem.
- To value and preserve the rich heritage of our composite culture.
- To protect and improve the national environment including forests, lakes, rivers and wild life.
- To have compassion for living creations.
- To strive towards excellence in all spheres of individual and collective activity.

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 Raj) 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.

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].

Industrial and Labour Laws

- The most notable laws are as follows:
- 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

The Employee's Provident Funds Act, 1952

The Act shall apply to:

- every establishment which is a factory
- engaged in any industry mentioned in schedule I of the Act and
- employing 20 or more persons or
- any other establishment employing twenty or more persons or
- such other establishment as the Central Government may notify.

Right To Information Act, 2003

- The Right to Information emerges out of the umbrella of Right to Freedom of Speech and Expression and Right to Life.
- Right to Information is also the centrifugal point for access to myriad other basic human rights such as environment, health, food, livelihood etc.
- The most direct transformation that the right to information effects is in the governance system.
- From the perspective of citizenship, right to information is the primary tool in the hands of the citizen.

Writs

The Writs are issued by the Supreme Court under Article 32 and by the High Courts under Article 226 of the Constitution of India.

Types of Writs:

- Writ of prohibition
- Writ of habeas corpus
- Writ of certiorari
- Writ of mandamus
- Writ of quo warranto

Indian Judicial System

- The three-tiered system of Indian judiciary comprises 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.

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 Mukherjea and S. R. Das.
- The first Attorney General for India was Mr. M.C. Setalvad.

The Supreme Court

- The Supreme Court of India comprises the Chief Justice and not more than 25 (30) other Judges appointed by the President of India.
- The proceedings 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* .

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 falling within its territorial jurisdiction.
- The High Courts are Courts of Record.
- The High Courts also exercises original jurisdiction under the Companies Act.

The High Courts Cont...

- 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.
- 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.

The High Courts Cont...

- 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 judgment 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.

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.

RECENT TRENDS IN LAW

CRIMINAL PROCEDURE CODE

- Plea Bargaining in Criminal Cases
- Plea bargaining is introduced in India by Criminal Law (Amendment) Act, 2005.
- This affects cases in which the maximum punishment is imprisonment for seven years.
- However, offenses affecting the socio-economic condition of the country and offenses committed against a woman or a child below the age of fourteen are excluded.