

# INDIAN LEGAL SYSTEM



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# Introduction

- ❖ the legal practices and institutions of India. The general history of law in India is a well-documented case of reception as well as of grafting.
- ❖ Foreign laws have also frequently been “grafted” upon indigenous laws, as is seen in both Anglo-Muslim and Hindu law.
- ❖ Legal institutions introduced by foreign governments were accepted readily by the Indians, either because they were compatible with existing trends or because they met new needs. Independence in 1947 brought an intensification of these processes.

# Sources

- ❖ Indian law thus draws on a number of sources. The Hindu law system began with the Vedas and contemporary indigenous customs (i.e., not Indo-European) 3,000 years ago. Slowly it evolved through blending, comparison, and analysis.
- ❖ The English common law is the residual law in the high courts of Bombay (now Mumbai), Calcutta (now Kolkata), and Madras (now Chennai); and, at times with the aid of relevant British statutes, it is the residual law also in all other jurisdictions representing the old East India Company's courts, in which, since 1781, "justice, equity and good conscience" have supplied the rule of law when no Indian statute or rule of personal law (e.g., Hindu law) covered the point.



# Sources

- ❖ All powers adapted their laws to local conditions, and the famous Anglo-Indian codes, passed in India at intervals from 1860 to 1882, reflected the influence of French and American as well as English and Anglo-Indian models.
- ❖ During that period Roman, or civil, law and continental juridical theory were widely cited, particularly in the Madras high court, to give India the benefit of the best law available; but through codification and other influences this source was soon exhausted.

# Hindu Law



- Hindu law is the personal law applying to the great majority of the population and constituting the main juridical product of Indian civilization. The word Hindu does not imply a strict religious orthodoxy and is more ethnic than creedal in its emphasis.
- Nevertheless, since independence India has aimed at abolishing the personal laws in favour of a civil code (constitution, article 44), which would unify, as far as practicable, the diverse Hindu schools and customs applicable to the various communities.

# Hindu Law

- ❖ Modern Hindu law is the creation of the Hindu Marriage Act (1955), and of the Hindu Minority and Guardianship Act, Hindu Succession Act, and Hindu Adoptions and Maintenance Act (all of 1956). Until 1955–56 Hindus were entitled to claim exemption from the personal law if a custom could be proved of sufficient certainty, continuity, and age and was not contrary to public policy.



# Hindu Law

- ❖ Very little scope is now allowed to custom. As an example of the changes, the Special Marriage Act (1954) provided that any couple might marry, irrespective of community, in a civil, Western-type manner, and their personal law of divorce and succession automatically would become inapplicable.
- ❖ In the new divorce law they have, in addition, a right of divorce by mutual consent after they have lived apart for a year and have waited an additional year.



# Legal System in Ancient India

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- India's legal history is the oldest in the world which can be traced back to the Neolithic age, consisting of the civil and criminal adjudication process, which followed till the Indus Valley Civilization, but the main evidence of India's historical legal system and heritage can be traced from the Vedic period, where the main idea of justice and law is given by the idea of Dharma as illustrated by various Hindu texts like Puranas and Smritis.

# Legal System In Medieval India

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- During the Medieval period in India, the Mitakshara school of law was the most prevalent law compiled by a Chalukya ruler in the 11th century, which was a very definite interpretation of the law. Today this law has become the basis of Hindu Joint Family laws<sup>9</sup>. Then Islam came into India during the 11th century when Mohammed Ghori defeated Prithviraj Chauhan at the Second Battle of Tarain in 1192 AD, with which Qutubuddin Aibak became the first Sultan of Delhi, belonging to the Slave Dynasty.

# Legal System During the Colonial Period in India

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- The common law system , a system of law based on recorded judicial precedents- came to India with the British East India Company<sup>13</sup>. The Mughal judicial system was not very organized and efficient due to which, the English Governor of Surat, where the first English factory was set up after the permission was given by Emperor Jehangir, decided to have their own legal procedures and rules to govern the workers who worked at the factory.
- The East India Company was granted a charter by King George-1 to establish the mayors court in Madras, Bombay, and Calcutta (now Chennai, Mumbai, and Kolkata respectively<sup>14</sup>. These courts had the authorities to decide cases related to both civil and criminal matters, but they derived their source of power from the Company.



# Conclusion



- Law in India has evolved from religious prescription to the current constitutional and legal system we have today, traversing through secular legal systems and the common law. ... The common law system – a system of law based on recorded judicial precedents- came to India with the British East India Company.
- The Supreme Court of India has established a reputation for itself and has become well known in the jurisprudential world map of law and justice. The Court's interpretation of the right to equality and right to life has made it a trendsetter worthy of the most liberal egalitarian judges. The Court is a tribute to the makers of the Constitution. In keeping with traditional tolerance of the people, the Court has never been indifferent or unhelpful to the minorities and their rights but has always been alive and protective of minority rights.
- 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.



THANK YOU