

# INDIAN LEGAL SYSTEM

Patel Dev

20LL9A

# CONTENTS

- Introduction
- **Constitution**
- **Legal system**
- Hindu Law
- Sources of Hindu Law
- Classification of legal 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.

# CONSTITUTION

- The Constitution of India of 1950 is a written document which currently comprises over 450 Articles and 12 Schedules. It is the longest written constitution of any sovereign country in the world.
- The Constitution of India was drafted and adopted by a constituent assembly of elected representatives of the people and came into effect on 26 January 1950. The Constitution of India is not the creation of parliament but of the people of India and is therefore supreme. India's constitutional supremacy is evidenced in the opening sentence of the Preamble to the Constitution of India: "We, The People of India, having solemnly resolved to constitute India into a Sovereign Socialist Secular Democratic Republic".

# CONSTITUTION

- The Constitution of India is sometimes referred to as a cosmopolitan document because it derives several of its features from foreign sources, most notably:
- Parliamentary government, rule of law and bicameralism from the UK.
- Directive Principles of State Policy from Ireland.
- Fundamental rights, judicial independence and functions of the president from the US.
- Union list and state list from Canada.
- Concurrent list and freedom of trade from Australia.
- Fundamental duties from the former USSR.

# LEGAL SYSTEM

- **Main sources of law**
- **The Constitution of India.** This is the supreme source of law.
- **Statutes.** Statutes are enacted by the Parliament or the state legislatures. At local level, subordinate delegated legislation (such as rules, regulations and bye-laws) is passed by local authorities (such as government departments, municipal corporations, municipalities and *gram panchayat*).
- **Customary law.** In certain aspects, local customs and conventions (usually religious in nature) that are not against any statute or morality are also applicable.
- **Judicial decisions.** While technically not law, judicial decisions of superior courts like the Supreme Court of India and High Courts are another important legal source, and have precedential value.

# 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 tradition, in its surviving ancient texts, does not universally express the law in the canonical sense of *ius* or of *lex*. 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).

# 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.



# Sources of Hindu Law

## Ancient Sources

*Shruti*

*Smiriti*

*Digest & Commentaries*

*Custom & Usage*

## Modern Sources

**Equity, Justice & Good Conscience**

***Precedent***

**Legislation**

# 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.

# CLASSIFICATION OF CONSTITUTIONS

1. Evolved and Enacted constitutions
2. Legal and Real constitutions
3. Written and Unwritten constitutions
4. Flexible and Rigid constitutions

## ***EVOLVED AND ENACTED CONSTITUTIONS:***

- An evolved constitution is the repercussion of the historical burgeoning. It is not mounted at a particular time. For instance, the British Constitution has either been passed by any exceptional Constituent Assembly at a specific time or has the ruler given it to the people. Natively, England is about a complete kingship still, but in practice her place is different. Enacted constitutions are framed at a specific time, like the American constitution mounted by a Constituent Assembly after the declaration of Independence. In France, the 1<sup>st</sup> constitution was made in 1830, 2<sup>nd</sup> was constituted in 1848, third was framed in 1871, 4<sup>th</sup> in 1946 and 5<sup>th</sup> in 1958. After the II World War, India's new constitution was completed on November 26, 1949 and it was introduced on 26<sup>th</sup> January, 1950.

# ***LEGAL AND REAL CONSTITUTIONS***

- The scribbled components of the constitution constitute legal constitution and when the agreements and decisions of the court are added to it, it becomes the real constitution.

# ***WRITTEN AND UNWRITTEN CONSTITUTION***

- According to DR. Garner, the dissimilarity between evolved and enacted constitution is similar to that of written and unwritten one. Unwritten is the one, in which the most part is not written like decisions, legal judgements, customs etc.

# ***FLEXIBLE AND RIGID CONSTITUTIONS***

- A flexible constitution refers to which could be amended by ordinary law exercise. While rigid constitution refers to which could only be amended by a very difficult special procedure.



# CONCLUSION

- Constitution may come in different forms or shapes but still it acts as a parent for all rules and regulations of a state. It serves as a base of rights and duties served to citizens.

Thank You