

Indian System of Government: A Perfect Blend of both Common Law and Civil Law

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Abstract

The purpose of this paper is to provide a brief overview of the Indian legal system. India is a sovereign nation with a written constitution that lays out the entire system of democratic organs that will govern the country's operations in detail. India is the largest democracy in the world and has the longest-written constitution in the world. It is also very diverse in terms of culture, religion, language, and standard of living, among other things. In the Indian legal system, the common and civil systems of law are briefly discussed. A brief discussion is provided of the Indian legal system's pre- and post-independence origins. The Indian legal system is based on both common law and civil law. They are the most widely used legal systems in the world, and this paper will briefly discuss their significance in the Indian legal system and their application to the current situation.

The British ruled India for approximately 200 years. They came to trade with India and then ruled it. They needed a system that would control trade and disputes in order to rule. They followed common law, which was their system of government. In this paper, we will briefly talk about how India's civil system of law and common law were implemented when it gained independence.

Keywords: Indian Legal System, Constitution, Government, Common and Civil Law, Courts

Introduction

1.1 Common Law

Common law is the body of law that is established by judicial decisions or written opinions issued by judges at the conclusion of a trial based on the doctrine of judicial precedent. A decision of the Apex Court of the Country holds a power to act as Law which is to be respected and applied by the Apex Court of the State and by other regional courts in their decisions and even by the other benches of the Apex court of the Country. These decisions will act as a Law only when there is no specific law, act etc. dealing with that particular subject matter exists or enforced. Therefore during such circumstances the Justice system relies on such decisions. In common law, judges make decisions that become law and are binding on the courts below them. The person who is in charge of a case determines which points of reference are relevant to that particular case. The decisions of the Regional Courts must be passed by applying the principles set in the decisions of the Apex court of the Country. During the year 1106 A.D., it was developed in England.¹

1.2 Civil Law

The law of continental Europe, also known as Romano-Germanic law, is based on a combination of Roman, Germanic, ecclesiastical, feudal, commercial, and customary laws. The law that is based on a nation's customs or tradition, also known as civil law or continental law is usually written down and codified. All citizens of the nation are bound by it. The nation's official legal system is made up of civil law. All individuals are considered to be bound by legislative enactments. There is minimal opportunity for judge made legislation in civil, criminal, and industrial courts, however judges generally follow previous decisions in practice; The Roman Empire around the 5th or 6th century A.D. established constitutional and administrative courts, which have the power to overturn laws and regulations and whose decisions are binding on all parties.²

¹ Available at <https://www.translegal.com/lesson/8161>. (last visited on 08/01/2023)

² Max rhientien, MaryAnn glenndon, poalo caroza, CIVIL LAW Romano- Germanic.

Concept of Indian System of Government

Bharat, or India, is a union of states. India is a democratic, secular, socialist, and sovereign republic with a parliamentary government. The nation of India is governed by the Living document which was adopted by the Constituent Assembly of the country on November 26, 1949, and went into effect on January 26, 1950. The document known as the Constitution establishes a parliamentary system of government with a federal framework and certain unitary features. The President is the constitutional head of the Executive of the Union. The President and two Houses, the Council of States (Rajya Sabha) and the House of the People (Lok Sabha), make up the council of the Union's Parliament. The President is expected to carry out his or her duties in accordance with the guidance provided by the Council of Ministers, which is headed by the Prime Minister. As a result, the Council of Ministers, headed by the Prime Minister, holds the real executive power. There are 29 union territories and 28 states in India. New Delhi is India's capital.³

India's democracy is supported by three bodies: the legislature, the judiciary, and the executive.

2.1 Legislature:

The President is the head of the Legislature of the Union, which is known as Parliament. Additionally, there are two Houses: the House of the People (Lok Sabha) and the Council of States (Rajya Sabha). Within six months of its previous sitting, each House must meet. In certain circumstances, two Houses may hold a joint sitting.

Like legislatures in other democratic nations, that of India is tasked with passing statutes, monitoring the activities of the government, approving spending plans, responding to feedback from the public, and addressing a wide variety of issues, including global relations, foreign policy, and development strategies. The Union and the States are given different levels of authority under the Bill of Rights, which highlights the overall supremacy of Parliament in the legislative branch. Even in normal times, in addition to a wide range

³ Available at <https://indian.gov.in> (last visited on 03/01/2023)

of subjects, the Parliament can, in certain circumstances, assume legislative authority over a subject that is solely the responsibility of the States. In accordance with the procedure outlined in the Constitution, the Parliament also has the authority to have the head of state, persons employed in the Apex Court of the country & Apex Court of the states, the Comptroller, and the Auditor General dismissed from their current positions.

The consent of both Houses of Parliament is required for any piece of legislation. However, the Lok Sabha's decision on money bills prevails. Parliament is also able to review and control delegated legislation. Parliament is given the authority to initiate Constitutional amendments in addition to the power to legislate.⁴

2.2 Executive:

The Prime Minister serves as the head of the Council of Ministers, which includes the President, Vice President, and Union executive. In accordance with the Constitution, the President has the authority to exercise executive power over the Union. He can do so directly or through officers who report to him. He also holds supreme command of the Union's defense forces. Any time, with the exception of when both Houses of Parliament are in session, the head of state has a number of powers, including the ability to convene sessions of Parliament, prorogue them, send messages to them, dissolve the Lok Sabha, promulgate ordinances, recommend the introduction of give approval to pecuniary and fiscal bills, forgiveness, reprieves, respites, or a waiver of penalties., suspend proceedings, and in some circumstances reduce or commute sentences.. He can assume all or any of the functions of the state's government if the constitutional machinery fails in that state. If the President is satisfied that a grave emergency exists, in which the security of India or any part of its territory is threatened by war, external aggression, or armed rebellion, the President can declare an emergency in the country.

If the Nominal Head is away, ill, or otherwise unable to carry out his duties, or until the election of a new Commander of Chief of the Indian Army (which must be held within six months if an absence is caused by the head of state's demise, resignation, removal, or

⁴ Available at <https://knowindia.gov.in/profile/the-union.php>. (last visited on 22/01/2023)

other event), the Vice-President serves as Chairman of the Rajya Sabha on an ex-officio basis. He ceases to act as the Chairman of the Rajya Sabha while doing this.

The Prime Minister is in charge of a Council of Ministers that helps and advises the President in carrying out his responsibilities. The President appoints the Prime Minister, who in turn recommends other ministers to the President. The Cabinet as whole is answerable to the House of People. All decisions, regulatory suggestions, and knowledge relating to Union governance must be communicated to the Nominal Head by the Real Head of the Executives. Ministers who are members of the Cabinet, Ministers of State (independent charge), Deputy Ministers, and Ministers of State make up the Council of Ministers,⁵

2.3 Judiciary:

In a Country like India there are three musketeers of Justice:

- **Lower Courts of the Country:** For any disputes in their city or region, this is where the majority of residents turn. Each state is divided into numerous districts, each of which has its own local or lower court. Additionally, the District Judge is in charge of the entire district.
- **Apex Court of the State:** Each of the states in a country has an Apex Court, which is unquestionably the state's highest court of justice.
- **Apex Court of the Country:** The decisions of the Apex Court of the Country are to be followed not only by the citizens but also by the Lower Courts of the districts or Apex Court of the State. These judgments have the power to act as a law only in the subjects for which no law is passed or law enforced require to be amended as per the changes in the Society.

The Living Document is eventually under the authority of the judges. As a result, a judge may even void laws passed by the legislative body if there is any breach of the basic tenets of the constitution. Judicial evaluation is the term for this sort of process. Almost all Vital Privileges are given under Living document of the country. If such vital privileges

⁵ *Supra* note 2

of the people gets restricted or interrupted without any probable reason, such person can approach the Apex court of the country. In a democracy all the three pillars are independent of each other.⁶

2.4 The following are characteristics of the Indian political system:

- A legislative system
- Republic with a legislature
- Federated republic
- A nation governed by law

India is a liberal federal republic with a legislative form of government that is heavily influenced by that of the UK. The President and the two Houses, the Rajya Sabha (the Council of States) and the Lok Sabha (the House of the People), make up Parliament, which is known as the "supreme legislative body of India." The legislative arm of the Indian government is represented by the bicameral parliament. The executive branch of government consists of the President, the Vice President, and the Federal Cabinet, which is headed by the real head of the executive branch in his capacity as head of state. The Union, state, and local courts in India make up the judicial arm of the government.

⁶ Available at <https://www.toppr.com/guides/civics/judiciary/introduction-of-the-judiciary/>. (last visited on 12/12/2022)

Blend of Common Law and Civil Law

3.1 Common Law

The British East India Company introduced a judicial precedent-based legal system to India. In 1726, King George I granted the company a charter to establish "Mayor's Courts" in Madras, Bombay, and Calcutta—currently Chennai, Mumbai, and Kolkata, respectively. After winning the "Battle of Plassey", the company's lawful purposes significantly increased, and the Justice System of the same extended far away from the 3 prime cities during the year of 1772. As a result of such extension the company slowly acquire the justice system run by the Mughals in those areas.

The after effects of the revolutionary war fought during 1857 is that the cities under the supervision of the said company got obtained by the "Crown of the British." The Indian legal system underwent the next significant shift when it became a part of the empire. The current mayoral courts were abolished and replaced by supreme courts. These courts became the first High Courts by letters patent permitted under the Indian High Courts Act, which was passed by the British legislature in 1862. The administration of the subordinate courts and the hiring of solicitors was delegated to the individual high courts. During the Raj, the Privy Council served as the highest court of appeal. On matters presented to the council, the law lords of the House of Lords decided. The British monarch sued the government and was sued on her behalf as Empress of India.

The advocates known as "vakils," who were a part of the Mughal legal system, also followed suit during the transition, though most of them continued to serve as client representatives. Because right of audience was restricted to members of professional organizations in England, Ireland, and Scotland, Indian lawyers have been excluded from the newly formed Apex Courts. The Legal Practitioners Act of 1846, which allowed people of all ethnic and religious backgrounds to make a living practicing law, obeyed constraints and laws. The first Law Commission also marked the beginning of serious legal coding. Under the leadership of Thomas Babington Macaulay, Criminal Substantive law was drawn up, enacted and put into effect in 1862. The Crimination Procedure Law, as well

as other more than a dozen additional laws and codes, including the Evidence Act No 1872 and contracts law, were also drawn up by that Commission.⁷

It is said that the Indian Constitution has a structure that is typical of the British. In addition to drawing heavily on the collection of British ideas and institutions that were India's legacy from British rule, the authors of the Indian Constitution also took care to maintain continuity with the British-era governmental system. They treasured everything that had been useful to them and to which they were accustomed rather than cutting ties with the past. As a result, the new structure was not only based primarily on British principles but also altered and expanded upon the previous structure. The situation can be clarified by making a brief reference to the circumstances and process by which the Constitution was drafted. A unitary government had been in place in British India for about a century prior to 1935. The Indian government's machinery was established by periodically passed legislation. By incorporating an Indian component into the legislatures and, later, the executive, they had gradually liberalized it.

The Supreme Court of India examined the relationship between the executive and legislative powers in the Indian Constitution and concluded:

“Our Constitution, despite its federal structure, is based on the British parliamentary system, in which the executive is deemed to have the primary responsibility for the formulation of governmental policy and its transmission into law. However, the condition precedent to the exercise of this responsibility is that it maintains the confidence of the legislative branch of the state,” the Constitution states. As a result, the Indian Constitution follows the English model of a parliamentary executive, and the Council of Ministers, which consists of members of the legislature, functions similarly to the British Cabinet as a hyphen that joins the legislative and executive branches of the state.⁸

The overview of the skeleton of the “Union Government” created under the Law of the land shows that such skeleton is taken from the Westminster System of the country UK.

⁷ Available at, "<http://www.barcouncilofindia.org/about/about-the-legal-profession/legal-education-in-the-united-kingdom/>.” (last visited on 19/12/2022)

⁸ “Bad Sahib Bam Jawaya Kapur Ors. v. The State of Punjab (1955) 2 S.O.B. 225, 236, 237.”

The fundamental distinction that the Indian Union is a federal rather than a unitary government will undoubtedly result in some significant differences. In accordance with the Commonwealth of Australia Act and the British North America Act, the Constitution divides the Union's functions into three categories: executive, legislative, and judicial.

3.2 Civil Law

It is a system in which legislation is codified by parliament or another form of representative government. They are distinct from common law primarily due to the fact that they originate from parliaments rather than court cases. Civil code systems are based on the idea that citizens, through their political representatives, make the laws that apply to them. Instead of making laws, judges are there to enforce them. Codification refers to the collection of similar laws into a logical system that applies to the entire region. In advanced societies, it is a priority to ensure that all laws follow logically consistent principles and do not conflict with one another. The codified laws of complex societies are extensive and in-depth.

3.3 Parliamentary Laws in India:

Parliament contains Lok Sabha, Rajya Sabha and the President.⁹ To make the laws approval from all three bodies is required. The main process of law making in India is:

- Bill is presented in either of the chamber i.e. People Assembly or States Assembly then,
- Act before it enforcement is also presented in other chamber, only when the bill is moved by the both chambers,
- The bill is presented before president for his accent and when Accent given by president it becomes law.¹⁰

Parliament has enacted numerous laws since independence. According to the constitution, the government follows the law-making process. The needs of society and

⁹ The constitution of India. Art. 79.

¹⁰ *Supra* note 2 art. 107.

the nation are taken into consideration when the government makes laws. Culture, education, technology, ideas, business, standard of living, and other aspects of society continue to evolve. Therefore, new laws must be enacted in tandem with changes in society and the nation. The legislature has this opportunity and authority under the civil law system to make laws immediately or after the problem has caused damage. Legislators have the authority to enact new laws in accordance with legal process whenever they believe that they are necessary for the operation of society and nation. The parliament's laws are codified and recorded in writing. They were published by the central government as an official gazette.

India's parliament has the authority to amend and make new laws. The Indian constitution grants the parliament the authority to amend both the constitution and the laws, following the constitutional procedure.¹¹ The Indian Parliament meets twice a year, and in some cases, both houses can meet together.¹² Because it is the body in charge of running a nation and has a wide range of responsibilities, parliament has extensive powers and duties. The current Indian legal system is based on parliamentary laws, also known as statutory laws. The legislatively enacted and imposed statutes form the basis for statutory laws. A formal legislative act is a written statute. It declares the Legislature's will. It could be a declaration of the law, a directive that must be followed, or a prohibition against a particular behavior or act.¹³

¹¹Supra note 3. Art. 368

¹² Supra note 4. Art. 108

¹³Abhijeet Aryan," Legislation & Common law: Indian legal system", <http://www.legalservicesindia.com/article/587/Legislation-&-Common-Law-:-Indian-Legal-System.html>

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Common and Civil Laws in India at Present: Analysis

India's legal system is a combination of common law and civil law. The British government's Government of India Act of 1935 serves as the foundation for the constitution's fundamental structure. India's parliament was established after independence to make laws that meet the needs of the country. Until India's independence, common law was deeply ingrained in the legal system. However, when the Indian parliament came to power, statute-based laws were also used to run the country. In the Indian legal system, the statutory law has binding value and the common law system has demonstrative value. The rule that is followed by the court becomes the law in common law, which is based on the decision of the court. The problem with common law is that it will only make laws when a problem is presented to it. In civil law, on the other hand, the parliament can anticipate problems that will arise in the future and make laws accordingly.

The judiciary is not the body that makes laws; rather, its function is to interpret laws made by parliament when they are brought before the court if they cause a problem for society or the nation. In the current situation, laws made by parliament have more weight. The constitution grants the judiciary the authority to conduct judicial review, which also derives from judicial precedent. Any law that goes against the constitution's fundamental structure can be overturned by it. The judiciary cannot legislate. This suggests that, at the moment, the laws enacted by parliament are more important for running the country. On the other hand, although the judiciary does not have the authority to make laws, it is necessary for a democratic republic's checks and balances to interpret or declare the law.

Conclusion

The paper demonstrates how the Indian legal system perfectly combines civil and common law. The British ruled India for approximately 200 years, so what they developed to govern society during that time still prevails in India. However, after independence, the Indian people adopted the constitution, and the law-making body known as parliament enacted numerous laws utilizing its power and functions to govern the nation, which is a component of civil law. Despite the fact that both legal systems are in use today, the law made by statutory authority is legally binding. Individuals of India choose individuals for parliament in view that our concerns will be raised and regulations will be made as far as we're concerned, that is the piece of common regulation in India.

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