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## The legal system in India: A historic perspective

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### Abstract

The term 'law' means any set or uniform principle which is generally followed. Broadly speaking, laws operate everywhere in the universe. The Common Law system is one of the three major types of legal systems in the world. The other two are Civil Law (based on Codes) and Religious Law (based on Religious Texts). Kautilyan civil law like Dharmaśāstra, similarly Kautilya's criminal law such as Kantakashodhana while Kautilya in addition to it devoted no less than thirteen sub-chapters (in the Arthaśāstra) indicating the types of crimes and equivalent types of punishments against such crimes Kautilya appears to be more advanced than determining the civil and criminal laws for the use of the king and the state. A salient feature of ancient Indian law in these times was that it was secular, though it varied from kingdom to kingdom. To implement and enforce the law and provide services to the public, a Government's bureaucracy, the military and police are vital. While all these branches are created and bound by law, an independent legal profession and a vibrant civil society inform and support their progress. Today law is a practice that is dependent on specialization. This has resulted in the birth of specializations such as areas of securities transactions, intellectual property law, insurance, cyber law

**Keyword:** Common law system, Indian legal history, ancient indian judicial system, law in british-ruled india, law after independence, classifications of indian legal system, india and its legal system

### Introduction

The term 'law' means any set or uniform principle which is generally followed. Broadly speaking, laws operate everywhere in the universe. There the sequence of cause and effect passes for law. Within the area of the society, however, certain social laws are expressed in custom, tradition and in several others forms 'Law' those principles that govern human conduct in society. Moral laws pertain to the motives and internal decisions of the individual. They are enforced by individual conscience and public opinion, and in case of their violation, the individual suffers from remorse or social disapproval.

### Common Law system

The Common Law system is one of the three major types of legal systems in the world. The other two are Civil Law (based on Codes) and Religious Law (based on Religious Texts). Common law developed in England, influenced by Anglo-Saxon law and to a much lesser extent by the Norman conquest of England which introduced legal concepts from Norman law, which had its origins in Social law. Under our common law system, all citizens of whatever rank or status are subject to the same set of laws, and the exercise of Governmental power is limited by those laws. The Supreme Court is empowered to review legislation, but only to determine whether it conforms to Constitutional requirements.

### Indian Legal history

The legal systems of the world today are generally based on one of three basic systems: civil law, common law, and religious law or combinations of these. However, the legal system of each country is shaped by its unique history and so incorporates individual variations. Legal systems are the systems of civil law, common law and religious law. Each country often develops variations on each system and incorporates many other features into the system.

### Ancient Indian judicial system

From the earliest Vedic ages, India has had a recorded legal history. In fact, a civil legal system might well have been in existence in the Bronze Age and in the Indus Valley civilization.

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India was always governed by laws as laid down in the Arthashastra way back in 400 BC and then later in 100 AD in the Manusmriti. The Vedas, Upanishads and other religious books of the Hindus, Jains and Buddhists put laws in place in ancient India, so the Indians of these times were already exposed to the idea of living under the law. Kautilya has referred the Chatuspadah (four parts) four sources of law namely. (1) Dharma, (Sacred law) 2) Vyavahara (evidence) 3) Charitra (Customs) and 4) Rajshasana (edicts of the king). And he also adds 'equity' to it. The factor is also very much in the Kautilyan law which is also based upon the science of logic and deduction.

Kautilyan civil law like Dharmashastra, similarly Kautilya's criminal law such as Kantakashodhana while Kautilya in addition to it devoted no less than thirteen sub-chapters (in the Arthashastra) indicating the types of crimes and equivalent types of punishments against such crimes Kautilya appears to be more advanced than determining the civil and criminal laws for the use of the king and the state.

A salient feature of ancient Indian law in these times was that it was secular, though it varied from kingdom to kingdom. Many leading dynasties belonging to ancient India had court systems to deal with civil and criminal cases. The Maurya dynasty and the Mughals are two excellent examples of this, with the latter paving the way for what we know today as common law. Centuries later, when the Muslims invaded India, Islamic law became applicable to the Muslims living here. But when India came under British rule, this practice was replaced by common law. From this point onwards, the history of India's modern judicial system begins.

The Indian judicial system was derived from the British legal system which they established in India in the middle of the 19<sup>th</sup> century. It was based on a hybrid judicial system which comprised precedents, customs and legislative law, all of which were valid before the law. Since Indian independence, the Constitution of India has come to be known as its most supreme legal document. The Indian legal system is one of the oldest legal systems in the entire history of the world. It has altered as well as developed over the past few centuries to absorb inferences from the legal systems across the world. The Constitution of India is the fountainhead of the Indian legal system. It demonstrates the Anglo-Saxon character of judiciary which is basically drawn from the British legal system.

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. Secular law in India varied widely from region to region and from ruler to ruler. Court systems for civil and criminal matters were essential features of many ruling dynasties of ancient India. Excellent secular court systems existed under the Mauryas (321-185 BC) and the Mughals (16<sup>th</sup> – 19<sup>th</sup> centuries) with the latter giving way to the current common law system

### Law in British-ruled India

The British East India Company established a system of courts in each of the three Presidencies (Bengal, Bombay and Madras). The types of courts and their jurisdiction varied from Presidency to Presidency, until the Crown replaced the company's administration and greater uniformity in the entire judicial structure became possible. From an early date, Indians held important roles in the Company's judiciary. Uniquely, the British also demonstrated an early interest and sensitivity to the existence and use of Hindu and Islamic law

in the company's courts. As the first Law Member, Thomas Macaulay initiated a tradition of the law's codification for use in India. It is pretty evident that judicial conditions during the prolonged period of 17<sup>th</sup>-18<sup>th</sup> century in British India was taken up as a solemn effort, paving the way for future law developments.

The common law system – a system of law based on recorded judicial precedents- came to India with the British East India Company. The company was granted charter by King George I in 1726 to establish "Mayor's Courts" in Madras, Bombay and Calcutta (now Chennai, Mumbai and Kolkata respectively). Judicial functions of the company expanded substantially after its victory in Battle of Plassey and by 1772 company's courts expanded out from the three major cities<sup>[6]</sup>. In the process, the company slowly replaced the existing Mughal legal system in those parts.

Following the First War of Independence in 1857, the control of company territories in India passed to the British Crown. Being part of the empire saw the next big shift in the Indian legal system. Supreme courts were established replacing the existing mayoral courts. These courts were converted to the first High Courts through letters of patents authorized by the Indian High Courts Act passed by the British parliament in 1862. Superintendence of lower courts and enrolment of law practitioners were deputed to the respective High Courts. During the Raj, the Privy Council acted as the highest court of appeal. Cases before the council were adjudicated by the law lords of the House of Lords. The state sued and was sued in the name of the British sovereign in her capacity as Empress of India.

During the shift from Mughal legal system, the advocates under that regimen, "Vakils", too followed suit, though they mostly continued their earlier role as client representatives. The doors of the newly created Supreme Courts were barred to Indian practitioners as right of audience was limited to members of English, Irish and Scottish professional bodies. Subsequent rules and statutes culminating in the Legal Practitioners Act of 1846 which opened up the profession regardless of nationality or religion.

Coding of law also began in earnest with the forming of the first Law Commission. Under the stewardship of its chairman, Thomas Babington Macaulay, the Indian Penal Code was drafted, enacted and brought into force by 1862. The Code of Criminal Procedure was also drafted by the same commission. Host of other statutes and codes like Evidence Act (1872) and Contracts Act (1872).

### Law after Independence

At the dawn of independence, the parliament of independent India was the forge where a document that will guide the young nation was being crafted. It will fall on the keen legal mind of B. R. Ambedkar to formulate a Constitution for the newly independent nation. The Indian Bar had a role in the Independence movement that can hardly be overstated – that the tallest leaders of the movement across the political spectrum were lawyers is ample proof. The new nation saw its first leader in Jawaharlal Nehru, and a paternal figure in M. K. Gandhi, both exemplary lawyers. Perhaps it is the consequent understanding of law and its relation to society that prompted the founding fathers to devote the energy required to form a Constitution of unprecedented magnitude in both scope and length.

The Constitution of India is the guiding light in all matters executive, legislative and judicial in the country. It is extensive and aims to be sensitive. The Constitution turned

the direction of system originally introduced for perpetuation of colonial and imperial interests in India, firmly in the direction of social welfare. The Constitution explicitly and through judicial interpretation seeks to empower the weakest members of the society.

India has an organic law as consequence of common law system. Through judicial pronouncements and legislative action, this has been fine-tuned for Indian conditions. The Indian legal system's move towards a social justice paradigm, though undertaken independently, can be seen to mirror the changes in other territories with common law system. From an artifice of the colonial masters, the Indian legal system has evolved as an essential ingredient of the world's largest democracy and a crucial front in the battle to secure Constitutional rights for every citizen.

### The primary origins of law <sup>[7]</sup>

- The Indian Constitution
- Customary law
- Case law, and
- Statutes (legislation).

### Secondary Source

Case law (judgments of the Supreme and Court High Court)

The Constitution of India is the foundation stone of all matters pertaining to judicial, executive and legislative. Though wide in its scope, it is sensitive to the needs of the people. It put an end to all colonial interests in India and turned its focus on to public welfare. The Constitution empowers the general public, including the weaker sections of society-through a system of rights and duties, through the channel of judicial interpretation.

Among these, the statutes are operated by the Parliament, union territory legislatures and state legislatures. There are mainly two categories under which the Indian legal system operates, these include-Indian Civil Law and Criminal Law

### Classifications of Indian legal system

The judicial system or Indian legal system is a unique feature of the Indian Constitution. It is an integrated system of courts that administer both state and union laws. The Supreme Court of India is the uppermost part in the Indian legal system. Under this, each state or a group of states possesses High Courts. There are several subordinate courts under these High Courts.

### Basics of Indian Legal System

The President of India appoints the Chief Justice and the other judges of the Supreme Court. The Supreme Court of India has its own advisory and appellate jurisdiction that extends to the enforcement of primary rights mentioned by the Indian Constitution and to any argument in between the Government of India and all the states of India.

While the Indian legal system is measured fair, a large backlog of different types of cases can be found and regular dissolutions can effect in the delay before the closing of a particular case. Though, matters of precedence and public interest are dealt with efficiently. Besides these, interim relief is also allowed in other cases where it is necessary.

### India and its legal system

The legal system defines a set of rules, conductor/and procedures which are necessary for establishing and maintaining a disciplined society. It has been formulated by custom, agreement and national interests and is enforced

through a set of institutions. The legal system is critical as it shapes politics, economics and society in various ways and acts as the best social mediator in relations between people and institutions.

The Indian Legal system is one of the oldest and longest written set of laws in the world. Our legal system has its roots in the legislature formulated during the British Raj era. The Indian legal system is formulated bearing in mind the diversity of the country and with due respect to the religion, customs and traditions of the people. For instance the Indian Divorce act is different for Hindus and Muslims which is aligned to their respective religious guidelines. The three main branches of Government that act as the central institutions for interpreting and creating law are:

- Impartial judiciary.
- Democratic legislature
- Accountable executive

### Conclusion

To implement and enforce the law and provide services to the public, a Government's bureaucracy, the military and police are vital. While all these branches are created and bound by law, an independent legal profession and a vibrant civil society inform and support their progress. Today law is a practice that is dependent on specialization. This has resulted in the birth of specializations such as areas of securities transactions, intellectual property law, insurance, cyber law.

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