

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 precedent, also known as stare decisis, is a record of past judicial decisions that serve as a foundation for evaluating subsequent cases. Because there is no official legal code that can be applied to a particular case, common law, also known as case law, relies on detailed records of similar situations and statutes. In common law, judges make decisions that become law and are binding on the courts below them. The adjudicator directing a case figures out which points of reference apply to that specific case. Cases tried in lower courts must follow the example set by higher courts. In 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. In civil, criminal, and commercial courts, there is little room for judge-made law, though judges typically 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

2. 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 Constitution of India, which was approved by the Constituent Assembly on November 26, 1949, and entered into force on January 26, 1950, governs the Republic. A parliamentary form of government with federal structure and some unitary characteristics is established by the Constitution. The President is the constitutional

¹ <https://www.translegal.com/lesson/8161>.

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

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. There are also two Houses: the Council of States (Rajya Sabha) and the House of the People (Lok Sabha). Within six months of its previous sitting, each House must meet. In certain circumstances, two Houses may hold a joint sitting.

India's Parliament, like those in other parliamentary democracies, is responsible for enacting legislation, supervising administration, approving the budget, addressing public complaints, and debating a wide range of topics like development plans, national policies, and international relations. In many ways, the Constitution's distribution of powers between the Union and the States emphasizes the general predominance of Parliament in the legislative arena. Even in normal times, in addition to a wide range 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 remove the Chief Election Commissioner, the Comptroller and Auditor General, the Judges of the Supreme Court and High Courts, and the President from office.

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

³ <https://indian.gov.in>

⁴ <https://knowindia.gov.in/profile/the-union.php>.

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 President can summon, prorogue, address, send messages to Parliament, dissolve the Lok Sabha, promulgate Ordinances, make recommendations for introducing financial and money bills, give assent to bills, grant pardons, reprieves, respites or remission of punishment, suspend, and remit or commute sentences in some cases. 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.

When the President is unable to carry out his duties due to absence, illness, or any other reason, or until the election of a new President (to be held within six months if a vacancy is caused by death, resignation, removal, or otherwise of the President), 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 Council is accountable to the Lok Sabha as a whole. It is the responsibility of the Prime Minister to inform the President of all Council of Ministers decisions, legislative proposals, and information pertaining to Union administration. 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

⁵ *supra* note 2

2.3 JUDICIARY:

As per the judiciary system, there are three levels of courts in India:

- **District Courts:** This is where most citizens go to for any dispute in their city or region. Each state comprises many districts and has its own district or subordinate courts. And, the entire district is presided over by the District Judge.
- **High Courts:** Each state has its own High Court, which is most certainly the highest judicial authority of the state.
- **Supreme Court:** This is at the top of all state and district courts, presided by the Chief Justice of India. Because it is the highest authority of justice for the country, the decisions made by the Supreme Court stand above all other courts.

The Supreme Court of India is the highest authority of the judiciary. The judiciary has the final hold on the Constitution of India. As such, if there is any violation of the fundamentals of the constitution, the court can even overwrite laws passed by the Parliament. This process is called Judicial Review. Almost all Fundamental Rights of Indian citizens are defined in our constitution. In case, any citizen feels that any of such rights are violated, they can approach their local high courts or the Supreme Court. Judiciary is independent from other two organs.⁶

2.4 The following are characteristics of the Indian political system:

- A legislative system
- Republic with a legislature
- Federated republic
- A constitutional republic

India is a federal democratic republic with a parliamentary government that is largely modeled after the UK's. 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 Union Council of Ministers (or federal cabinet), which is led by the Prime Minister as head of government. The judicial branch of government consists of India courts at the Union, state, and local levels.

⁶ <https://www.toppr.com/guides/civics/judiciary/introduction-of-the-judiciary/>.

3. 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 judicial functions significantly increased, and by 1772, the company's courts had expanded beyond the three major cities. The company gradually overtook the Mughal legal system in those areas during this process.

The British Crown acquired control of company territories in India following the First War of Independence in 1857. 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. Through letters of patent authorized by the Indian High Courts Act, which was enacted by the British parliament in 1862, these courts were transformed into the first High Courts. The respective high courts were given charge of the lower courts and the enrollment of lawyers. The Privy Council was the highest court of appeal during the Raj. The law lords of the House of Lords made decisions on cases brought before the council. In her capacity as Empress of India, the British sovereign sued the state and was sued in her name.

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 practitioners were unable to enter the newly established Supreme Courts. Rules and statutes followed, culminating in the Legal Practitioners Act of 1846, which made the profession accessible to people of any nationality or faith. The first Law Commission also marked the beginning of serious legal coding. The Indian Penal Code was drafted, enacted, and put into effect in 1862 under the direction of its chairman, Thomas Babington Macaulay. The same commission also drafted the Code of Criminal Procedure and other numerous additional statutes and codes, including the Evidence Act (1872) and the Contracts Act.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

⁷ <http://www.barcouncilofindia.org/about/about-the-legal-profession/legal-education-in-the-united-kingdom/>.

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 general or Union government structure of the Constitution will convince us that it is based on the British and parliamentary system. 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.

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

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 introduced in either of the house i.e. Lok Sabha or Rajya Sabha then,
- Bill introduced in other house. when the bill is passed by the both house,
- 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 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.

⁹ INDIAN CONST. art. 79.

¹⁰ *Supra* note 2 art. 107.

¹¹ *Supra* note 3. art. 368

¹² *Supra* note 4. art. 108

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

4. 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.

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

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.