



Conceptual study of Indian law and society

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Abstract

Law of India refers to the system of law in modern India. India maintains a hybrid legal system with a mixture of civil, common law and customary or religious law within the legal framework inherited from the colonial era and various legislation first introduced by the British are still in effect in modified forms today. Since the drafting of the Indian Constitution, Indian laws also adhere to the United Nations guidelines on human rights law and the environmental law. Certain international trade laws, such as those on intellectual property, are also enforced in India.

Keywords: constitution, legislation, environmental, intellectual, tradition

Introduction

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Indian personal law is fairly complex, with each religion adhering to its own specific laws. In most states, registering of marriages and divorces is not compulsory. Separate laws govern Sikhs, Hindus, Muslims, Christians, and followers of other religions. The exception to this rule is in the state of Goa, where a uniform civil code is in place, in which all religions have a common law regarding marriages, divorces, and adoption. In the first major reformist judgment for the last decade, the Supreme Court of India banned the Islamic practice of "Triple Talaq" (divorce by uttering of the "Talaq" word thrice by the husband). The landmark Supreme Court of India judgment was welcomed by women activists across India ^[2].

As of January 2017, there were about 1,248 laws. However, since there are Central laws as well as State laws, it is difficult to ascertain their exact numbers as on a given date and the best way to find the Central Laws in India is from the official website.

Ancient India represented a distinct tradition of law, and had a historically independent school of legal theory and practice. The Arthashastra, dating from 400 BC and the Manusmriti, from 100 AD, were influential treatises in India, texts that were considered authoritative legal guidance. Manu's central philosophy was tolerance and pluralism, and was cited across Southeast Asia ^[3].

Early in this period, which culminated in the creation of the Gupta Empire, relations with ancient Greece and Rome were not infrequent. The appearance of similar

fundamental institutions of international law in various parts of the world show that they are inherent in international society, irrespective of culture and tradition. Inter-State relations in the pre-Islamic period resulted in clear-cut rules of warfare of a high humanitarian standard, in rules of neutrality, of treaty law, of customary law embodied in religious charters, in exchange of embassies of a temporary or semi-permanent character ^[5].

With the advent of the British Raj, there was a break in tradition, and Hindu and Islamic law were abolished in favour of British common law. As a result, the present judicial system of the country derives largely from the British system and has few, if any, connections to Indian legal institutions of the pre-British era ^[6].

Constitutional and administrative law

The Constitution of India, which came into effect on 26 January 1950 is the lengthiest written constitution in the world. Although its administrative provisions are to a large extent based on the Government of India Act 1935, it also contains various other provisions that were drawn from other constitutions in the world at the time of its creation. It provides details of the administration of both the Union and the States, and codifies the relations between the Federal Government and the State Governments. Also incorporated into the text are a chapter on the fundamental rights of citizens, as well as a chapter on directive principles of state policy ^[7].

The constitution prescribes a federal structure of government, with a clearly defined separation of legislative and executive powers between the Federation and the States. Each State Government has the freedom to draft its own laws on subjects classified as state subjects. Laws passed by the Parliament of India and other pre-existing central laws on subjects classified as central subjects are binding on all citizens. However, the Constitution also has certain unitary features, such as vesting power of amendment solely in the Federal Government, the absence of dual citizenship, and the

overriding authority assumed by the Federal Government in times of emergency^[8].

Criminal law

The Indian Penal Code formulated by the British during the British Raj in 1860, forms the backbone of criminal law in India. The Code of Criminal Procedure, 1973 governs the procedural aspects of the criminal law.

Jury trials were abolished by the government in 1960 on the grounds they would be susceptible to media and public influence. This decision was based on an 8-1 acquittal of Kawas Nanavati in *K. M. Nanavati vs. State of Maharashtra*, which was overturned by higher courts^[9].

In February 2011, the Supreme Court of India ruled that criminal defendants have a constitutional right to counsel. Capital punishment in India is legal. The last execution was conducted on February 28, 2017, when two women, Renuka Shinde and Seema Mohan Gavit, who were guilty of kidnapping and killing at least 13 children under 6 years, were executed at Yerwada Central Jail in the morning. They were also the first women in India to be given capital punishment^[10].

Contract law

The main contract law in India is codified in the Indian Contract Act, which came into effect on 1 September 1872 and extends to all India except the state of Jammu and Kashmir. It governs entrance into contract, and effects of breach of contract. Indian Contract law is popularly known as mercantile law of India. Originally Indian Sales of Goods Act and Partnership Act were part of Indian Contract act, but due to needed amendment these acts were separated from Contract Act. The Contract act is the main and most used act of legal agreements in India^[11].

Labour law

Indian labour law are among the most comprehensive in the world. They have been criticized by the World Bank, primarily on the grounds of the inflexibility that results from government needing to approve dismissals. In practice, there is a large informal sector of workers, between 80 or 90 per cent of the labour force, to whom labour rights are not actually available and laws are not enforced^[12].

Company law

The current Indian company law was updated and recodified in the Companies Act 2013.

Tort law

The development of constitutional tort law in India began in the early 1980s. It influenced the direction tort law in India took during the 1990s. In recognising state liability, constitutional tort deviates from established norms in tort law. This covers custodial deaths, police atrocities, encounter killings, illegal detention and disappearances. Law commission of India's first report was relating to the Liability of the State in Tort. This report was submitted by the Law commission of India on 11 May

1956. State owes tortious Liability under Article 300 of Indian Constitution^[13].

Property law

Further information: The Transfer of Property Act 1882

Tax law

Indian tax law involves several different taxes levied by different governments. Income Tax is levied by the Central Government under the Income Tax Act 1961. Customs and excise duties are also levied by the Central government. Sales tax is levied under VAT legislation at the state level. The authority to levy a tax is derived from the Constitution of India which allocates the power to levy various taxes between the Centre and the State. An important restriction on this power is Article 265 of the Constitution which states that "No tax shall be levied or collected except by the authority of law." Therefore, each tax levied or collected has to be backed by an accompanying law, passed either by the Parliament or the State Legislature. In 2010-11, the gross tax collection amounted to ₹ 7.92 billion (Long scale), with direct tax and indirect tax contributing 56% and 44% respectively^[14].

Central board of direct taxes

The Central Board of Direct Taxes (CBDT) is a part of the Department of Revenue in the Ministry of Finance, Government of India^[27]. The CBDT provides essential inputs for policy and planning of direct taxes in India and is also responsible for administration of the direct tax laws through Income Tax Department. The CBDT is a statutory authority functioning under the Central Board of Revenue Act, 1963. It is India's official FATF unit. The Central Board of Revenue as the Department apex body charged with the administration of taxes came into existence as a result of the Central Board of Revenue Act, 1924. Initially the Board was in charge of both direct and indirect taxes. However, when the administration of taxes became too unwieldy for one Board to handle, the Board was split up into two, namely the Central Board of Direct Taxes and Central Board of Excise and Customs with effect from 1 January 1964. This bifurcation was brought about by constitution of the two Boards u/s 3 of the Central Boards of Revenue Act, 1963^[15].

Income Tax Act of 1961

The major tax enactment is the *Income Tax Act* of 1961 passed by the Parliament, which establishes and governs the taxation of the incomes of individuals and corporations. This Act imposes a tax on income under the following five heads^[16].

- Income from house and property,
- Income from business and profession,
- Income from salaries,
- Income in the form of Capital gains, and
- Income from other sources

However, this Act may soon be repealed and be replaced with a new Act consolidating the law relating to Income Tax and Wealth Tax, the new proposed legislation is

called the Direct Taxes Code (to become the Direct Taxes Code, Act 2010). Act was referred to Parliamentary standing committee which has submitted its recommendations. Act is expected to be implemented with changes from the Financial Year 2013–14^[17].

Goods and services tax

Goods and Services Tax (GST) Goods and Services Tax (India) is a comprehensive indirect tax on manufacture, sale and consumption of goods and services throughout India to replace taxes levied by the central and state governments. It was introduced as The Constitution (One Hundred and First Amendment) Act 2016, following the passage of Constitution 101st Amendment Bill. The GST is governed by GST Council and its Chairman is Union Finance Minister of India - Arun Jaitley. This method allows GST-registered businesses to claim tax credit to the value of GST they paid on purchase of goods or services as part of their normal commercial activity. Administrative responsibility would generally rest with a single authority to levy tax on goods and services. Exports would be considered as zero-rated supply and imports would be levied the same taxes as domestic goods and services adhering to the destination principle in addition to the Customs Duty which will not be subsumed in the GST^[18].

Introduction of Goods and Services Tax (GST) is a significant step in the reform of indirect taxation in India. Amalgamating several Central and State taxes into a single tax would mitigate cascading or double taxation, facilitating a common national market. The simplicity of the tax should lead to easier administration and enforcement. From the consumer point of view, the biggest advantage would be in terms of a reduction in the overall tax burden on goods, which is currently estimated at 25%-30%, free movement of goods from one state to another without stopping at state borders for hours for payment of state tax or entry tax and reduction in paperwork to a large extent^[19].

Trust law

Trust law in India is mainly codified in the Indian Trusts Act of 1882, which came into force on March 1, 1882. It extends to the whole of India except for the state of Jammu and Kashmir and Andaman and Nicobar Islands. Indian law follows principles of English law in most areas of law, but the law of trusts is a notable exception. Indian law does not recognise "double ownership", and a beneficiary of trust property is not the equitable owner of the property in Indian law^[20].

Family law: Personal law

Family laws in India are different when Warren Hastings in 1772 created provisions prescribing Hindu law for Hindus and Islamic law for Muslims, for litigation relating to personal matters. However, after independence, efforts have been made to modernise various aspects of personal law and bring about uniformity among various religions. Recent reform has affected custody and guardianship laws, adoption laws, succession law, and laws concerning domestic violence and child marriage^[21].

Hindu law

As far as Hindus are concerned Hindu Law is a specific branch of law. Though the attempt made by the first parliament after independence did not succeed in bringing forth a Hindu Code comprising the entire field of Hindu family law, laws could be enacted touching upon all major areas that affect family life among Hindus in India. Jains, Sikhs and Buddhists are also covered by Hindu law^[22].

Muslim law

Indian Muslims' personal laws are based upon the Sharia, which is thus partially applied in India, and laws and legal judgements adapting and adjusting Sharia for Indian society. The portion of the fiqh applicable to Indian Muslims as personal law is termed Mohammedan law. Despite being largely uncodified, Mohammedan law has the same legal status as other codified statutes. The development of the law is largely on the basis of judicial precedent, which in recent times has been subject to review by the courts. The concept of the judicial precedent and of 'review by the courts' is a key component of the British common law upon which Indian law is based. The contribution of Justice V.R. Krishna Iyer in the matter of interpretation of the statutory as well as personal law is significant^[23].

Sunni Law

Quran
Sunna or Ahdis (Tradition of the Prophet)
Ijma (Unanimous Decision of the Jurists)
Qiyas (Analogical deduction)

As per Shia law

Usooli Shia up
Quran
Tradition (only those that have come from the family of the Prophet)
Ijma (only those confirmed by Imams)
Reasons

Akhbari Shia

Tradition (only those that have come from the family of the Prophet)

"Secondary source"

Polygamy and triple talaq is a subject of debate from long time. It has been abolished in many Islamic countries, but still holds its legal validity in the secular country of India. Supreme Court asked the central government for its views, to which it replied that polygamy should be done away with.

Christian Law

For Christians, a distinct branch of law known as Christian Law, mostly based on specific statutes, applies. Christian law of Succession and Divorce in India have undergone changes in recent years. The Indian Divorce (Amendment) Act of 2001 has brought in considerable Changes in the grounds available for divorce. By now Christian law in India has emerged as a separate branch of law. It covers the entire spectrum of family law so far

as it concerns Christians in India. Christian law, to a great extent is based on English law but there are laws that originated on the strength of customary practices and precedents. Christian family law has now distinct sub branches like laws on marriage, divorce, restitution, judicial separation, succession, adoption, guardianship, maintenance, custody of minor children and relevance of canon law and all that regulates familial relationship [24].

Nationality law or citizenship law is mainly codified in the constitution of India and the Citizenship Act of 1955. Although the Constitution of India bars multiple citizenship, the Parliament of India passed on 7 January 2004, a law creating a new form of very limited dual nationality called *Overseas Citizenship of India*. Overseas citizens of India have no form of political rights or participation in the government, however, and there are no plans to issue to overseas citizens any form of Indian passport [25].

Conclusion

Law enforcement in India is undertaken by numerous law enforcement agencies. Like many federal structures, the nature of the Constitution of India mandates law and order as a subject of the state, therefore the bulk of the policing lies with the respective states and territories of India.

At the federal level, the many agencies are part of the Union Ministry of Home Affairs, and support the states in their duties. Larger cities also operate metropolitan police forces, under respective state governments. All senior police officers in the state police forces, as well as those in the federal agencies, are members of the Indian Police Service (IPS) and Indian Revenue Service (IRS), two of the several kinds of civil services. They are recruited by the Union Public Service Commission.

The federal police are controlled by the central Government of India. The majority of federal law enforcement agencies are controlled by the Ministry of Home Affairs. The head of each of the federal law enforcement agencies is always an Indian Police Service officer (IPS). The constitution assigns responsibility for maintaining law and order to the states and territories, and almost all routine policing-including apprehension of criminals-is carried out by state-level police forces. The constitution also permits the central government to participate in police operations and organisation by authorising the maintenance of the Indian Police Service. Indian Police Service (IPS) officers are recruited by the Union Public Service Commission through a competitive nationwide examination. On completion of a nationwide basic public-service course, the Indian Police Service recruits attend the National Police Academy at Hyderabad, Telangana, for training. They are then assigned to particular state or union territory forces, where they usually remain for the rest of their careers. About 50 percent of the officers are regularly assigned to states or territories other than their own in an effort to promote national integration.

Government usually appoints Law Commission panels to study and make non-binding recommendations for the law reform. In first 65 years 1,301 obsolete laws were

repealed, including 1029 old laws in 1950 by Jawaharlal Nehru and 272 old laws in 2004 by Atal Bihari Vajpayee. After that 1,824 such laws were repealed by Narendra Modi government between May 2014 to December 2017, taking the total to 3,125.

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