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Indian Legal System and Its Impact on Indian Society

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ABSTRACT: Law is a set of obligations and principles imposed by the government for securing welfare and providing justice to society. India's legal framework reflects the social, political, economic, and cultural components of society. The common law system garnered its roots throughout the history of the legal system in India. The main sources of law in India are the Constitution, statutes, customary law and the judicial decisions of superior courts. The laws passed by parliament may apply throughout all or a portion of India, whereas the laws passed by state legislatures normally apply within the borders of the states concerned.

KEYWORDS: Indian, impact, society, legal, system, constitution, judicial, court

I. INTRODUCTION

Government of India Act, 1935 was passed by the Parliament of the United Kingdom. It defined the characteristics of the government from "unitary" to "federal". Powers were dispersed between centre and state to avoid any disputes. In 1937, Federal Court was established and had the jurisdiction of appellate, original and advisory. The powers of Appellate Jurisdiction extended to civil and criminal cases whereas the Advisory Jurisdiction was extended with the powers to Federal Court to advise Governor-General in matters of public opinion. The Federal Court operated for 12 years and heard roughly 151 cases. The Federal Court was supplanted by India's current Apex Court, the Supreme Court of India.[1]

Types of laws in the Indian legal system

The Constitution of India, 1950 is the foremost law that deals with the framework of the codes, procedures, fundamental rights and duties of citizens and powers, and duties of government. The laws in India are interconnected with each other forming a hybrid legal system. The classification of laws in the Indian judiciary system:

Criminal Law

Criminal law is concerned with laws pertaining to violations of the rule of law or public wrongs. Criminal law is governed under the Indian Penal Code, 1860, and the Criminal Procedure Code, 1973. The Indian Penal Code, 1860, defines the crime, its nature, and punishments whereas the Criminal Procedure Code, 1973, defines exhaustive procedure and punishments of the crimes.

Murder, rape, theft, and assault are all examples of criminal offences under the law.

Civil Law

Matters of disputes between individuals or organisations are dealt with under Civil Law. Civil courts enforce the violation of certain rights and obligations through the institution of a civil suit. Civil law primarily focuses on dispute resolution rather than punishment. The act of process and the administration of civil law are governed by the Code of Civil Procedure, 1908. Civil law can be further classified into Tort law, Family Law, Property Law, and Contract law.

Some examples of civil law are defamation, breach of contract, and a dispute between landlord and tenant.

Common Law

A judicial precedent or a case law is common law. A law passed by the Supreme Court will be obligatory upon the courts and within the territory of India under Article 141 of the Indian Constitution. A common law theory, Natural justice, often known as “Jus Natural,” encompasses statutory provisions for justice. Nemo judex in causa sua (Rule against Prejudice), audi alteram partem (Rule of fair Hearing), and reasoned decision are the rules of Natural Justice. The doctrine of “Stare Decisis” is the principle for the common law. It is a Latin word that literally means “to stand by that which is decided.” The doctrine of Stare Decisis states the obligation of courts to follow the same principle or judgement established by previous decisions while ruling a case where the facts are similar. A judgement can override or alter a common law, but it cannot override or change the statute.

Statutory Law

Statutory legislation refers to any written law approved by a legislative body to regulate the conduct of its citizens. The Central Government makes laws through Parliament, the state government makes laws through Vidhan Sabha, and the Local Government makes laws through municipalities. A bill is introduced in the legislature and for it to become an act voted upon by the members of both houses requires the assent of the President. The President of India has veto powers over his assent.

Structure of the Indian Judicial System

The judiciary system of India regulates the interpretation of the acts and codes, and dispute resolution, and promotes fairness among the citizens of the land. In the hierarchy of courts, the Supreme Court is at the top, followed by the High Courts and district courts.

Supreme Court

The Supreme Court is the apex body of the judiciary. It was established on 26th January 1950. The formulation of the Supreme Court of India is under Chapter IV of Part V of the Constitution of India. Article 145 of the Indian Constitution enshrines the establishment of Supreme Court Rules, 1966. The jurisdiction of the Supreme Court covers 3 categories: Original (Article 131), Appellate (Article 133 and Article 134), and Advisory (Article 143).

The Chief Justice of India is the highest authority appointed under Article 126. The principal bench of the Supreme Court consisted of seven members including the Chief Justice of India. Presently, the number has increased to 34 including the Chief Justice of India due to the rise in the number of cases and workload. A Supreme Court judge is contravened from practising in any other court of law.

An individual can seek constitutional remedies in the Supreme Court by filing a writ petition under Article 32. A law passed by the Supreme Court will be obligatory upon the courts and within the territory of India under Article 141 of the Indian Constitution.

High court

The highest court of appeal in each state and union territory is the High Court. Article 214 of the Indian Constitution states that there must be a High Court in each state. The High Court has appellant, original jurisdiction, and Supervisory jurisdiction. However, Article 227 of the Indian Constitution limits a High Court’s supervisory power. The Constitution and its powers of a High Court are dealt with under Articles 214 to 231. In India, there are twenty-five High Courts, one for each state and union territory, and one for each state and union territory. Six states share a single High Court. The oldest high court in the country is Calcutta High Court, established on 2 July 1862.

The appointment of a judge of the High Court is dealt with under Article 217 of the Constitution. The High Court Judges (Salaries and Conditions of Service) Act, 1954, deals with the regulations of salaries and services of a High Court judge.

An individual can seek remedies against violation of fundamental rights in High Court by filing a writ under Article 226.

District courts

Chapter VI of Part VI of the Indian Constitution deals with subordinate courts. District Courts regulate matters of justice in a particular area or district chaired by a District judge. There are 672 district courts all over India. The appellate jurisdiction of the High court governs the ruling of the district court. [2]

The district courts are divided into the Court of District Judge and the Court of Sessions Judge.

- Court of District Judge

A Court of District judge deals with cases of civil nature. It vests and exercises its powers from the Code of Civil Procedure, 1908. It has original and appellate jurisdiction. The district courts have appellate jurisdiction over subordinate courts. Section 9 states that the courts have the power to try any case unless barred from doing it. Section 51 to 54 of the Code of Civil Procedure, 1908 deals with procedure in execution. The civil district courts are categorised in ascending order, Junior Civil Judge, Principal Junior Civil Judge Court, Senior Civil Judge Court. The appeal is filed under territorial jurisdiction, pecuniary jurisdiction, and Appellate Jurisdiction. Additional District Judge or Assistant District Judge is appointed depending upon the case and workload and has the same powers as a District Court Judge.

Under the pecuniary jurisdiction, a civil judge can try suits of valuation not more than Rupees two crore.

Under territorial jurisdiction, Section 16 to 20 of the Code of Civil Procedure, 1908 deals with the territorial jurisdiction of courts. Cases are decided based on the nature of the property and within the local limits of the jurisdiction.

- Munsiff Courts

Munsiff courts are the lowest rank of courts in a district. It is usually under the control of the District Court of that region. The pecuniary and territorial jurisdiction limits are defined by the State Government.

- Court of Session

A Court of Sessions judge deals with criminal matters and is the highest authority in the district for criminal matters. It vests and exercises its powers from the Code of Criminal Procedure, 1973. Section 225 to Section 237 deals with the procedure for trial by a Public Prosecutor before a Court of Session. Section 29 deals with the sentences by a Chief Judicial Magistrate, Court of a Magistrate of the first class, and a Magistrate of the second class.

The Session Court is categorised as the court of Chief Judicial Magistrate and deals with matters punishable by imprisonment for a term exceeding seven years but cannot be punished with a death sentence. The Court of a Magistrate of the first class deals with matters punishable for a term of not exceeding three years or a fine not exceeding ten thousand rupees, or both. A Judicial Magistrate of the second class deals with matters punishable with imprisonment not exceeding one year, a fine of one thousand rupees, or both. An Additional Sessions Judge or Assistant Sessions Judge is appointed depending upon the case and workload and has the same powers as a Session Court Judge. An Assistant Session Judge cannot give imprisonment of more than 10 years as per Section 28(3). The



Additional Session judge can exercise the powers of a Sessions Judge vested into him by any general or special order of the Sessions Judge according to Section 400. [3]

Section 366(1) of the Code of Criminal Procedure, 1973 lays down that a Session Court cannot impose a death penalty without the consultation of the High Court.

- Metropolitan courts

Section 16 states that Metropolitan courts are established in metropolitan cities in consultation with the High Court where the population is ten lakh or more. Section 29 states that Chief Metropolitan Magistrate has powers as Chief Judicial Magistrate and Metropolitan Magistrate has powers as the Court of a Magistrate of the first class.

II. DISCUSSION

Form of the Indian Constitution

The Constitution of India has features of both federal and unitary constitutions and is quasi-federal in nature.

The federal features of the Indian Constitution are:

Division of Powers

The federal system of the Indian Constitution decentralises powers between the state and the centre. Article 246 under the Seventh Schedule of the Indian Constitution lays down three lists describing jurisdiction at each level:

1. Union List: The power to make laws is vested in the Parliament of India. It consists of laws related to national importance such as defence, foreign relations, Naval, and military.
2. State List: The state government has the right to make laws under this list. It consists of laws related to public order, public health, sanitation, agriculture, and transport.
3. Concurrent List: The state government and the Government of India as a joint have the right to make laws under this list. It consists of laws related to criminal procedure, trade unions, education, industrial, and labour disputes.

Article 254 describes the doctrine of repugnancy. In case of any inconsistency between the laws of Parliament and the laws of the state on the Concurrent List, the laws of the Parliament will prevail.

Supremacy of the Indian Constitution

The Constitution of India is the supreme pillar of the laws in India. The core framework of the Indian Constitution cannot be modified or altered. Laws should be made concerning the Constitution of India. In case of any inconsistency with the Indian Constitution, the law shall be declared void by the power of judicial review vested to the High Court and Supreme Court.

In a landmark case of Kesavananda Bharati v. State of Kerala (1973), the Hon'ble Supreme Court defined the principle of basic structure and held that the basic structure of the Indian Constitution cannot be changed. [4]



Independent judiciary

The Indian Constitution established the Supreme Court of India as the apex and independent judiciary to ensure the supremacy of the Indian Constitution. It regulates the framework of matters such as limits of power of central and state, fundamental rights and duties, and directive principles of state policy.

Written Constitution

The Constitution of India is the backbone for the rest of the acts. It is the longest written constitution and it consists of a Preamble, 470 Articles divided into 25 Parts with 12 Schedules.

Rigid Constitution

The Constitution of India is rigid in the provisions mentioned under it. The process for altering the provisions requires a special majority in the Parliament and the approval of at least half of the state legislatures.

Dual Government Polity

The Indian Constitution established dual government polity by setting up a Central and state Government. The Union government regulates the safeguarding of national issues whereas the state government focuses on regulating regional and local issues.[5]

Bicameralism

The Indian Constitution established a system of bicameralism. It divides the legislative body into Lok Sabha (House of the People) and Rajya Sabha (Council of States). Lok Sabha or the lower house consists of representatives of people elected through a universal adult franchise whereas Rajya Sabha or the upper house is a permanent body that cannot be dissolved and is elected by the legislative members of the state.

The unitary features of the Indian Constitution are:

Single citizenship

People of India enjoy single citizenship irrespective of in which state they reside. This ensured that the people of India are united as a whole. Articles 5 to 11 under Part II of the Indian Constitution deal with citizenship.

Strong centre

The Central Government has powers over the state government and carries residuary powers as well. The state government is bound by the laws of the Central Government.

Single Constitution

The Constitution of India is a uniform constitution that is applied to the whole of India. It is a framework of duties and powers of central and state government, fundamental rights and obligations of individuals, and directive principles of state policy that apply throughout India's territory.



Appointment of governor

Section 155 states that by the assent of the President the governor of India is appointed. Section 156 states that the governor must hand over his resignation to the President.

Emergency powers

The emergency powers are vested with the President under Part XVIII, from Articles 352 to 360. The emergency is applied in the state of affairs when there is adversity to the security, sovereignty, unity, or integrity of a state. [6]

The separation of powers is categorized into 3 branches, legislative, executive, and judiciary, each has its own powers and responsibilities. The primary goal of the separation of powers was to prevent the misuse of authority by one organ of government. This model of separation of powers is known as trias politica. The idea of this system was inspired by the model of Montesquieu in *De l'esprit des Lois*, 1747 (*The Spirit of Laws*, 1747). In India, the separation of powers is not mentioned anywhere rigidly but can be found in parts of the Indian Constitution. The details of the three branches are as follows:

Legislature

The legislative body is responsible for the enactment of the law. It comprises of Lok Sabha, Rajya Sabha, and the President. It regulates the executive and the judiciary, the other two branches of law. Article 211 lays down restrictions on the legislature and refrains it from any discussion of the conduct of Judges of the Supreme Court or of a High Court.

Executive

Part V of Chapter I deals with the executive organ. The executive body is in charge of government administration and policy execution in accordance with the principles of natural justice. The executive branch consists of the President under Article 53(1), the Vice President, the Prime Minister, and the council of ministers for advice under Article 74 to the President.

Judiciary

The judiciary organ is responsible for the interpretation of the law and aiding justice in society. It comprises the Supreme Court, High Court, and all other subordinate courts. Article 50 of Part IV, Directive Principles of State Policy, establishes the separation of the judiciary and the executive. However, the executive organ is responsible for the appointment of the judiciary. Article 122 and Article 212 state that courts do not have the power to examine Parliamentary proceedings and legislative proceedings respectively.

System of checks and balances

The system of checks and balances regulates the prevention of arbitrary and inconsistency with the powers vested to the organs of the government. The goal behind the checks and balances system is to guarantee that the branches of government check and balance each other so that no branch of the government becomes too authoritative. It promotes efficiency and specialization between the organs of the government. The judiciary organ has the power to exercise judicial review over the acts of legislative and executive. The Judiciary must ensure that it exercises within the limits of the law. The executive organ is responsible for the appointment and removal of Judges in the judiciary organ and the executive is answerable to the legislative organ.

General legislative process

1. A draft of a legislative proposal is a bill. A Minister can introduce a Government Bill or a Private Member can introduce a Private Member's Bill in either the Lok Sabha or the Rajya Sabha. To introduce a bill in the House, a Member-in-Charge must first obtain approval from the Speaker of the House. This procedure is known as "first reading".[5]
2. In case the introduction to the bill is opposed, the speaker may allow a briefing by the members opposing it. When a bill is objected to on the ground that it exceeds legislative power, the speaker may allow a discussion and voting in the House.
3. After being introduced in the parliament, a bill is usually published in the public gazette. Under certain conditions, a bill can be published in the public gazette without being introduced in the house with the speaker's approval. The committee may seek expert advice or public opinion, but it must ensure that the general principles and provisions are taken into consideration while drafting the report and submitting it to the House after completion.
4. There are two steps to the second reading stage. The first stage consists of a discussion of the bill's underlying principle. It is up to the House to recommend the bill to a Select Committee or Joint Committee, circulate it for public opinion, or pass it. When a bill is issued for public input, it is not authorized to move it for a motion of consideration. The second stage consists of examining the Bill clause by clause or as reported by a select or joint committee. The applicable amendments that are moved but not withdrawn are voted on. If the amendments obtain a majority of votes, they form part of the law.
5. The Member-in-Charge can move the bill for the third stage once the second stage is completed. At this stage, the debate about whether the Bill should be supported or opposed takes place.
6. After a Bill has been passed in one House, it is sent to other house for consensus and goes through the above-mentioned stages with the exception of the introduction stage. If one house passes a bill but the other rejects it, or the houses reject the bill's amendments, or more than six months have passed from the date of receipt of the bill by one house, the president may call a joint sitting of the two houses to resolve the stalemate. The bill is considered to be passed by both Houses if a majority of the total number of members of both Houses vote in favour of it and its amendments. However, there cannot be a joint sitting for amendment in the Constitution.
7. Ordinary bills require only a simple majority. Each house must vote with a majority of not less than two-thirds of the members present in order to revise the constitution.
8. After the Houses of Parliament have passed a bill, it is delivered to the President for his approval. After the President signs a bill into law, it becomes an act.

III. RESULTS

Issues with the Indian legal system

One of the most crucial challenges with the Indian judicial system is the delay of cases. The major source of pendency is the increasing number of new cases and the slow rate at which they are resolved. Over 4.7 crore lawsuits are pending in courts at all levels of the judiciary as of May 2022. Nearly 1,82,000 cases have been outstanding for more than 30 years, with 87.4 per cent in subordinate courts and 12.4 per cent in High Courts. According to data from the Department of Justice's National Judicial Data Grid database, courts recorded a 27 per cent increase in pendency between December 2019 and April 2022. Presently, there is an inadequate number of judges available to resolve disputes. Statistics of the Department of Justice show that there are 400 vacancies with a working force of 708 as of June 2022 for the Judges in the Supreme Court of India and the High Courts which is not sufficient to clear the backlog of pending cases in India. [4]



Reforms needed in the Indian legal system

With the country's fast development, there is an urgent need to reform the judicial system as well. There is a legal maxim that says justice delayed is justice denied. It is the basis for the right to a quick trial and equality of treatment intended to improve the legal system because of the aggrieved party who experienced the injury hopes for fast and efficient redressal of the dispute. The legal issues are resolved too slowly either because the cases are too complex, the existing system is too complex, or due to the overburden of multiple cases. Reforms should strive to improve the administrative functions of the judiciary in a robust manner. To increase judicial productivity, the Centre recommended measures such as an increase in the number of working days for courts, establishing fast-track courts, and establishing Indian Courts and Tribunal Services (ICTs). The executive branch, local government, various economic improvements, and administrative reforms must all be considered as part of a well-coordinated and integrated ancillary reform initiative that ensures the judicial system's improvement. Most significantly, judicial changes in the country will be impossible to accomplish without institutional balance, unity, and the state's ability to execute regulatory, supervisory, economic, civil society, and public democratic control functions.

IV. CONCLUSIONS

Throughout history, India's judicial system has witnessed many changes. The supreme pillar and core is the Indian Constitution which has established the operation of the whole justice system in India. The country's rapid evolution demands significant reforms in the judicial system as well. The Indian government is attempting to remove the impediments and backlog. However, there is still more progress that needs to be made.[6]

REFERENCES

- 1) [https://uk.practicallaw.thomsonreuters.com/w-017-5278?transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://uk.practicallaw.thomsonreuters.com/w-017-5278?transitionType=Default&contextData=(sc.Default)&firstPage=true)
- 2) <http://www.barcouncilofindia.org/about/about-the-legal-profession/legal-education-in-the-united-kingdom/>
- 3) <https://timesofindia.indiatimes.com/home/education/news/what-are-the-types-of-law-in-the-indian-legal-system/articleshow/77262576.cms>
- 4) <http://dspace.jgu.edu.in:8080/jspui/bitstream/10739/1842/1/India%20Legal%20Research-%20a%20resource%20guide.pdf>
- 5) <http://164.100.47.194/our%20parliament/How%20a%20bill%20become%20an%20act.pdf>
- 6) <https://www.thehindu.com/news/national/indian-judiciary-pendency-data-courts-statistics-explain-judges-ramana-chief-justiceundertrials/article65378182.ece#:~:text=to%2Dpopulation%20ratio.At%20present%2C%20India%20has%20a%20sanctioned%20strength%20of%2025%2C628%20judges,different%20levels%20of%20the%20judiciary.>



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