

CIVIL JUSTICE SYSTEM IN INDIA: NEED A FRESH LOOK

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Introduction

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.

Historical Development

Ancient Period

The Vedic, Bronze, and Indus Valley civilizations all contributed to the legal judiciary system in India. The first known source of law in India was classical Hindu law. "Dharma" deals with legal and religious duties. The main sources of Hindu Law or "Dharma" are Veda, Smriti, and Aâchâra.

Rigveda, Yajurveda, Samaveda, and Atharvaveda are the four Vedas. Vedas consisted of hymns, praises, customs, and religious obligations.

Smritis defined obligations, practices, and teachings of religion that an individual needs to practise in society. 'Dharmashastra' is a Smriti and one of the primaeval legal texts written in Sanskrit, containing information such as the principles of law, duties of the king, manner of evidence, and witnesses. The king was in command and was counselled by his ministers. The legal procedure was Vyavahâra under Hindu law. The stages of legal procedure were: the plaint, the reply, the trial, and the decision. Manusmriti (200 BC – 200 CE), Yajnavalkya Smriti (200 – 500 CE), Naradasmriti (100 BC – 400 CE), Vishnu Smriti (700 – 1000 CE), Brhaspatismriti (200 – 400 CE) and Katyayanasmriti (300 – 600 CE) are some of the prominent Smritis from Dharmashastra texts that were used as precedents. "Manusmriti" is the ancient set of rules that binds a person by specific responsibilities and obligations. The framework of the judicial system was constructed throughout the era of dynasties to solve various civil and criminal issues.

During Mughal Period:

During the reign of the Mughal Empire, Mahakuma-e Adalat was found to provide justice to the people. Quran, Sunna and Hadis, Ijma, and Qiyas were the primary sources of Muslim law. Fiqh-e-Firoz Shahi and Fatwai-i-Alamgiri were the principles governing the judicial procedure.

During British Period:

The East India Company established the judicial system in India during the British era by creating Mayor's Courts in Madras, Bombay, and Calcutta formulated under the Charter of 1726 and governed under the common law. During the Mayor's Court's regulation, certain constraints were discovered. It lacked details on the kind of law it would regulate and since the English law was the main source of law, in certain instances, it neglected personal and customary laws. By the Charter of 1753, mayor courts were re-established and brought under the regulating authority of the Governor and the Council. The Council of Privy was the highest court of appeal.

The judicial system was separated into District Diwani Adalats for civil cases and District Fauzdari Adalats for criminal matters and the Supreme Court at Calcutta was established under the Regulating Act of 1773 AD under Warren Hastings' administration (1772-1785 AD).

The District Faujdari Court was abolished during the reign of Cornwallis (1786-1793 AD), and the Circuit Court and Mal Adalats were established. Sadar Nizamat Adalat was relocated to Calcutta and placed under the administration of the Governor-General and members of the Supreme Council, assisted by Chief Qazi and Chief Mufti. A district judge presided over the District Diwani Adalat, which was renamed District, City, or Zila Court. He also established civil courts for both Hindus and Muslims, such as the Munsiff Court, the Registrar Court, the District Court, the Sadar Diwani Adalat, and the King-in-Council.

Government of India Act, 1935

The 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.

Types of Legal System in India

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.

Constitution of Indian Judicial System

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).

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. 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.

Conclusion

Throughout the 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.

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