

INTRODUCTION TO INDIAN LAWS, FUNDAMENTAL DUTIES

Indian Legal System

- Indian law refers to the system of law which operates in India.
- It is largely based on English common law.
- Various Acts introduced by the British are still in effect in modified form today.
- Much of contemporary Indian law shows substantial European and American influence.

History of Indian law

- Ancient India represented a distinct tradition of law.
- India had an 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.
- Manu's central philosophy was tolerance and pluralism, and was cited across Southeast Asia.

Source of Law • Primary Source:

- a. The primary source of law is in the enactments passed by the Parliament or the State Legislatures.
- b. The President and the Governor have limited powers to issue ordinances.
- c. These ordinances lapse six weeks from the re-assembly of the Parliament or the State Legislature.

Source of Law ...Cont

Secondary Source:

- Secondary source of law is the judgments of the Supreme Court, High Courts and some of the specialized Tribunals.
- The Constitution provides that the law declared by the Supreme Court shall be binding on all courts within India.

Constitution of India

- The Constitution declares India to be a sovereign socialist democratic republic, assuring its citizens of justice, equality, and liberty.
- It is the longest written constitution of any independent nation in the world.
- It contains 395 articles and 12 schedules, as well as numerous amendments, for a total of 1,17,369 words in the English language version.

Types of law in India

- **1. Common Law**

- The common law can be traced back to have its origin in England. It came to India along with the infiltration of the British East India Company.
- The universal consent and practice of the people from time immemorial formed the basis of Common Law. Common law is also known as judicial precedent or case law.
- It conveys from the name only that, this source of laws are made by the decisions of the cases. This was mostly seen in UK, where if a case was brought up in the court of law and if the decision was given by the judge then that decision was taken as a precedent for the future cases.

2. Criminal Law

- The Indian Criminal law is basically dealt by, the Indian Penal Code, 1860; Code of Criminal Procedure, 1973; and the Indian Evidence Act, 1872.
- Based on British criminal law, the Indian Penal code, defines basic crimes and punishments and is applicable to resident foreigners and citizens alike, and recognizes offences committed by Indian nationals in abroad.
- This kind of law is an offence which is considered to be an offence against the society at large i.e against everybody, and not against a particular individual.
- The police of the state have an important role to play in this kind of law. Murder, assault, robbery, rape are some kinds of offences that can be included in criminal law. These offences are classified in criminal law because such wrongdoing threatens all the people around as they could have also been a victim of the same. Criminal law is dealt with by the public services and not by private lawyers or investigators.

3. Civil Law

- It can be simply defined as the law which deals with actions which are not crimes. All the civil matters are heard by the civil courts.
- The Civil Procedure Code (C.P.C) regulates the functioning of the civil courts. This code lays down the procedure of filing of civil cases, which includes specific rules for proceedings of a case, rights of appeals, review or reference etc. With each religion having its own specific laws to follow, Indian civil law becomes complex.
- Indian laws are changing according to the modern world after independence, example: the most recently the domestic violence act was passed in the year 2005. Civil law can be further sub divided into Torts, Contract law, Family law and Property law.

A) Law of Tort

- The law of tort was planted in the Indian Constitution back in 1980s. In other words tort is a civil wrong the appropriate remedy for which is a suit for unliquidated damages.
- It involves personal injury and civil wrongdoing
- . A tort is a civil wrong, done by one person or entity to another, which results in injury or property damage and compensation given is in monetary terms to the injured party.
- There are three pigeonholes of torts: negligence, intentional tort, and strict liability.

- B) Contract Law

- The Indian Contract Act, 1872 deals with all kinds of contract. It contains all provisions with regards to the validity of a contract to its discharge and also includes the penalties for breach of the contract.
- It is a law that deals with agreements between two or more parties. If one party violates any of the terms and conditions of the contract, they have committed a civil wrong known as "breach of contract." Generally speaking, contracts may be oral or written. However, there are certain types of contracts that must be reduced to writing.

D) Property Law

- Both personal and real properties are included in this law. Property can be tangible or intangible. Tangible property includes jewelry, animals, merchandise etc.

While, intangible property includes patents, copyrights, stocks, and bonds. Land and anything built on it, that cannot be easily removed, as well as anything under the surface of the land, such as oil and minerals are included in real property.

4. Statutory Law

- It is also known as the legislative law. Statutory laws can be set down by the national, state legislature or by the local municipalities. It is the basic structure of the present legal system of India.
- The statute is a formal act of the Legislature in written form. It declares the will of the Legislature. The Statutory law comes into existence by codification.
- The legislative enactments or the statutory laws follow the usual process of legislation. It goes as follows: A bill is proposed in the legislature and voted upon. If approved, it passes to the executive authority (either a governor at the state level or the president at the federal level). If the executive signs the bill, it becomes a statute. If the executive fails or refuses to sign the bill, veto power can be used and sent back to the legislature.
- If the parliament again passes the bill by a required margin it becomes a law. Statutes are also recorded, or codified, in writing and published. Statutory law generally becomes effective on a said date written into the bill. Statutes can be altered by a later parliamentary enactment or if found unconstitutional by a court of competent jurisdiction.

Fundamental Rights

- There are six fundamental rights recognised by the Indian constitution

1. Right to equality (Articles. 14-18)

2. Right to Freedom (Articles. 19-22)

3. Right Against Exploitation (Articles. 23-24)

4. Right to Freedom of Religion (Articles. 25-28)

5. Cultural and Educational Rights (Articles. 29-30), and

6. Right to Constitutional remedies (Articles. 32-35)

Fundamental Duties

- Added to the Constitution in 1977.
 1. Abide by the Constitution and respect national flag & National Anthem
 2. Follow ideals of the freedom struggle
 3. Protect sovereignty & integrity of India
 4. Defend the country and render national services when called upon
 5. Sprit of common brotherhood
 6. Preserve composite culture
 7. Preserve natural environment
 8. Develop scientific temper
 9. Safeguard public property
 10. Strive for excellence
 11. Duty for all parents/guardians to send their children in the age group of 6-14 years to school.