

Role of Constitution in the Legal system of India

Dr. Savita R Giri

Principal S.S.Lahoti law college,
Kalaburgi -585102, Karanataka, India.

Abstract

Law in India have evolved from religious prescription to the current constitutional and legal system we have today travelling through secular legal systems and the common law. The Indian legal system is one of the oldest legal systems in the entire history of the world with its laws and jurisprudence during back to centuries and evolving like a living way of life with the people of India adopting to the changing times. India has recorded legal history starting from Vedic ages and some sort of civil law system may have been in place during the Bronze age and the Indus valley civilization.

The constitution of India is the fountainhead of the Indian Legal system. It demonstrates the Anglo saxon character of judiciary which is a basically drawn from British Legal system. India is a land of diversified culture, local customs and various conventions which are not in opposition to the statute or ethics.

The judicial system or Indian legal system is a unique feature of Indian constitution. It is an integrated system of courts that administer both state and union laws. Under this Constitution, the Supreme Court is the highest court of civil and criminal appeal and it also vested with original and advisory jurisdiction. The Supreme Court of India is the uppermost part in the Indian legal system. Under these each state or group of States possesses High Courts. India has an organic law as consequence of common law system.

This paper focuses on the role of Constitution through Supreme Courts and High Courts regarding Legal system in India through judicial pronouncements and legislative action, this has been fine tuned for Indian conditions.

Keyword

Concept of law, Legal History, Legal system, Constitution, Supreme Court, High Court

Introduction

'Law' is basically a set of rules that are created and enforced by a particular country and community through Social or Government institutions to regulate the actions of its members. Law in India primarily evolved from customary practices and religious prescription to the modern well-codified acts and laws based on Constitution. Through the recorded History of law starts only in Vedic period. It is widely believed that aancient India has some sort of legal system in place even during the Bronze age and in Indus valley civilization. The various stages of evolution of Indian law is classified as that during the Vedic period, Islamic period, the British period and Post Independence. Thus India has a hybrid legal system having elements of civil law common law, equitable law and customary religious law.

Legal History

History comprises of the growth evolution and development of legal system in the country and sets fourth the historical process whereby a legal system has come to be what it is overtime. India has one of the oldest legal systems in the world with its laws and jurisprudence dating back to centuries and evolving like living way of life with the people of India adopting to the changing time. India's legal system is the oldest in the world which can be traced back that age which consisting of the civil law and criminal adjudication process. But the main evidence of India's historical legal system and heritage can be traced from Vedic period. Indian judicial system is largely based on English common law system (where law is developed by judges, through their decisions, orders and judgments. It has created a federal system, with a Central Government coupled with State Government.

Historically India was a collection of kingdoms and empires and the legal system only based on customary law. As a consequence of British rule since 1750 to till 1947, great portions of Indian law are substantially based on British Law, British legal system and the English language.

Indian legal history is divided into four periods.

A) The Ancient Hindu period:-

During this period Indian legal system took its shape from Hindu religious and social practice and this Hindu society was characterized by caste system

that is Brahmin Kshatriya vaishya and shudras the Joint Hindu family system. Broadly Indian legal system based on 'Dharma shastra' (manusmriti) written in Sanskrit, which is concerning the religious and legal duty of a citizen where king's role as the fountain head of justice. The ancient Indian judicial system resided courts hierarchy, where king's Court being the highest (king's advised by his ministers) when the court of chief justice or Pradvivaka, then council of justice and then village councils of arbitrators or kulani similar to modern village panchayat.

Suit or trial (vyavhara) consist four parts of judicial procedure i.e the plaint (poorva-paksha) and the reply (uttar), the trial and investigation of dispute by the court (kriya) and the verdict or decision (Nirnaya)

B) Law and judicial system in the Muslim period

Started in 12th century from 1206-1750 AD and this period divided into two phases i.e Sultanate period (1206-1526) and Mughal period (1526-1750). Broadly Muslim judicial procedure was regulated by two Muslim codes i.e Figh-e-Firoz Shahi and Fatwa-i-Alamgiri and the primary sources of Muslim law Quran, Sunna, Ahadis, Ijma and Qiyas.

C) legal system in India during the British period

During over 200 years of British period in India, they applied English law as extended to India but in personal matters they applied customary law. Even different personal laws governing family law especially Hindu and Muslim laws in modern Indian legal system. Indian legal history can be traced back when king George issued a charter in 1726 to change your Presidency Town's. i.e Bombay, Kolkata, Madras judicial administration by introducing Privy Council in England.

Privy council (1726-1949) exercise appellate jurisdiction and pronounced over 2500 judgements and laid down fundamental principles of law for guidance of Indian courts. British Court established three Supreme Court of judicature at Fort William at Calcutta, Madras and Bombay which are abolished by Indian High Courts Act 1861 to modernise the prevalent judicial system and also established Sardar Diwani Adalats (Supreme Court of Revenue) in the Presidency Towns. British authorities inaugurated first Constitutional Court, Federal court of India at Delhi on 1st October 1937, for all Original, Appellate and Advisory Jurisdictions and was replaced by Supreme Court of India in 26th January 1950.

D) Legal system in India after Independence

After independence, India's leaders had the huge task of a formulating a constitution to govern a country with the population of more than 350 million which has so much diversity in it. The task fell on constituent assembly, which consists of representation from all sections of society, with Dr B.R Ambedkar as the chief of the Drafting Committee of the Constitution and Dr Rajendra Prasad as President of Constituent Assembly. Thus after nearly three years. The Constitution of India came into force on 26th January 1950 and India became a Republic. It must, however, be stated that the pattern of judicial administration even after the Independence of India, remained more or less the same. Thus, the modern judicial system is essentially the same as bequeathed to us by British rurals.

Presently, India has a fairly advanced judicial system having a well defined hierarchy of Courts with the Supreme Court at the apex and a number of subordinate Courts below it. The laws are mostly codified having a uniform application throughout the country. The primary object of judicial administration is to ensure even-handed justice to all alike and establish Rule of Law throughout the country. It is, however, distressing to note that introduction of "Uniform civil code" as contemplated by Article 44 of the Constitution of India is not yet accomplished despite the Supreme Court decision in this regard. The independence of judiciary has been well guarded by the Constitution of India and the provisions of appeal are fair to ensure justice to common man.

Modern judicial system and Hierarchy of Courts

Modern Nation - States function through a set of institutions. The British Reforms helped India in its present legislative framework. The parliament, the Judiciary and the Executive apparatus such as bureaucracy and the police and the formal structure of Union- State relations as well as electoral system are the set of institutions constituted by the idea of constitutionalism (i.e securing the ideals of Constitution) Their arrangements, dependencies and inter-dependencies are directly shaped by the highest politico-legal document of our country - i.e the Constitution.

Constitution

A constitution means a document having a special legal sanctity which sets out the framework and the principal functions of the organs of the Government of state and declare the principles governing the operation of those organs. The legal system derives its authority from the constitution and is deeply embedded in the political system. The presence of judiciary prove the theory of separation of powers there in the other two organs, viz legislature and executive stand relatively apart from it.

Parliamentary democracy works on the principle of "Division of Power" and in the making of law there is a direct participation of Legislature and the Executive. It is only the judiciary that remains independent and strong safeguarding the interests of the citizens by not allowing the other organs to go beyond the constitutional limits. It acts, therefore, as a check on the acts of the other two organs which might violate the Constitution, structure and powers assigned to them. Only judiciary has the powers of interpreting the Constitution and its mandates, and the say of judiciary has to be followed by all organs.

Indian judiciary is a single integrated and unified system of course for the union as well as the states which administers both the union and State laws and at the head of the entire system stands the Supreme Court of India the development of the judicial system can be trace to the growth of Modern Nation-States and Constitutionalism.

In the constitution of India every citizen has been given several rights and since the rights are provided, there will infringement of those rights as well. Our legislature has introduced various laws to enforce and protect such rights, in order to civilize the society and maintain peace and harmony among the individuals.

India has a federal judicial system which is the primary based on mixed law, that is based on parliamentary legislature, court laws, customary and religious laws as well. The Indian judicial system is developed by judges through their decisions, orders and judgements.

Structure of Judiciary in India

Under our Constitution, there is a single integrated system of Courts for the Union as well as the States, which administer both Union and State laws, and at the heads of system stands Supreme Court of India. Below the Supreme Court are the High Courts of different States and under each High Court there are 'Subordinate Courts' i.e Courts subordinate to and under the control of High Courts.

At the top of the judicial system is Supreme Court of India followed by High Courts at State level. There are 21 High Courts in the Country. At the District level, there are Subordinate District Courts.

Supreme Court of India

Chapter IV of part V of the Constitution of India makes provision for ' Union Judiciary' Article 124 deals with establishment and constitution of Supreme Court interalia prescribing its composition qualifications of judge and the mode of appointment as a judge therefore and procedure for removal of judge from the office.

The supreme court is the apex court at National level which was established down 28th January 1950 under article 124(1)of the Constitution of India. All proceedings in the Supreme Court are conducted in English.

The Supreme Court of India stands out as the forum for redressal of grievances as the guardian of liberties and rights and also as the final orbiter in most disputes, not only between individuals, but also between States or between the Union and States or between Individuals and States.

As an appellate Court it can hear appeals from the high courts on civil criminal and constitutional matters the Supreme Court has the appellate jurisdiction over all courts and tribunals in India the court can review its own judgements in its advisory capacity it answers references by the President of India on any question of law or fact of public importance which may have arisen or is likely to arise.

The supreme court is designated as the custodian of fundamental rights and 'Rule of law'. Article 144 mandates all authorities, civil and judicial, to act in aid of the Supreme Court. The court has the authority to pass any decree and order as is necessary for doing 'complete justice'.

Under article 141 of the Constitution, the law declared by the Supreme Court is binding on all courts within the territory of India. The Supreme Court

exercises a wide and powerful discretionary jurisdiction under Article 136 which is unique and is aimed at doing complete justice rather than strictly following the letter of the law.

“If the Supreme Court and the High Court both were to be thought of as brothers in the administration of justice, the High Court has larger jurisdiction but the Supreme Court still remain the elder brother” **Justice R.C.Lahoti**

Under the constitution, the Supreme Court is the highest court of Civil and Criminal appeal and is also vested with original and advisory jurisdiction. In view of its importance to the working of the constitutional system, the Constitution itself has specified the jurisdiction and powers of the Supreme Court. Parliament is given in the power to enlarge its jurisdiction or confer special jurisdiction. The salient features of its jurisdiction and powers are:-

1. Original jurisdiction for enforcement of fundamental rights under Article 32. Under this Article any person can directly approach the highest court, to seek enforcement of any of the fundamental rights guaranteed under the Constitution. Article 32 finds its place in the Chapter on Fundamental Rights - - and is hence itself a fundamental right.
2. Exclusive jurisdiction to decide a Centre State and Interstate disputes.
3. Appellate Jurisdiction against judgements of High Courts on certificate by the High Court in any case involving substantial question of law relating to interpretation of the provisions of the constitution and in any matter involving a substantial question of law.
4. Appellate jurisdiction against judgement in any criminal matter in which the High Court has reversed an order of acquittal into one of conviction and has imposed death sentence, or the High Court has withdrawn a case for trial and imposed death sentence or certified that the case is fit one to appeal to the Supreme Court.
5. Appeal against any judgement, decree, determination, sentence or order of any Court or tribunal.
6. Power to transfer cases pending in one High court to another or to be withdraw cases involving similar questions and pending in more than one High court and decide on such cases itself.

7. Advisory jurisdiction to furnish opinion on important questions of law or fact on a reference by the President.

Analysis of the provisions referred to above indicates that under the scheme of Constitution the Supreme Court is constituted to function..

1. As the protector of the fundamental rights and liberties of individuals in exercise of its original as well as appellate jurisdiction.
2. As the ultimate authority to interpret and enforce the provisions of Constitution and the Laws.
3. Final Court of appeal in all matters constitutional, civil, criminal, revenue etc., against the decisions and orders of all courts and tribunals in the country.
4. To sole tribunal to decide Centre - state and inter-state disputes.
5. To give opinions in any advisory capacity on important questions of law or fact, on a reference by the President.

Thus the Supreme Court occupies most vital and exalted position under the Constitutional setup, entrusted with the power to interpret and finally decide on all matters and disputes pertaining to the state, it's various organs and the people of India. Further, it's decision is binding on all courts throughout India.

Conclusion

The legal system of a country is part of its social system and reflects the social, political, economic, cultural characteristics of that society. It is therefore difficult to understand that legal system outside the socio- cultural aspects in which it operates the legal system based on British model is full of technicalities and procedures and this makes a system still foreign to the majority of Indians and limits access to justice for poor and illiterate people.

In this article the courts and legal system in India had been properly discussed with the help of history of legal system of the country.

It is evident that the role of constitution of India plays a major role in this aspect with the help of other rules and laws enforced from time to time to strengthen the judiciary system of country. The constitution of India is the well spring of the Indian legal system.. Our present legal system is based on British laws. Ultimately the legal system currently in India bears a very close resemblance toward

the British left with. From this study it is evident that the present legal system is well refined and has developed to its best.

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