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INTRODUCTION

THIS CHAPTER INCLUDES

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| <ul style="list-style-type: none">• Sources of Law• Legislative Process in India | <ul style="list-style-type: none">• Legal Method and Court System in India• Primary and Subordinate Legislation |
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CHAPTER AT A GLANCE

Law

Law, as a tool of governance, has been dynamic in nature, expanding its horizons to accommodate the requirements of the society, over centuries. "Law is a set of rules..." (for the society) – Concept of Law by H.L.A. Hart.

The founding stone of source of law in modern India, post Independence, is the Constitution of India, 1950 which provides us the basic principles of law.

Statutes

The statutes are enacted by the Parliament and State Legislatures according to their domain, mentioned in the 7th Schedule of the Constitution of India (the Union List, The State List and the Concurrent List).

Judicial Precedents

As, we try and enhance our understanding of the law and its sources, it is very pertinent to know that all laws, go through rigorous scrutiny under the public eye, once it comes into effect.

Personal Laws

Personal Laws are mostly based on individual faith, hence mostly guided by customs and practice.

Example – Hindu Marriage Act, 1955, The Indian Christian Marriage Act, 1872, The Kazis Act, 1880, etc.

Ordinance/Regulations

Article 13.3 (a) on the Constitution of India, 1950 mentions law includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law;

Sources of Law and Legal System in India before Independence – Brief History

1. **The Ancient Period** of law and governance can be found in and around the geographical boundaries of modern day India, 1500 years before and after the beginning of approximately the first decade of the Gregorian calendar. This era is mostly ruled and governed by kings having their own territories, and having laws and regulations that were very localized and specific to their geographical boundaries.

Ancient Indian Courts can be divided into six categories based on their rank.

They are as follows:

The Kula - Family Councils or groups

The Shreni - Trade or Professional Councils

The Gana - Village Assembly

Adhikrita - Court appointed by the King

Sasita - King's Court

Nripa - The King

2. **The Medieval Period** begins around the 12th century majorly influenced by foreign invasions and the idea of justice and laws they imported along-with themselves (overlapping with other legal systems under rulers of different faith).

During the Sultanate period, there were several courts of Justice, related to different branches of law. For example-Diwan-i-Mazlim deals with disputes concerning with administration or bureaucracy.

During the Mughal period courts were categorized according to the subject and requirement in contention, the central administration of justice was done by the central judicial system.

3. The British Administrative Period lasted for approximately around 200 years. They entered India as traders, during the medieval period, however they were not alone in their endeavour. The Portuguese, the British, the Danes, the Dutch, and the French also reached India. All of these nations came to India for trade, but, out of them, the English people succeeded to establish their presence in India.

4. Indian Legal Period (1950 – Present Day) – The Indian (post Independence) legal history, begins with the Abolition of Privy Council Jurisdiction Act, 1949 (earlier Privy Council seated in England acted as the Highest Court of Appeal, since 1726) which was passed by the Indian Government. This Act accordingly abolished the jurisdiction of Privy Council to entertain new appeals and petitions as well as to dispose of any pending appeals and petitions. It also provided for transfer of all cases filed.

Parliament of India and State Legislature

Article 79 of the Constitution of India states that The Parliament for the Union which shall consist of the President and two Houses to be known respectively as the Council of States (Rajya Sabha) and the House of the People (Lok Sabha). Article 168 of The Constitution of India, 1950 - Constitution of Legislatures in States - For every State there shall be a Legislature which shall consist of the Governor and one House (Legislative Assembly). In some states, there are two houses, Article 168 (2) of the Constitution of India, where there are two Houses of the Legislature of a State:

- (1) Legislative Council and
- (2) Legislative Assembly.

Introduction of Bill

In order to formulate a law, all legislative proposals have to be brought in the form of bills. The process of law making begins with the introduction of a Bill in either House of Parliament. A bill can be introduced either by a Minister or a member other than a Minister. In the former case, it is called a Government Bill and in the latter case, it is known as a Private Member's Bill.

A bill undergoes readings in each House, i.e., the Lok Sabha and the Rajya Sabha, before it is submitted to the President for assent. Therefore, as every bill goes through several rounds of debates and scrutiny before it becomes a law, therefore the time frame for the same too is one that takes time, weeks or sometimes months.

Hierarchy of Courts in India

The Constitution of India, 1950 has provided us with a single integrated judicial system with a pyramidal structure which consists of different types of courts each having varying powers depending on their tier and jurisdiction. The framework of the current legal system has been laid down by the Constitution of India, 1950 in Part V (Chapter IV-Supreme Court of India) and Part VI (Chapter V-High Courts) and (chapter VI-Subordinate Courts).

Supreme Court

Supreme Court is the apex court under the Indian Judicial system governed under Chapter IV of Part V- Art 124-147 of the Constitution comprising of the Chief Justice and other Judges appointed by the President.

High Court

High Courts are the second highest courts in the hierarchy dealt in Chapter V of Part VI of the Constitution.

Lower/Subordinate Courts

Chapter VI of Part VI of the Indian Constitution incorporates provisions related to the subordinate courts. These courts are established and

controlled by the High Court taking into account various factors.

Criminal Court Structure

Section 6 of the Criminal Procedure Code, 1973 prescribes for the constitution of following four classes of criminal courts:

- (a) Court of Session
- (b) Court of Metropolitan Magistrate
- (c) Court of Chief Judicial Magistrate
- (d) Executive Magistrates

Civil Court Structure

The district court is the highest civil court in a district and has judicial as well as administrative powers including the power of superintendence with both appellate and original jurisdiction. According to Article 233 of the Constitution the appointment of district judges that shall be done by the Governor in consultation with the High Court in every district or more than one district. Following are the courts subordinate to the district courts which have jurisdiction based on subject matter, pecuniary or territorial jurisdictions:

- a. Sub-Judge
- b. Additional Sub-Judge
- c. Munsif Courts

The Tribunal System in India

- Tribunals are institutions established for discharging judicial or quasi-judicial duties. The objective may be to reduce case load of the judiciary or to bring in subject expertise for technical matters.
- The Supreme Court has ruled that tribunals, being quasi-judicial bodies, should have the same level of independence from the executive as the judiciary. Key factors include the mode of selection of members, the composition of tribunals, and the terms and tenure of service.

The Supreme Court has noted that the members of a tribunal may be selected from departments of the central government as well as from various other fields of expertise. The presence of expert members (technical

members) along with judicial members is a key feature of tribunals which distinguishes them from traditional courts. Only persons with a judicial background (such as Judges of the High Court and lawyers with the prescribed experience who are eligible for appointment as High Court Judges) may be considered for appointment as Judicial Members.

Alternate Dispute Resolution (ADR)

The process by which disputes between the parties are settled or brought to a result without the intervention of Judicial Institution and without any trial is known as Alternative Dispute Resolution. ADR offers to resolve all type of matters including civil, commercial, industrial and family etc., where people are not being able to start any type of negotiation and reach the settlement.

Modes of Alternate Dispute Resolution (ADR)

Arbitration

The dispute is submitted to an arbitral tribunal which makes a decision (an "award") on the dispute that is mostly binding on the parties. Except for some interim measures, there is very little scope for judicial intervention in the arbitration process.

Conciliation

A non-binding procedure in which an impartial third party, the conciliator, assists the parties to a dispute in reaching a mutually satisfactory agreed settlement of the dispute.

The parties are free to accept or reject the recommendations of the conciliator. However, if both parties accept the settlement document drawn by the conciliator, it shall be final and binding on both.

Mediation

In mediation, an impartial person called a "Mediator" helps the parties try to reach a mutually acceptable resolution of the dispute.

The mediator does not decide the dispute but helps the parties communicate so they can try to settle the dispute themselves. Mediation leaves control of the outcome with the parties. This is more or less an informal way of arriving at a settlement/arrangement.

Lok Adalat

An interesting feature of the Indian legal system is the existence of voluntary agencies called Lok Adalat (People's Court). The Legal Services Authorities Act was passed in 1987 to encourage out-of-court settlements.

Lok Adalat or "People's Court" comprises of a forum which facilitates negotiations in the presence of a judicial officer. The order of the Lok-Adalat is final and shall be deemed to be a decree of a civil court and shall be binding on the parties to the dispute. The order of the Lok-Adalat is not appealable in a court of law.

Regulatory Bodies in India**1. Securities and Exchange Board of India (SEBI)**

The Securities and Exchange Board of India (SEBI) is a statutory body established under the SEBI act of 1992, as a response to prevent malpractices in the capital markets that were negatively impacting people's confidence in the market. Its primary objective is to protect the interest of the investors, prevent malpractices, and ensuring the proper and fair functioning of the markets.

2. Reserve Bank of India (RBI)

The Reserve Bank of India (RBI) is India's central bank and was established under the Reserve Bank of India act in 1935. The primary purpose of RBI is to conduct the monetary policy and regulate and supervise the financial sector, most importantly the commercial banks and the non-banking financial companies. It is responsible to maintain price stability and the flow of credit to different sectors of the economy.

3. Insurance Regulatory and Development Authority of India (IRDAI)

The Insurance Regulatory and Development Authority of India (IRDAI) is an independent statutory body that was set up under the IRDA Act, 1999. Its purpose is to protect the interests of the insurance policyholders and to develop and regulates the insurance industry. It issues advisories regularly to insurance companies regarding the changes in rules and regulations.

- 4. Pension Funds Regulatory and Development Authority (PFRDA)**
The Pension Fund Regulatory and Development Authority (PFRDA) is a statutory body, which was established under the PFRDA act, 2013. It is the sole regulator of the pension industry in India. Initially, PFRDA covered only for employees in the government sector but later, its services were extended to all citizens of India including NRI's. Its major objectives are – to provide income security to the old aged by regulating and developing pension funds and to protect the interest of subscribers to pension schemes.
- 5. Association of Mutual Funds in India (AMFI)**
The Association of Mutual Funds in India (AMFI) was set up in 1995. It is a non-profit organization that is self-regulatory and works for the development of mutual fund industry by improving professional and ethical standards, thus aiming to make the mutual funds more accessible and transparent to the public. It provides spreads awareness vital information about mutual funds to Indian investors.
- 6. Ministry of Corporate Affairs (MCA)**
The Ministry of Corporate Affairs (MCA) is a ministry within the government of India. It regulates the corporate sector and is primarily concerned with the administration of the Companies Act, 1956, the Companies Act, 2013 and other legislations. It frames the rules and regulations to ensure the functioning of the corporate sector according to the law.
- 7. National Housing Bank (NHB)**
National Housing Bank, is the apex regulatory body for overall regulation and licensing of housing finance companies in India. It is under the jurisdiction of Ministry of Finance, Government of India. It was set up on 9 July 1988 under the National Housing Bank Act, 1987.

Primary Legislation is the law that derives its source from the enactments passed by the Parliament or the State Legislatures, the bodies empowered by the Constitution of India, 1950 by its provisions. In addition to these the President and the Governor have limited powers to issue ordinances when the Parliament or the State Legislature are not in session.

Secondary Legislation/Sub-Ordinate Legislation arises from the need for empowering authorities (to legislate) working at the grass-root level to counter the daily challenges to the existing laws becomes a necessity. The provision for secondary legislation (in the form of regulations/bye laws) has been ingrained in the Constitution of India, 1950. Article 13.3 (a) of the Constitution of India, 1950 mentions law includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law; therefore provision for such delegation (subordinate legislation) gains its prominence.

Local Governance: The Constitution of India, 1950 itself provides provisions for decentralization of governance, for effective and adequate authority over a territory to look after the requirements. Part IX (Panchayat System) and Part IXA (Municipalities) of the Constitution of India, 1950 give them adequate powers and autonomy over their jurisdiction. These two bodies are one of the largest sources of sub-ordinate legislation, as regulations in these territories need to be revised very rapidly.

MULTIPLE CHOICE QUESTIONS

1. Which Article in the Constitution of India, 1950 has provisions for introduction of a bill in the Parliament of India?
 - (a) Article 119
 - (b) Article 141
 - (c) Article 107
 - (d) Article 243
2. Money Bill is introduced in which House of the Parliament?
 - (a) Council of People – Lok Sabha
 - (b) Council of States – Rajya Sabha
 - (c) Both the Houses
 - (d) None of the Houses
3. The essence of Sub-Ordinate legislation can be found in which Article of the Constitution of India, 1950?

- (a) Article 12
 - (b) Article 32
 - (c) Article 13
 - (d) Article 14
4. Which is the highest civil court in a district?
- (a) Sessions Court
 - (b) Supreme Court of India
 - (c) District Court
 - (d) High Court
5. When was the Supreme Court of India established?
- (a) 26th November 1949
 - (b) 26th January 1950
 - (c) 28th January 1950
 - (d) 1st October 1937
6. What kind of structure does the Indian Constitution have?
- (a) Unitary
 - (b) Federal
 - (c) Autocracy
 - (d) Totalitarian
7. Which is the lowest court to approach for criminal matters?
- (a) Munsif Court
 - (b) Judicial Magistrate
 - (c) Sessions Court
 - (d) District Court
8. Fundamental Rights are mentioned under which part of the Constitution of India?
- (a) Part-II
 - (b) Part-III
 - (c) Part-IX
 - (d) Part-XII
9. What is a Private Bill?
- (a) A bill introduced by a member other than a Minister
 - (b) Bill introduced by a private citizen
 - (c) Bill introduced by a Private company

- (d) A bill relating affairs which are private to individual
10. Secondary/Sub-ordinate legislation cannot go beyond:
- (a) The ambit of the Act
 - (b) The ambit of the Act or the Constitution of India
 - (c) The Constitution of India
 - (d) Directive Principles of State Policy
11. Elements of law include:
- (a) Command
 - (b) Duty
 - (c) Sanction
 - (d) All of the above
12. As per Historical definition of law, it is not universal in nature.
- (a) True
 - (b) False
 - (c) Partly True
 - (d) Partly False
13. is a primary source of Hindu law.
- (a) Vedas
 - (b) Holy Kuran
 - (c) Smritis
 - (d) Bible
14. is the most ancient source of Indian law.
- (a) Judicial Decisions
 - (b) Personal Law
 - (c) Statutes
 - (d) Customs
15. custom prevails in a particular locality.
- (a) Legal
 - (b) General
 - (c) Conventional
 - (d) Local
16. Custom to be valid must not be:
- (a) Immemorial
 - (b) Uncertain
 - (c) Reasonable
 - (d) In confirmation with law and public morality.
17. Rule of Court decision to be followed in future cases is known as
- (a) Doctrine of Indoor Management
 - (b) Doctrine of Stare Decisis
 - (c) Doctrine of Court Decisis
 - (d) None of the above.

18. In case of any conflict between decisions of co-equal benches,.....
decision prevails.
- (a) Later (b) Previous
(c) Both (a) and (b) (d) None
19. Bench of two judges is known as -
- (a) Smallest Bench (b) Full Bench
(c) Division Bench (d) None of the above
20. Supreme Court is bound by its own decisions.
- (a) True (b) False
(c) Partly True (d) Partly False
21. precedents creates law for the whole country.
- (a) Declaratory (b) Pervasive
(c) Absolutely Authoritative (d) Original
22. Legislation can be:
- (a) Supreme (b) Subordinate
(c) Both (a) and (b) (d) None
23. Shruti includes number of Vedas.
- (a) 1 (b) 2
(c) 3 (d) 4
24. Hindu and Muhammedan law is
- (a) Personal Law (b) Principle Law
(c) Historical Law (d) Customary Law
25. "A declaratory precedent is one which is merely the application of
already existing rule of law." This was said by:
- (a) Ulpine (b) Cicero
(c) Salmond (d) None
26. _____ is the last stage of law making and therefore, the lawyer or the
jurist is most important than legislature.
- (a) Custom (b) Social control
(c) Legislation (d) None of these
27. _____ refers to some pattern set for guiding the future conduct
- (a) Doctrine of Stare Decisis (b) Precedent
(c) Judicial Precedent (d) Both (a) and (b)

28. Law administered by chancellor is known as
(a) Statued law (b) Equity
(c) Equity courts (d) All of these
29. These customs which are non-obligatory and are observed due to the pressure of public opinion is known as
(a) Custom having sanction (b) Positive Morality
(c) Both (a) and (b) (d) None of these
30. Customs that are enforced by state are known as
(a) Customs having sanction (b) Local customs
(c) General customs (d) All of these
31. This is an essential condition for making a valid custom:—
(a) Compulsory observations (b) Peaceable enjoyment
(c) Certainty (d) All of these
32. The term precedent means
(a) Observation
(b) Set pattern for guiding the future conduct
(c) Both (a) and (b)
(d) None of these
33. _____Article makes clear that the law declared by the government shall be binding on all the courts within the territory of India.
(a) Article 171 of the constitution
(b) Article 141 of the constitution
(c) Article 187 of the constitution
(d) All of these
34. Which proceeds from the sovereign power in the state or which derives the power directly from the constitution.
(a) Supreme Legislation (b) Obiter Dicta
(c) Judiciary (d) All of these
35. Which of the following is not the branch of law
(a) Civil Law (b) Administrative Law
(c) Commercial Law (d) None of these

36. Which of the following statement is not correct in context to the Supreme Court?
- (a) It is bound by its own decisions
 - (b) It's decisions are binding on all courts in India
 - (c) It is not bound by the decision of Federal Court
 - (d) None of the above.
37. Which of the following is NOT correct in context to the High Court in India?
- (a) It is the court of Co-ordinate Jurisdiction
 - (b) Privity council decisions are not
 - (c) Its decisions are binding on all tribunals within its jurisdiction
 - (d) All of the above
38. A Bench of three Judges in a High Court is called as
- (a) Smallest Bench
 - (b) Division Bench
 - (c) Triangular Bench
 - (d) Full Bench
39. The Smallest Bench in a High Court consists of how many Judges?
- (a) Five
 - (b) Two
 - (c) One
 - (d) None of the above
40. A Bench of two judges in High Court is called as
- (a) Smallest Bench
 - (b) Division Bench
 - (c) Full Bench
 - (d) None of the above
41. The Hindu Personal law is basically found in
- (a) Shruti
 - (b) Smriti
 - (c) Both (a) & (b)
 - (d) None of the above
42. Which of the following is not a Smriti?
- (a) Manu
 - (b) Yajnavalkya
 - (c) Narada
 - (d) Shruti
43. The guidance or authority of the past decisions of the court are called
- (a) Judicial Precedents
 - (b) Original Precedents
 - (c) Persuasive Precedents
 - (d) None of the above

44. Legal customs and conventional customs are a part of
 (a) Customs without Sanction (b) Customs having Sanction
 (c) Judicial Customs (d) Voluntary Customs

ANSWER

1	(c)	2	(a)	3	(c)	4	(c)	5	(b)	6	(b)
7	(b)	8	(b)	9	(a)	10	(b)	11	(d)	12	(a)
13	(a)	14	(d)	15	(d)	16	(b)	17	(b)	18	(a)
19	(c)	20	(b)	21	(d)	22	(c)	23	(d)	24	(a)
25	(c)	26	(c)	27	(c)	28	(b)	29	(b)	30	(a)
31	(d)	32	(b)	33	(b)	34	(a)	35	(d)	36	(a)
37	(b)	38	(d)	39	(c)	40	(b)	41	(c)	42	(d)
43	(a)	44	(b)								

QUESTION OF JUNE 2013

1. Which kind of precedent from the following creates and applies a new rule of law?
 (a) Declaratory (b) Persuasive
 (c) Absolutely authoritative (d) Original.

SOLUTION OF JUNE 2013

1. (d) An **original** precedent is one which creates and applies a new rule of law. It is a law for the future because it is now applied. Number of original precedents is small but their importance is very great. They

alone develop the law of the country and serve as a good evidence of law for the future.

QUESTIONS OF JUNE 2014

1. Which of the following is not a source of Indian law?
(a) English mercantile law (b) Judicial law
(c) Civil law (d) Customs and trade usage
2. Decision of one High Court have only a _____ value in a court within the jurisdiction of another High Court.
(a) Voluntary (b) Mandatory
(c) Persuasive (d) All of the above
3. The decisions given by Supreme Court are recorded in –
(a) AIR (b) SCC
(c) AIR and SCC (d) ITR
4. Meaning of intra vires –
(a) Within the power (b) Amongst the other
(c) Beyond the power (d) None of these
5. Which law is related to the commercial activities of the people of the society?
(a) Constitutional law (b) Administrative law
(c) Civil law (d) Mercantile law

SOLUTIONS OF JUNE 2014

1. (c) The principal sources of Indian law are:
 - Customs or Customary Law.
 - Judicial decisions or precedents
 - Statutes or legislation.
 - Personal Law e.g. Hindu & Mohammedan Law.Hence, **Civil Law** is not a source of Indian Law.

2. (c) High Court's decisions are binding on all subordinate courts and tribunals within its jurisdiction. Where as, High Court's decision have a **persuasive** value in a court which comes under jurisdiction of another court.
3. (c) Those decisions which are given by Supreme Court are recorded in SCC (Supreme Court Cases) and AIR (All India Report).
4. (a) The legal Maxim, "intra vires" means **within the powers**.
5. (d) **Mercantile Law or Commercial Law** is related to the Commercial activities of people of the society. It is concerned with trade and commerce.

QUESTION OF DECEMBER 2014

1. Past decision of the courts for future cases is known as:
 - (a) Customs
 - (b) Previous work
 - (c) Precedents
 - (d) Historical record

SOLUTION OF DECEMBER 2014

1. (c) The guidance or authority of past decisions of the courts for future cases or only such decisions which lay down some new rule or principle are called judicial **precedent**.

QUESTIONS OF JUNE 2015

1. In case of Hindu and Muslim family business, which laws prevail to divide their family properties?
 - (a) Government law
 - (b) Their Own laws
 - (c) Legal laws
 - (d) None of these.

- (a) Conditionally authoritative precedents
- (b) Declaratory precedents
- (c) Persuasive precedents
- (d) Absolutely Authoritative Precedent.

SOLUTION OF JUNE 2016

1. (b) A **declaratory precedent** is one which is merely the application of an already existing rule of law. It do not create or applies a new rule of law. It is as good a source of law as an original precedent.

QUESTION OF JUNE 2017

1. Customs are considered as _____ of law.
- (a) Rules
 - (b) Source
 - (c) Principle
 - (d) Decision

SOLUTION OF JUNE 2017

1. (b) **Sources** means origin. It is divided into 2 parts i.e principal sources and secondary sources. Custom falls under the category of principal sources. It is most ancient of all sources. Smiritis and commentaries are based on customs.

QUESTION OF JUNE 2019

1. Highest Court of India
- (a) Supreme Court
 - (b) High Court
 - (c) Civil Court
 - (d) District Court

SOLUTION OF JUNE 2019

1. (a) Supreme Court is the highest Court of India. Its decisions are binding on all courts within the Territory of India and other Judicial tribunals of the country.

QUESTIONS OF DECEMBER 2019

1. _____ is the Court whose decisions are binding on all courts and other judicial tribunals
 - (a) High Court
 - (b) Supreme Court
 - (c) Indian Penal Court
 - (d) None of the above.
2. Hindu and Mohammedan law is
 - (a) Personal Law
 - (b) Customary Law
 - (c) Precedents
 - (d) Statutes
3. Find the odd one out:
 - (a) Manu
 - (b) Yojnavalkya
 - (c) Shruti
 - (d) Narada

SOLUTIONS OF DECEMBER 2019

1. (a) Article 141 of the Constitution makes it clear that the law declared by Supreme Court shall be binding on all the courts within the territory of India. The Supreme Court being the highest court binds all judicial tribunals and courts by its decisions.

2. (a) The courts are required to apply personal law of the parties where the point at issue is not covered by any statutory law or custom. Hindus are governed by their personal law in matters relating to inheritance, succession, marriage, etc. and Mohammedans are governed by their personal law in matters relating to wills, succession, legacies, etc.
3. (c) According to the personal law, in case of Hindus, their personal law is found to be in:
 - (a) The Shruti which includes four Vedas.
 - (b) The 'Smritis' which are recollections handed down by Rishi's or ancient teachings and precepts of God. There are three main Smritis:
Codes of Manu, Yojnavalkya and Narada.