

VARIOUS LEGAL SYSTEMS ACROSS THE WORLD

Author: Saima Hasan, 1 year of B.B.A., LL.B. from NorthCap University

ABSTRACT

The purpose of writing this research is to better help us understand the various legal systems across the world. The paper consists of the detailed evolution of the common law system, civil law system, customary law system and religious law system. The application of various legal systems across the world and what is followed in India, according to Indian context common law system is briefly followed here and with some partial civil law system, by this research paper, we can say that in India there is a mixture of all type of legal systems and it is in full consonant with that of the society and its component. As we dive deep into the topic we came to know about the origin of law and that of governing principles. The methodology used in this paper was comprehensive in the main topic and covered the main detail of adjacent topics. It will enrich the knowledge and answer your curiosity.

INTRODUCTION

The legal system is a process utilized for the enforcement of laws. It consists of rules and procedures that guide public officials and private individuals in carrying out their lawful activities. The tax system is a system used for collecting taxes. The electoral system is a system used for making democratic choices. These are examples of Legal systems. Most of us take pride in the role of the legal system in society. As citizens, we each have a social obligation to make the streets safer for everyone. However, we are not the ones who are responsible for the enforcement of these laws. ¹There are generally considered to be five legal systems in the world today: civil law, common law, customary law, religious law, and mixed legal systems.

CIVIL LEGAL SYSTEM

Civil law is a system of legal procedure that originated in Europe and is adopted in many parts of the world. It is based on the principles of Roman law, and its core principles are referred to as a referable system. The civil law system is often compared to the common law

¹ Alvendia , Kelly & Demarest Legal system <https://www.akdlawyers.com/what-is-the-legal-system/>

system, which originated in mediaeval England. It provides for the authority to make prior court decisions.

Civil law is a collection of legal ideas and systems that were originally derived from the *Juris Civilis*. It is often linked to the various traditions and practices of the time. A conceptual concept that draws on abstract ideas, civil law generally formulates rules and procedures that are procedurally sound. It holds case law as secondary and subordinate to the statutory law.²

Origin of Civil Law

Civil law is often referred to as neo-Roman or Romano-Germanic law. It is the system of law that draws heavily from Roman law. It is the most widespread legal system in the world, and it is in force in about 150 countries. This system of law was the main mode of justice for the conquered peoples prior to the modern era. Civil law practitioners often refer to their system as *jus commune*. In civil law systems, the main source of law is usually the law code. This code, which is a systematic collection of articles, sets out the basic principles of law and provides a framework for recognizing rights and responsibilities.

Unlike common law, civil law courts do not deal with case law apart from the case itself. Instead, they decide cases on a case-by-case basis. In actual practice, an increasing amount of precedent is being observed in civil law courts, and it is commonly seen in higher courts.³ While civil law jurisdictions place a lot of emphasis on court decisions, they often generate a huge number of reported legal opinions. This is because there is no requirement for the publication of legal opinions in a law report.

Prominent Civil Codes

One of the most viewed Legal Code Napoleonic Code. The Napoleonic Code is a civil law code that was created by Napoleon III. It consists of three components: the Code of Conduct, the Code of Justice, and the Napoleonic Code. Another example of civil code is the German Civil Code, German Civil Code, also known as the *Bürgerliches Gesetzbuch*, was first introduced in 1900. It is highly influential and can be found in various countries such as Switzerland, Japan, and South Korea.

² This extract has been taken from Wikipedia

³ This system of jurisdiction and precedent is used by British India Courts.

History of the civil legal system

Civil law is the major inspiration for classical Roman law⁴. It was developed throughout the Middle Ages, and its various components were refined and expanded by the influence of canon law. The Justinian Code⁵ provided a sophisticated framework for contracts, procedures, and wills.

Roman law continued to be practised in the Byzantine Empire during the last century of its existence. Its laws were widely implemented in the West during the late mediaeval period. It was first received in Rome because it was regarded as imperial law. It then spread in Europe because of its students. It became the basis for Scots law⁶, though it was also rivalled by feudal law. Although Roman law was a secondary source of law in Europe, it was only applied when local customs and laws were not up to par. After a time, even local law was being interpreted and evaluated on the basis of Roman law, which then influenced the main source of law. Even local law was initially interpreted and evaluated on the basis of Roman law. This then led to the development of what would later become a common body of law and a common method of education and scholarship.

The civil legal system in India

In India, civil action is covered under the Code of Civil Procedure 1908. Code of Civil Procedures is a set of rules that dictates the governance of the civil matter. The Indian Civil Code is divided into two parts, the first being the first section which has 158 sections and the second being the first schedule which has 51 orders and rules.⁷

COMMON LAW LEGAL SYSTEM

Common law is the law created by judges and similar tribunals after they have stated their opinions in written reports and letters. This type of law is usually referred to as precedent.

If a similar dispute has already been resolved in the past, and the current issue is fundamentally different from the previous ones, then the court should rule differently. Generally, if the current dispute is not fundamentally different from the previous ones, then

⁴ c.AD 1-250

⁵ 6th Century AD

⁶ Scots Law is the legal system in Scotland, it is the mixture of Civil Law and Common Law elements

⁷ First enacted in 1859 and came into force in 1908

the judges should rule differently. The reason why the decision was made is usually based on the reasoning used in the previous decisions.

Common law is the law made by judges and is not subject to the legislative process or regulations promulgated by the executive branch. The concept of justice requires that courts apply the principles of law in deciding cases. The common law, which is often referred to as the English system, originated from the court systems of the English kings⁸ during the Norman Conquest. Following the British Empire's spread of the English legal system, many colonies still retain it.

How to understand common law system

Sequestration⁹ is a history of judicial decisions that are used to evaluate future cases. Case law is a type of legal procedure that uses detailed records of similar cases and statutes to identify and prosecute cases. The judge who presides over a case decides which of the precedents apply to the particular case. The result is that lower courts follow the precedent set by the Supreme Court. Sometimes, lower courts can also change or deviate from a precedent if it is outdated or has a significantly different case.

Difference between common law and civil law

Civil law is a set of statutes created by the legislative branch. It clearly defines the types of cases that can be brought to court, and it sets out the procedures for handling claims. The principles of the civil code are used by judges to evaluate each case and make decisions. Common law draws its inspiration from the interpretations of public juries and judges. This process is aimed at establishing consistent results and procedures. In some cases, precedent can be established only by case-by-case decisions in individual jurisdictions.

Examples of common law

The common law often provides the basis for new legislation. In the UK, for instance, it has been an offence to receive public decency when a person takes a photograph of their private parts without their consent. In February 2019, the UK Parliament passed a law that makes

⁸ The Norman Conquest was an invasion and occupation of England that was led by the Duke of Normandy and was later styled as William the Conqueror.

⁹ Stare Decisis

upskirting a crime. This act, which became law in February 2019, carries a maximum sentence of 2 years in prison and a lifetime ban on sex offenders.

Common law in India

The Indian legal system can be seen as having a contemporaneous existence with the arrival of the English in India. When the East India Company was established during the 1600s, little did the Indian masses know that they would shape the foundation of modern society. The concept of a judicial system was established based on the common law system of England. This system was made applicable to the territories leased by the East India Company. The Mughal legal system was eventually replaced by the English legal framework. In the 17th century¹⁰, the admiralty courts were established in several towns of the British Empire.

In the eighteenth century, the authority of the mayor was derived from the crown. This historic step led to the establishment of a legal system in India. The establishment of India's first independent judicial organ was a historic moment in the country's history. It was the first step towards creating a separate and autonomous judicial system. The Privy Council was the court of record for appeals from this court. It was to have jurisdiction over all matters relating to the law of England. In the mid-19th century, the High Court was established in various regions as a result of the Letter Patents Act of 1862. The judges of these courts acted as the same as the Supreme Court and the Privy Council. They also Coded the laws relating to criminal matters. The Contracts Act of 1872 and the Evidence Act of 1872 were among the foundations of a judicial system.

Does common law apply in India

The Indian legal system has been based on the principles of common law since the time of the English. This is because Indian society has different needs and demands than that of the English. Many of the laws that we have today were based on Common Law principles. These statutes, which include the Indian Penal Code, the Indian Evidence Act, the Code of Criminal Procedure, and the Code of Civil Procedure, were enacted based on these principles.

The uniform adoption of laws allowed fundamental laws to be enforced uniformly throughout the nation. The concept of Precedents derived from Common Law has wide application in the

¹⁰ After Mughals are defeated in the Battle of Plassey in 1757 by the British Empire.

Indian legal system. A precedent is a rule or principle that a court may use in deciding cases similar to an issue or facts.

Initially, the English judges and lawyers in India followed the decisions of the English courts. This concept of precedents was then widely followed in the Indian courts. As per the Indian Constitution, all courts shall be bound by the judgments of the Supreme Court. This system is also widely applied in the present-day legal system of India. Common law traces back to England and is mainly used for administering justice. It has various aspects and is practised with the help of laymen and the learned over the years. The common law was initially applied to the English for their convenience. However, as India became an independent state, the common law became very common for Indians. This led to the development of the modern legal system.

CUSTOMARY LAW LEGAL SYSTEM

A legal custom is a pattern of behaviour that can be verified within a certain social setting. A customary legal system exists where a certain legal practice is followed and the act is considered to be the law. Most customary laws are based on established standards of the community. These standards can also apply to areas where certain laws have been widely accepted as correct bases of action. Although it is often acknowledged that custom is a source of law within the framework of the civil law tradition, its importance is diminishing. In most countries, one or more types of custom law still exist side by side with official laws. The principle of property law is that if something has been going on for a long time without an objection, the law will eventually recognize the fact and give the person the legal right to continue. A custom is a type of local law that has been practised since time immemorial. This is a type of local law that can be used to protect certain rights or privileges. One particular example is the right to moor a ship.

Nature, definition and sources

The recognition of custom is a central issue in how scholars define and evaluate the concepts of traditional law. There is not yet a consensus on how to approach this issue, and it remains unclear how to reconcile the concepts of jurisprudence and customary law. In their famous book "Rules and Processes", Comaroff and Roberts tried to detail the various rules and processes that constitute Tswana law¹¹. They defined mekgwa le melao ya setswana as rules

¹¹ Is the general set of rules and guidelines that serve as the main law of the land.

that become customary through traditional usage. They also observe that the co-existence and contradicting nature of certain norms can breed conflict. This lack of rule classifications allows for more flexible dispute settlement procedures and enables disputants to advance their own goals.

The easiest way to solve these issues is by elevating one of the norms from its literal to symbolic form. This allows the accommodation of both as they no longer have the same connotation in reality. In terms of the principles of Tswana, most of the non-negotiable norms are seen as fundamental to the development of the nation. Roberts and Comaroff argue that the outcome of specific cases can change the norms in terms of their formation and transformation.

The validity of a chief's decisions is a direct determinant of their effectiveness. In the formulation of laws, the chief first speaks with his advisors and the public assembly before making a final decision.

Even if the public assembly rejects the law, a chief can still proclaim it. The legislation would most likely be executed if it gets rejected, as long as the people's will remains intact. In cases of disputes, the concept of the paradigm of argument often refers to the framework used by a disputant to create a coherent picture of the relevant events and actions in a given context. This paradigm can either be accepted or rejected, and the disputant then introduces his or her own. If the defendant wants to change the paradigm, they may refer to norms that are not explicitly referenced in the dispute resolution stage, as the audience would already know them. The headman or chief adjudicator may also do the same, as they may not refer to norms explicitly but recognize the factual basis implied by the parties.

Codification of customary

The codification of modern civil law was developed from the Customal, which was a collection of local customary law first created in a specific area or borough. It was then acquired by the courts and became the norm in communities. Customals became the law of the land when they became the recognized rule that certain rights and obligations were regulated among members of a community, such as communities.

Some examples of early 19th-century French art include the Coutume de Paris¹², the Coutume de Frankfurt, and the many fueros of Spain.

¹² Is a customary law in Paris

Customary law in India

Under the provisions of the Indian Constitution¹³, a person has the right to practice or use a custom or usage if proved by a court. The laws at the community level reflect the traditions and cultural beliefs of the local people. They serve as a way for the communities to self-reliance and are supported by local economies. However, as colonial rule began, these practices were gradually eroded. During the colonial era, courts tried to formulate a more rational framework for recognizing the rights of indigenous peoples. However, they did not have the authority to make these decisions.

Though various issues relating to community commons and the related traditional resource rights were under the jurisdiction of courts, these were not brought before them. The community did not recognize the jurisdiction of an outside institution to deal with their resource disputes. Also, they did not understand the complex issues involved in community ownership.

RELIGIOUS LAW SYSTEM

Religious law is composed of ethical and moral codes that are taught by various religious traditions. Some of these codes are more important to belief systems than others. For some, such as Judaism and Islam, the need for revealed positive law is desirable, while other religions reject this idea and only emphasize the moral precepts of divine law. Some examples of religious legal codes include Islamic sharia, Jewish halakha, and Christian canon law. These codes are applicable to a wider theological conception and are not secular state law.

Religious law system in terms of different religion**Baha I Faith**

Bah laws are the ordinances and principles used in the Bah Faith. They are based on the texts of Bah'u'llh and are presented as guidelines and principles. While some laws are enforced by Bah institutions, the emphasis is on individuals following the laws according to their conscience and understanding.

¹³ Article 13 of the Indian constitution

Christianity

There are also various possible terms for religious law within Christianity. One of these is the Mosaic Law, which is the law of the Old Testament. Another is the Divine Law, which is the law of the New Testament.

Hinduism

Hindu law is mainly based on the Manu Smriti or Manu. It was recognized by the UK during the colonial era, but its influence waned after the country's secular legal system was established.

Islam

Sharia is the religious code and the moral code of Islam. It is derived from the two primary sources, the Quran and the Sunnah. Islamic jurisprudence interprets and applies Sharia to questions that are not addressed in the primary sources. Although most Muslims believe that sharia is God's code, they differ as to its exact meaning. Sharia deals with many subjects that are covered by secular law, such as crime, economics, and religion. In cases where it has official status, it is referred to by Islamic judges or qadis.

The reintroduction of sharia in Muslim countries is a longstanding goal of Islamist movements. In some countries, such as India and Israel, Muslim minorities have maintained an institutional recognition of sharia. In the West, Muslim families have also introduced sharia family law in their disputes. Although most Muslims believe that sharia is God's code, they differ as to its exact meaning. There are many interpretations of sharia. Sharia deals with many subjects that are covered by secular law, such as crime, economics, and religion. In cases where it has official status, it is referred to by Islamic judges or qadis.

The reintroduction of sharia in Muslim countries is a longstanding goal of Islamist movements. In some countries, such as India and Israel, Muslim minorities have maintained an institutional recognition of sharia. In the West, Muslim families have also introduced sharia family law in their disputes.

Jainism

Jaina law or Jain law is the modern interpretation of the ancient Jain Law. It consists of rules for marriage, adoption, and death.

Judaism

Halakha is a collective body of rabbinical laws derived from the Oral and Intif Torah.

The Halakhah has developed through various legal and quasi-legal mechanisms. It is guided by the literature of questions to be asked by rabbis and the considered answers that are contained in Responsa. The Shulchan Aruch is the most influential code.

There are 613 known mitzvot in the bible. Some of these laws apply to men and women, some only to members of the ancient priestly groups and the Land of Israel's farmers.

CONCLUSION

As we have evolved as a human we are constantly in flux to change rules and regulations to control human behaviour. We as a society man in association draw various approaches to reach a level of absolute governance without any rift with different segments in the society. These approaches are known as the legal system and are defined above, there is no complete acceptance and complete ignorance but are there in every country someway or the other.

References

Alvendia , Kelly & Demarest Legal system

<https://www.akdlawyers.com/what-is-the-legal-system/>

[https://en.wikipedia.org/wiki/Civil_law_\(legal_system\)](https://en.wikipedia.org/wiki/Civil_law_(legal_system))

Prominent Civil Codes

<https://www.britannica.com/topic/civil-law-Romano-Germanic>

BY [Paolo Carozza](#)

History of Civil Legal Systems

<https://www.law.lsu.edu/clo/civil-law-online/what-is-the-civil-law/>

Civil Legal System in India

<https://legislative.gov.in>

Common Law System

<https://www.investopedia.com/terms/c/common-law.asp>

By

JAMES CHEN

<http://www.legalservicesindia.com/article/1186/Access-To-Justice-Civil-Law-&-Common-Law.html> ISBN No: 978-81-928510-1-3

Author : Anant Gupta

Common Law In India

<https://blog.ipleaders.in/common-law-apply-india/>

How Customary law protect traditional knowledge

https://www.wipo.int/edocs/pubdocs/en/wipo_pub_tk_7.pdf

Customary law in India

<https://www.india-seminar.com/2000/492/492%20b.%20j.%20krishnan.html>

B.J. KRISHNAN

https://en.wikipedia.org/wiki/Religious_law

