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Subject: Legal Method **L4 C4**

Objective: This paper focuses on orientation of students to legal studies from the point of view of basic concepts of law and legal system.

Unit – I: Meaning and Classification of Laws **(Lectures– 10)**

a. Meaning and definition
b. Functions of law?
c. Classification of laws:
   i. Public and Private Law
   ii. Substantive and Procedural Law
   iii. Municipal and International Law

Unit – II: Sources of Law **(Lectures– 09)**

a. Custom
b. Precedent
c. Legislation

Unit – III: Basic Concepts of Indian Legal System **(Lectures– 10)**

a. Common Law
b. Constitution as the Basic Law
c. Rule of Law
d. Separation of Powers
e. Judicial system in India

Unit – IV: Legal Writing and Research **(Lectures – 10)**

a. Legal materials – Case law
b. Statutes, Reports, Journals, Manuals, Digests etc.
c. Importance of legal research
d. Techniques of Legal Research
e. Legal writings and citations

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Unit-I: Meaning and Classification of Law

(a)Meaning and Definition of law

Law is a term which does not have a universally accepted definition, but one definition is that law is a system of rules and guidelines which are enforced through social institutions to govern behavior. Laws are made by governments, specifically by their legislatures. The formation of laws themselves may be influenced by a constitution (written or unwritten) and the rights encoded therein. The law shapes politics, economics and society in countless ways and serves as a social mediator of relations between people.

A general distinction can be made between civil law jurisdictions (including Canon and Socialist law), in which the legislature or other central body codifies and consolidates their laws, and common law systems, where judge-made binding precedents are accepted. Historically, religious laws played a significant role even in settling of secular matters, which is still the case in some countries, particularly Islamic.

The adjudication of the law is generally divided into two main areas. Criminal law deals with conduct that is considered harmful to social order and in which the guilty party may be imprisoned or fined. Civil law (not to be confused with civil law jurisdictions above) deals with the resolution of lawsuits (disputes) between individuals or organizations. These resolutions seek to provide a legal remedy (often monetary damages) to the winning litigant.

Under civil law, the following specialties, among others, exist: Contract law regulates everything from buying a bus ticket to trading on derivatives markets. Property law regulates the transfer and title of personal property and real property. Trust law applies to assets held for investment and financial security. Tort law allows claims for compensation if a person's property is harmed. Constitutional law provides a framework for the creation of law, the protection of human rights and the election of political representatives. Administrative law is used to review the decisions of government agencies. International law governs affairs between sovereign states in activities ranging from trade to military action.

To implement and enforce the law and provide services to the public by public servants, a government's bureaucracy, the military and police are vital. While all these organs of the state are creatures created and bound by law, an independent legal profession and a vibrant civil society inform and support their progress.

Law provides a rich source of scholarly inquiry into legal history, philosophy, economic analysis and sociology. Law also raises important and complex issues concerning equality, fairness, and justice. All are equal before the law. The author Anatole France said in 1894, "In its majestic equality, the law forbids rich and poor alike to sleep under bridges, beg in the streets, and steal loaves of bread." Writing in 350 BC, the Greek philosopher Aristotle declared, "The rule of law is better than the rule of any individual." Mikhail Bakunin said: "All law has for its object to confirm and exalt into a system the exploitation of the workers by a ruling class". said "more law, less justice". Marxist doctrine asserts that law will not be required once the state has withered away.

(b)Functions of Law

1. Outlines what people can and cannot do

2. Protects public order (Criminal Law)

3. To resolve disputes between people (Civil Law)

4. Protects certainty of systems

5. Outlines what the government can do and what it cannot do

6. Helps to protect us a keep people safe

The law is the body of rules imposed by a State upon its members which is designed to regulate human conduct within that State. The courts interpret these rules of conduct, decide whether they have been broken and pass sentence or make an award of compensation. A certain standard of behavior is thereby maintained amongst the members of the State in the interest of the common good.

(c)Classification of Law

(i)Procedural Law and Substantive Law

Procedural law comprises the set of rules that govern the proceedings of the court in criminal lawsuits as well as civil and administrative proceedings. The court needs to conform to the standards setup by procedural law, while during the proceedings. These rules ensure fair practice and consistency in the "due process".

Substantive law is a statutory law that deals with the legal relationship between people or the people and the state. Therefore, substantive law defines the rights and duties of the people, but procedural law lays down the rules with the help of which they are enforced. The differences between the two need to be studied in greater detail, for better understanding.

	Procedural Law	Substantive Law
Structure:	Elaborates on the steps which the case passes through	Deals with the structure and facts of the case
Enforcement:	Creates the machinery for the enforcement of law	Defines the rights and duties of citizens
Powers:	No independent powers	Independent powers to decide the fate of a case
Application:	Can be applied in non legal contexts	Cannot be applied in non legal contexts

Differences in Structure and Content

In order to understand the differences between the structure and content of substantative and procedural law, let's use an example. If a person is accused and undergoing a trial, substantive law prescribes the punishment that the under-trial will face if convicted. Substantative law also defines the types of crimes and the severity depending upon factors such as whether the person is a repeat offender, whether it is a hate crime, whether it was self-defense etc. It also defines the responsibilities and rights of the accused.

Procedural law, on the other hand provides the state with the machinery to enforce the substantive laws on the people. Procedural law comprises the rules by which a court hears and determines what happens in civil or criminal proceedings. Procedural law deals with the method and means by which substantive law is made and administered. In other words, substantive law deals with the substance of the case, how the charges are to be handled and how the facts are to be dealt with; while procedural law will give a step by step action plan on how the case is supposed to proceed in order to achieve the desired goals. Therefore its procedural law that helps decides whether the case requires trial or otherwise.

Powers of substantive vs. procedural laws

Substantive law is an independent set of laws that decide the fate of a case. It can actually decide the fate of the under-trial, whether he wins or loses and even the compensation amounts etc. Procedural laws on the other hand, have no independent existence. Therefore, procedural laws only tell us how the legal process is to be executed, whereas substantive laws have the power to offer legal solution.

Differences in Application

Another important difference lies in the applications of the two. Procedural laws are applicable in non legal contexts, whereas substantive laws are not. So, basically the essential substance of a trial is underlined by substantive law, whereas procedural law chalks out the steps to get there.

Example

An example of substantive law is how degrees of murder are defined. Depending upon the circumstances and whether the murderer had the intent to commit the crime, the same act of homicide can fall under different levels of punishment. This is defined in the statute and is substantive law.

Examples of procedural laws include the time allowed for one party to sue another and the rules governing the process of the lawsuit.

(ii)Municipal and International Law

International law governs the relation of sovereign independent states inter and constitutes a legal system the rules of which it is incumbent upon all states to observe. Municipal law also known as state law or national law is the law of state or a country.

International law regulates the behavior of states whereas national law the behavior of individuals. International law concerns with the external relations of the states and its foreign affairs. Municipal law concerns with the internal relations of states o and its domestic affairs.

International law is a law between equal sovereign states in which no one is supreme to the other but municipal laws the w law of the sovereign over the individuals subject to the sovereign rule.

Whether international law is a law or not is a debatable question and this debate is continued where as municipal law i a law in a real sense and there is o doubt about it.

However international law and municipal law relates to each other and some justice considers that both from a unity being manifestation of single conception of law while others say that international law constitutes an independent system of law essentially different from the municipal Law. Thus there are two theories knows as monastic and dualistic. According to monastic and the same thing. The origin and sources of these two laws are the same, both

spheres of law simultaneously regulate the conduct of individuals and the two systems are in their essence groups of commands which bind the subjects of the law independently of their will.

According to dualistic theory international law and municipal law are separate and self contained to the extent to which rules of one are not expressly tacitly received into the other system. The two are separate bodies of legal norms emerging in part from different sources comprising different difference subjects and having application to different objects.

(iii)Public law and Private law

Public law (lat. *ius publicum*) is that part of law which governs relationships between individuals and the government, and those relationships between individuals which are of direct concern to the society. Public law comprises constitutional law, administrative law, tax law and criminal law, as well as all procedural law. In public law, mandatory rules (not optional) prevail. Laws concerning relationships between individuals belong to private law.

The relationships public law governs are asymmetric and unequal – government bodies (central or local) can make decisions about the rights of individuals. However, as a consequence of the rule of law doctrine, authorities may only act within the law (*secundum et intra legem*). The government must obey the law. For example, a citizen unhappy with a decision of an administrative authority can ask a court for judicial review.

Rights, too, can be divided into *private rights* and *public rights*. A paragon of a public right is the right to welfare benefits – only a natural person can claim such payments, and they are awarded through an administrative decision out of the government budget.

The distinction between public law and private law dates back to Roman law. It has been picked up in the countries of civil law tradition at the beginning of the 19th century, but since then spread to common law countries, too.

The borderline between public law and private law is not always clear in particular cases, giving rise to attempts of theoretical understanding of its basis.

Private law is that part of a civil law legal system which is part of the *jus commune* that involves relationships between individuals, such as the law of contracts or torts (as it is called in the common law), and the law of obligations (as it is called in civil legal systems). It is to be distinguished from public law, which deals with relationships between both natural and artificial persons (i.e., organizations) and the state, including regulatory statutes, penal law and other law that affects the public order. In general terms, private law involves interactions between private citizens, whereas public law involves interrelations between the state and the general population.

The public law is that branch of law which determines and regulates the organization and functioning of states (country). Also it regulates the relation of the state (country) with its subjects.

Public law includes (i) constitutional law, (ii) Administrative law (iii) criminal law, (iv) municipal law (v) international law; criminal law is enforced on behalf of or in the name of the state.

On the other hand, private law is that branch of the law which regulates those of the relation of the citizens with one another as are not of public importance .In this sense the state, through its judicial organs, adjudicates the matters in dispute between them.

In other words, it is primarily concerned with the rights and duties of individuals to each other .under it, the legal action is begun by the private citizens to establish rights (In which the state is not primarily concerned) against another citizens or a group of citizens.

Private law includes, (i) Law of contract (ii) Law of tort (iii) Law of property (iv) Law of succession, (v) family laws. Private law is sometimes, referred to as civil law. In the case of private law the role of the state is merely to recognize and enforce the relevant law.

Unit-II: Sources of Law

There are six most essential sources of Law in India. By sources of law we mean its beginning as law and the point from which it springs or emanates. As regards law there are six important sources.

(A) Customs

Customs are oldest source of law. It is the outcome of habits. When a particular habit is followed for a long time by the people regularly and habitually, the custom comes into being. When written laws were more conspicuous by their absence in the primitive society, it was customary laws that regulated human conduct in the primitive society. It is said that kings have no power to create custom and perhaps less to destroy it. Customs largely influence the legal system of a state and the state gets rid of the bad customs like Sati, Polygamy, and Dowry etc. only by means of legal impositions. The United Kingdom provides the best example of customary laws which are found in the common law of England. In the United Kingdom the law and custom are so intimately connected with each other that the violation of convention custom will lead to the violation of law.

(B) Religion

The religion is another important source of law. It played an important role in the primitive period when men were very much religious minded and in the absence of written laws the primitive people obeyed religion thinking it of divine origin. In the medieval period, most of the customs that were followed were only religious customs. Even today the Hindu Laws are founded on the code of Manu and the Mohammedan Laws are based on the Holy Koran. The religious codes become a part of the law of the land in the state incorporates the religious codes in its legal system.

(C) Judicial Decisions

Since the dawn of the human civilization the dispute between two parties is referred to a third party who acts as the arbiter. His decision is generally obeyed by both the parties. The arbiter may be a tribal chief or a priest. But with the passage of time, the judicial organ of the state is given power to decide cases between the parties. While deciding a case and pronouncing a judgment, the judges generally apply their own common sense and justice. This is known as Judge-made laws or case laws. Justice Holmes commented that "judges do and must make laws". The principle by which a judicial decision becomes a precedent is known as "Stare Decisis".

(D) Scientific commentaries

Chief Justice Hughes of the U.S.A. opines that " We are living under a constitution and the constitution is what the judges say it is". The law needs interpretation and the scientific commentaries and interpretations by eminent jurists have contributed a lot for the evolution of a legal system. The views of Blackstone in the U.K., Kent in the U.S.A. have made tremendous impact on the legal system of their respective countries. The opinions of these expert legal luminaries are always kept in high esteem by the judges and the courts.

(E) Equity

The term 'equity' literally means 'just', 'fairness' and according to 'good conscience'. When the existing law is inadequate or silent with regard to a particular case, the judges generally apply their common sense, justice and fairness in dealing with such cases. Thus, without 'equity' the term law will be devoid of its essential quality.

(F)Precedent

In common law legal systems, a precedent or authority is a principle or rule established in a previous legal case that is either binding on or persuasive for a court or other tribunal when deciding subsequent cases with similar issues or facts. The general principle in common law legal systems is that similar cases should be decided so as to give similar and predictable outcomes, and the principle of precedent is the mechanism by which that goal is attained. Black's Law Dictionary defines "precedent" as a "rule of law established for the first time by a court for a particular type of case and thereafter referred to in deciding similar cases." Common law precedent is a third kind of law, on equal footing with statutory law (statutes and codes enacted by legislative bodies), and regulatory law (regulations promulgated by executive branch agencies).

Stare decisis is a legal principle by which judges are obliged to respect the precedent established by prior decisions. The words originate from the phrasing of the principle in the Latin maxim *Stare decisis et non quieta movere*: "to stand by decisions and not disturb the undisturbed." In a legal context, this is understood to mean that courts should generally abide by precedent and not disturb settled matters.

Case law is the set of existing rulings which have made new interpretations of law and, therefore, can be cited as precedent. In most countries, including most European countries, the term is applied to any set of rulings on law which is guided by previous rulings, for example, previous decisions of a government agency - that is, precedential case law can arise from either a judicial ruling or a ruling of adjudication within an executive branch agency. Trials and hearings that do not result in written decisions of a court of record do not create precedent for future court decisions.

(G) Legislation

This is the most important and modern source of law. The legislature is that organ of the state whose primary function is to make laws. To Leacock the legislatures deliberate, discuss and make laws. Thus, law can be defined as the opinion of the majority legislators. They are recorded in the Statute Book. When the legislature is not in session, the executive is empowered to issue ordinances, decrees etc. which as good as the laws are made by the legislatures

Besides the above six sources of law we can add two more sources of law in the present days. The executive in a parliamentary democracy has the support of the majority legislators in the legislature enabling it to make laws according to its choice. The executive in a presidential system can influence legislation in the floor of the legislature through its party men. With the advent of time, the legislature is required to make laws in a large number of subjects. Due to paucity of time, the legislature makes laws in the skeleton form and the flesh and blood is added to it by the executive. This is termed as 'delegated legislation which has considerably enhanced the role of the executive in the field of legislation. Public opinion in this age of democracy plays a vital role in the process of lawmaking. In Switzerland, with direct democracy, public opinion is reflected through Landsgeminde, Referendum and Initiative, which paves the way for making laws for the state.

Unit-III: Basic Concepts of Indian Legal System

(a)Common Law

Common law is the traditional unwritten law of England, based on custom and usage which developed over a thousand years before the founding of the United States. The best of the pre-Saxon compendiums of the Common Law was reportedly written by a woman, Queen Martia, wife of a Briton king of a small English kingdom. Together with a book on the "law of the monarchy" by a Duke of Cornwall, Queen Martia's work was translated into the emerging English language by King Alfred (849-899 A.D.). When William the Conqueror arrived in 1066, he combined the best of this Anglo-Saxon law with Norman law, which resulted in the English Common Law, much of which was by custom and precedent rather than by written code. By the 14th Century legal decisions and commentaries on the common law began providing precedents for the courts and lawyers to follow. It did not include the so-called law of equity (chancery) which came from the royal power to order or prohibit specific acts. The common law became the basic law of most states due to the Commentaries on the Laws of England, completed by Sir William Blackstone in 1769, which became every American lawyer's bible. Today almost all common law has been enacted into statutes with modern variations by all the states except

Louisiana which is still influenced by the Napoleonic Code. In some states the principles of common law are so basic they are applied without reference to statute.

The ancient law of England based upon societal customs and recognized and enforced by the judgments and decrees of the courts. The general body of statutes and case law that governed England and the American colonies prior to the American Revolution.

The principles and rules of action, embodied in case law rather than legislative enactments, applicable to the government and protection of persons and property that derive their authority from the community customs and traditions that evolved over the centuries as interpreted by judicial tribunals.

A designation used to denote the opposite of statutory, equitable, or civil, for example, a common-law action.

The common-law system prevails in England, the United States, and other countries colonized by England. It is distinct from the civil-law system, which predominates in Europe and in areas colonized by France and Spain. The common-law system is used in all the states of the United States except Louisiana, where French Civil Law combined with English Criminal Law to form a hybrid system. The common-law system is also used in Canada, except in the Province of Quebec, where the French civil-law system prevails.

Anglo-American common law traces its roots to the medieval idea that the law as handed down from the king's courts represented the common custom of the people. It evolved chiefly from three English Crown courts of the twelfth and thirteenth centuries: the Exchequer, the King's Bench, and the Common Pleas. These courts eventually assumed jurisdiction over disputes previously decided by local or manorial courts, such as baronial, admiral's (maritime), guild, and forest courts, whose jurisdiction was limited to specific geographic or subject matter areas. Equity courts, which were instituted to provide relief to litigants in cases where common-law relief was unavailable, also merged with common-law courts. This consolidation of jurisdiction over most legal disputes into several courts was the framework for the modern Anglo-American judicial system.

Early common-law procedure was governed by a complex system of Pleading, under which only the offenses specified in authorized writs could be litigated. Complainants were required to satisfy all the specifications of a writ before they were allowed access to a common-law court. This system was replaced in England and in the United States during the mid-1800s. A streamlined, simplified form of pleading, known as Code Pleading or notice pleading, was

instituted. Code pleading requires only a plain, factual statement of the dispute by the parties and leaves the determination of issues to the court.

Common-law courts base their decisions on prior judicial pronouncements rather than on legislative enactments. Where a statute governs the dispute, judicial interpretation of that statute determines how the law applies. Common-law judges rely on their predecessors' decisions of actual controversies, rather than on abstract codes or texts, to guide them in applying the law. Common-law judges find the grounds for their decisions in law reports, which contain decisions of past controversies. Under the doctrine of *Stare Decisis*, common-law judges are obliged to adhere to previously decided cases, or precedents, where the facts are substantially the same. A court's decision is binding authority for similar cases decided by the same court or by lower courts within the same jurisdiction. The decision is not binding on courts of higher rank within that jurisdiction or in other jurisdictions, but it may be considered as persuasive authority.

Because common-law decisions deal with everyday situations as they occur, social changes, inventions, and discoveries make it necessary for judges sometimes to look outside reported decisions for guidance in a CASE OF FIRST IMPRESSION (previously undetermined legal issue). The common-law system allows judges to look to other jurisdictions or to draw upon past or present judicial experience for analogies to help in making a decision. This flexibility allows common law to deal with changes that lead to unanticipated controversies. At the same time, *stare decisis* provides certainty, uniformity, and predictability and makes for a stable legal environment.

Under a common-law system, disputes are settled through an adversarial exchange of arguments and evidence. Both parties present their cases before a neutral fact finder, either a judge or a jury. The judge or jury evaluates the evidence, applies the appropriate law to the facts, and renders a judgment in favor of one of the parties. Following the decision, either party may appeal the decision to a higher court. Appellate courts in a common-law system may review only findings of law, not determinations of fact.

Under common law, all citizens, including the highest-ranking officials of the government, are subject to the same set of laws, and the exercise of government power is limited by those laws. The judiciary may review legislation, but only to determine whether it conforms to constitutional requirements.

(b) Rule of Law

The expression 'Rule of Law' has been derived from the French phrase 'la principle de legalite', i.e. a Government based on the principles of law. In implied by the state in the administration of justice. The Rule of law, according to Gamer, is of en used simply to describe the state le words, the term 'rule of law' indicates the state of affairs in a country where, in main, the law mules. Law may be taken to mean mainly a rule or principle which governs the external actions of the human beings and which is recognized and aloof affairs in a country where, in main, the law is observed and order is kept. It is an expression synonymous with law and order.

The basis of Administrative Law is the 'Doctrine of the Rule of Law'. It was expounded for the first time by Sri Edward Coke, and was developed by Prof. A.V.Dicey in his book 'The law of the Constitution' published in 1885. According Coke, in a battle against King, he should be under God and the Lank thereby the Supremacy of Law is established.

Dicey regarded rule of law as the bedrock of the British Legal System:. 'Fins doctrine is accepted in the constitutions of U.S.A. and India.

According to Prof. Dicey, rules of law contain three principles or it has three meanings as stated below:

1. Supremacy of Law or the First meaning of the Rule of Law.

2. Equality before Law or the Second meaning of the Rule of Law: and

3. Predominance of Legal Spirit or the Third meaning of the Rule of Law.

1. Supremacy of Law: The First meaning of the Rule of Law is that 'no man is punishable or can lawfully be made to suffer in body or goods except for a distinct breach of law established in the ordinary legal manner before the ordinary courts of the land. It implies that a man may be punished for .a breach of law but cannot be punished for anything else. No man can be punished except for a breach of law. An alleged offence is required to be proved before the ordinary courts in accordance with the ordinary procedure.

2. Equality before Law: - The Second meaning of the Rule of Law is that no man is above law. Every man whatever is his rank or condition is subject to the ordinary law of the realm and amenable to the jurisdiction of the ordinary tribunals.

Prof. Dicey states that, there must be equality before the law or equal subjection of all classes to the ordinary law of the land. He criticized the French legal system of droit Administrative in which there were separate administrative tribunals for deciding the cases of State Officials and citizens separately. He criticizes such system as negation of law

2. Predominance of Legal Spirit: - The Third meaning of the rule of law is that the general principles of the constitution are the result of juridical decisions determining file rights of private persons in particular cases brought before the Court.

Dicey states that many constitutions of the states (countries) guarantee their citizens certain rights (fundamental or human or basic rights) such as right to personal liberty, freedom from arrest etc. According to him documentary guarantee of such rights is not enough. Such rights can

be made available to the citizens only when they are properly enforceable in the Courts of law, For Instance, in England there is no written constitution and such rights are the result judicial decision.

Application of the Doctrine in England: Though, there is no written constitution, the rule of law is applied in concrete cases. In England, the Courts are the guarantors of the individual rights. Rule of law establishes an effective control over the executive and administrative power.

However, Dicey's rule of law was not accepted in full in England. In those days, many statutes allowed priority of administrative power in many cases, and the same was not challenged better c the Courts. Further sovereign immunity existed on the ground of King can do no wrong'. The sovereign immunity was abolished by the 'Crown Proceedings Act, 1947. Prof. Dicey could not distinguish arbitrary power from discretionary power, and failed to understand the merits of French legal system.

Rule of Law under the Constitution of India: - The doctrine of Rule of Law has been adopted in Indian Constitution. The ideals of the Constitution, justice, liberty and equality are enshrined (embodied) in the preamble.

The Constitution of India has been made the supreme law of the country and other laws are required to be in conformity with the Constitution. Any law which is found in violation of any provision of the Constitution is declared invalid.

Part III of the Constitution of India guarantees the Fundamental Rights. Article 13(l) of the Constitution makes it clear that all laws in force in the territory of India immediately before the commencement of the Constitution, in so far as they are inconsistent with the provision of Part ill dealing with the Fundamental Rights, shall, to the extent of such inconsistency, be void. Article 13(2) provides that the State should not make any law which takes away or abridges the fundamental rights and any law made in contravention of this clause shall, to the extent of the contravention, be void. The Constitution guarantees equality before law and equal protection of laws. Article 21 guarantees right to life and personal liberty. It provides that no person shall be deprived of his life or personal liberty except according to the procedure established by law. Article 19 (1) (a) guarantees the third principle of rule of law (freedom of such and expression).

Article 19 guarantees six Fundamental Freedoms to the citizens of India -- freedom of speech and expression, freedom of assembly, freedom to form associations or unions, freedom to live in any part of the territory of India and freedom of profession, occupation, trade or business. The right to these freedoms is not absolute, but subject to the reasonable restrictions which may be imposed by the State.

Article 20(1) provides that no person shall he convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence not be subject to a penalty greater than that which might have been inflicted tinder the law in for cc at the time of the commission of the offence. According to Article 20(2), no person shall be prosecuted and punished for the same offence more than once. Article 20(3) makes it clear that no person accused of the offence shall be compelled to be witness against himself. In India, Constitution is

supreme and the three organs of the Government viz. Legislature, Executive and judiciary are subordinate to it. The Constitution provided for encroachment of one organ (E.g.: Judiciary) upon another (E.g.: Legislature) if its action is mala fide, as the citizen (individual) can challenge under Article 32 of the Constitution.

In India, the meaning of rule of law has been much expanded. It is regarded as a part of the basic structure of the Constitution and, therefore, it cannot be abrogated or destroyed even by Parliament. It is also regarded as a part of natural justice.

In Kesavanda Bharti vs. State of Kerala (1973) - The Supreme Court enunciated the rule of law as one of the most important aspects of the doctrine of basic structure.

In Menaka Gandhi vs. Union of India, AIR 1978 SC 597 - The Supreme Court declared that Article 14 strikes against arbitrariness.

In Indira Gandhi Nehru vs. Raj Narahr, Alit 1975 SC 2299 - Article 329-A was inserted in the Constitution under 39th amendment, which provided certain immunities to the election of office of Prime Minister from judicial review. The Supreme Court declared Article 329-A as invalid since it abridges the basic structure of the Constitution.

In A.D.M Jabalpur vs., Shivakant Shukla (1976) 2 SCC 521 AIR 1976 SC 1207 - This case is popularly known as Habeas Corpus Case.

On 25th June, emergency was proclaimed under Article 359. Large number of persons was arrested under N11SA (Maintenance of Internal Security Act. 1971) without informing the grounds for arrest. Some of their filed petition in various high Courts for writ of *Heabeas Corpus*. The petitioners contend that their detention is violation of Article 21. It was argued on the other side that the protection tinder Article 21 is not available (suspended) during emergency. The preliminary objection (not to file writ petitions during emergency). The Preliminary objection (not to file writ petitions during emergence) was rejected by various High Courts. The Madhya Pradesh Government through Additional District Magistrate. Jabalpur and Government of India filed appeals before Supreme Court.

The question before Supreme Court was, whether there was any rule of law in India apart front Article 21 of the Constitution. The Supreme Court by majority held that there is no rule of law other than the constitutional rule of law. Article 21 is our rule of law. If it is suspended, there is not rule of law.

c)Doctrine of Separation of power

In the introduction it is explained that separation of powers and judicial review are important. The principle of checks and balances and its history and necessity are also explained. Montesquieu theory is in brief explained, if all the powers joining in one organ there can be tyrannical laws. Therefore all these three should be separate. Political theorist in the 17th century evolved that theory of separation of powers and theory of checks and balances are very closely related. In the second chapter it is compared with the Indian constitutions and also discussed the importance and necessity of exercising judicial powers. In the third it is concluded that administration of justice is primary function of the state. It should be maintained without any doubt and to be proved its efficiency and effectiveness in maintaining the administration of justice system properly. The Judiciary must bring confidence and faith among the public.

1. Introduction

1.1. Concept of Separations of Powers

In the context of separation of powers, judicial review is crucial and important. We have three wings of the state, judiciary, Legislature and Executive with their function clearly chalked out in our Constitutions. Article 13 of the constitution mandates that the "state shall make no law, which violates, abridges or takes away rights conferred under part III". This implies that both the Legislature and judiciary in the spirit of the words can make a law, but under the theory of checks and balances, the judiciary is also vested with the power to keep a check on the laws made by the Legislature.

Montesquieu: The foundations of theory of separation of powers were laid by the French Jurist Baron De conclusions of Montesquieu are summarized in the following quoted passage "When the legislative and executive powers are united in the same persons or body there can be no liberty because apprehensions may arise lest the same monarch or senate should enact tyrannical laws to enforce them in a tyrannical manner...were the powers of judging joined with the legislature the life and liberty of the subject would be exposed to arbitrary control. For the judge would then be the legislator. Were it joined to the executive power, the judge might be have with all the violence of an oppressors" To obviate the danger of arbitrary government and tyranny Montesquieu advocated a separation of governmental functions. The decline of separation of powers requires that the functions of legislations, administration and adjudications should not be placed in the hand of one body of persons but should be distributed among the district or separate bodies of persons.

2. Principles of checks and balances

The doctrine of separations of powers may be traced back to an earlier theory known as the theory of mixed government from which it has been evolved. That theory is of great antiquity and was adurnbrated in the writings of Polybius, a great historian who was captured by the Romans in 167 BC and kept in Rome as a Political hostage for 17 years in his history of Rome Polybius explained the reasons for the exceptional stability of Roman Government which enabled Rome to establish a worldwide empire. He advanced the theory that the powers of Rome stemmed from her mixed government. Unmixed systems of government that is the three primary forms of government namely, Monarchy, Aristocracy and Democracy – were considered by Polybius as inherently unstable and liable to rapid degeneration. The Roman constitutions counteracted that instability and tendency to degeneration by a happy mixture of principles drawn from all the three primary forms of government. The consuls, the senate and the popular Assemblies exemplified the monarchical, the aristocratic and the democratic principles respectively. The powers of Government were distributed between them in such a way that each checked and was checked by the others so that an equipoise or equilibrium was achieved which imparted a remarkable stability to the constitutional structure. It is from the wok of Polybius that political theorist in the 17th Century evolved that theory of separation of powers and the closely related theory of checks and Balances.

3. Separation of powers- Indian constitutions

Indian constitution is a very well built document. It assigns different roles to all the three wings of government the Legislature, Executive and the Judiciary. There is no ambiguity about each wings power, privilege and duties. Parliament has to enact law, Executive has to enforce them and the judiciary has to interpret them. There is supposed to be no overlapping or overstepping. The judiciary versus the Executive or Legislative is a battle which is not new but in recent times, the confrontation is unprecedented with both the sides taking the democration of powers to a flash point. Justice Mukherjee observed, "it does not admit of any serious dispute that the doctrine of separation of powers has, strictly speaking no place in the system of Government that Indian has at the present day. The theory of checks and balance has been observed in the Indian constitutions. There is no rigorous separation of powers. For instance, parliament has the judicial power of impeachment and punishing for contempt. The president has the legislative powers of ordinance making. Thus the Indian constitution has not applied the doctrine of separation of powers in its strictest form.

4. Judiciary –importance and its need

Judiciary – It's Importance: An endeavor is being made to highlights the judicial functioning in India, in the context of increasing cases of judicial corruptions and delays in administration of justice. The Indian judiciary has so far, gained the public confidence in discharging its constitutional functions. As an institution, the judiciary has always commanded considerable respect from the people of country. The roots of this high regard lie in the impartiality, independence and integrity of the members of the judiciary. The judiciary in a democratic polity

governed by the rule of law stands as a bull work against abuse or misuse of excess use of powers on the part of the executive and protects the citizens against the government lawlessness.

Judiciary – It Need: Expressing the needs for and importance of judiciary a learned jurist aptly remarks: "middle class people are combating with the government powers through media of the courts". The Indian judiciary is considered as Guardian of the Rights of the citizens of India, explained, argued and emphasized in several contexts.

5. Independence of judiciary

"Judiciary is unlimited"- an unelected judiciary which is not accountable to anyone except its own temperament has taken over significant powers of Indian Governance. The courts have gone well beyond ensuring that laws are implemented. Now, the Supreme Court has invented its own laws and methods of implementation, gained control of bureaucracy and threatened officers with contempt of court if its instructions are not complied with. The question is not whether some good has come out of the all this. The issue is whether the courts have arrogated vase and uncontrolled powers of themselves which undermine both Democracy and Rule of law, including the question is no undermine both Democracy and Rule of Law including the powers exercised under the doctrine of separation of powers.

6. Conclusion

Administration of justice is a divine function. In fact a nation's rank in the civilization is generally determined to the degree in which s justice is actually administrated. This sacred functions to be an institutions manned by men of high efficiency, honesty and integrity. As the old adages goes, "Justice delayed is Justice denied". This phrase seems to be tune in so far as the

administration of justice in India is concerned. While the people have reasons to feel disappointed with functioning of the legislatures and the executive, they have over the years clung to the belief that they can go to the courts for help. But unfortunately, the judiciary is fast losing its credibility in the eyes of the people for one of the main reasons that justice delivery systems have become costlier and highly time consuming. It is needless to say that the ultimate success of a democratic system is measured in terms of the effectiveness and efficiency of its administration of justice system observed by Lord Bryce, "There is no better test of the excellence of a Government than the efficiency of its judicial system".

(d)Indian Judicial System

The Indian Judicial System is one of the oldest legal systems in the world today. It is part of the inheritance India received from the British after more than 200 years of their Colonial rule, and the same is obvious from the many similarities the Indian legal system shares with the English Legal System. The frame work of the current legal system has been laid down by the Indian Constitution and the judicial system derives its powers from it.

The Constitution of India is the supreme law of the country, the fountain source of law in India. It came into effect on 26 January 1950 and is the world's longest written constitution.

It not only laid the framework of Indian judicial system, but has also laid out the powers, duties, procedures and structure of the various branches of the Government at the Union and State levels. Moreover, it also has defined the fundamental rights & duties of the people and the directive principles which are the duties of the State.

Inspire of India adopting the features of a federal system of government, the Constitution has provided for the setting up of a single integrated system of courts to administer both Union and State laws. The Supreme Court is the apex court of India, followed by the various High Courts at the state level which cater to one or more number of states. Below the High Court's exist the subordinate courts comprising of the District Courts at the district level and other lower courts.

An important feature of the Indian Judicial System is that it's a 'common law system'. In a common law system, law is developed by the judges through their decisions, orders, or judgments. These are also referred to as precedents. Unlike the British legal system which is entirely based on the common law system, where it had originated from, the Indian system incorporates the common law system along with the statutory law and the regulatory law.

Another important feature of the Indian Judicial system is that our system has been designed on the pattern of the adversarial system. This is to be expected since courts based on the common law system tend to follow the adversarial system of conducting proceedings instead of the inquisitorial system. In an adversarial system, there are two sides in every case and each side presents its arguments to a neutral judge who would then give an order or a judgment based upon the merits of the case.

Indian judicial system has adopted features of other legal systems in such a way that they do not conflict with each other while benefitting the nation and the people. For example, the Supreme

Court and the High Courts have the power of judicial review. This is a concept prevalent in the American legal system. According to the concept of judicial review, the legislative and executive actions are subject to the scrutiny of the judiciary and the judiciary can invalidate such actions if they are *ultra virus* of the Constitutional provisions. In other words, the laws made by the legislative and the rules made by the executive need to be in conformity with the Constitution of India.

The powers and the jurisdiction of the Supreme Court, the High Courts and subordinate courts like the District Courts are discussed below.

Jurisdiction & Powers of the Courts

Supreme Court of India
One of the most important powers of the Supreme Court of India is that any law declared or order/judgment passed by it is binding on all the courts within the territory of India.

The jurisdiction and powers of the Supreme Court (SC) are defined under Articles 131 to 142 of the Indian Constitution. The jurisdiction includes original, writ, and appellate jurisdiction.

Original Jurisdiction refers to the power of the court to hear disputes when they arise for the first time. By exercising its power of Original jurisdiction the Supreme Court can hear disputes between,

- Government of India (GoI) and one or more States, or
- GoI & any State or States on one side and one or more States on the other, or
- Two or more States, if it involves a question - of law or fact - on which depends the existence or extent of a legal right.

The Supreme Court has also been conferred the power to issue directions or order or writs under Article 32 of the Constitution for the enforcement of any of the rights provided under Part III of the Constitution, including the Fundamental Rights. This is referred to as the Writ jurisdiction of the Supreme Court. The writ jurisdiction of the Apex court under Article 32 is part of its original jurisdiction.

[For more details on Original jurisdiction kindly refer to Articles 32&131 of the Indian Constitution.]

Appellate jurisdiction refers to the power of the Apex court to hear appeals against any judgment, decree or final order (or sentence) of a High Court in a constitutional, civil or criminal case, where exists a substantial question of interpretation of

- the constitution, or
- a law of general importance in case of a death sentence awarded in criminal matters.

However, an additional requirement is that the concerned High Court (HC) under Article 134A has to certify that the case in question is fit for an appeal to the SC.

The jurisdiction of SC also encompasses matters which fell within the jurisdiction of the Federal Court under any law just before the commencement of the Indian Constitution.

The Supreme Court can also grant special leave to appeal against any judgment, decree, determination, sentence or order passed by any court or tribunal in the territory of India in any matter. The exception to this rule is the orders, judgments etc passed by any court or tribunal constituted by or under any law relating to the Armed Forces.

Apart from the original, appellate and writ jurisdiction, the Supreme Court also has special advisory jurisdiction regarding matters referred to it by the President if India under Article 143 of the Constitution.

The Apex court also has the power and authority to review any order or judgment passed by it as well as transfer cases from one High Court to another or from the District Court of one state to the District Court of another State.

High Courts of India

The High Courts of India are the supreme judicial authority at the State level. There are currently 21 High Courts in the country and of these the oldest High Court of India is the Kolkata High Court, which was established in the year 1862.

Their powers and jurisdiction are similar to that of the Apex court, but with a few differences –

- Any law declared or orders/judgments passed by them are not binding on the other High Courts (HCs) of the country or the subordinate courts which fall under the purview of the other HCs unless the other High Courts choose to follow such law or order or judgment.
- Their territorial jurisdiction is varied.

The High Courts are the appellate authority for a State or group of States and get a lot of matters in appeal from the subordinate courts.

They have the power to issue writs, just like the Apex court, under Article 226 of the Constitution, but with one difference. While the Supreme Court has the power to issue writs to enforce only the rights provided under Part III of the Constitution, the High Courts can issue writs for enforcement of the rights under Part III as well as “for any other purpose”.

Just like in the case of the Supreme Court, the writ jurisdiction of the High Court is also part of their Original jurisdiction, since all writ petitions are filed directly before the High Court. Apart from writ petitions, any civil or criminal case which does not fall within the purview or ambit of the subordinate courts of a State, due to lack of pecuniary or territorial jurisdiction, can be heard by the High Court of that State. Also certain other matters or issues may be heard by the High Court as part of its original jurisdiction, if the law lay down by the legislature provides for it. For example, the company law cases fall within the original jurisdiction of the High Court.

Therefore, the High Courts' work primarily consists of appeals from the lower courts as well as the writ petitions filed before it under Article 226.

The territorial jurisdiction of a High Court, as mentioned earlier, is varied.

Both the Supreme Court and the High Courts are courts of record and have all the powers associated with such a court including the power to punish for contempt of itself.

The Subordinate Courts

The District Courts are at the top of all the subordinate or lower courts. They are however under the administrative control of the High Court of the State to which the district court belongs to.

Their jurisdiction is confined to the districts they are responsible for, which could be just one or more than one. The original jurisdiction of the District Courts in civil matters is confined by not just the territorial limitations, but by pecuniary limitations as well. The pecuniary limitations are

laid down by the legislature and if the amount in dispute in a matter is way above the pecuniary jurisdiction of the District Court, then the matter will be heard by the concerned High Court of that State. In case of criminal matters, the jurisdiction of the courts is laid down by the legislature.

The decisions of the District Courts are of course subject to the appellate jurisdiction of the High Courts.

Apart from these judicial bodies who enforce the laws and rules laid down by the legislature and executive and also interpret them (the Supreme Court & High Courts), there are numerous quasi judicial bodies who are involved in dispute resolutions. These quasi judicial bodies are the Tribunals and Regulators.

Tribunals are constituted as per relevant statutory provisions and are seen as an alternative forum for redressed of grievances and adjudication of disputes other than the Courts.

Some of the important tribunals are, Central Administrative Tribunal (CAT), Telecom Disputes Settlement Appellate Tribunal (TDSAT), Competition Appellate Tribunal (COMPAT), Armed Forces Tribunal (AFT), Debt Recovery Tribunal (DRT), etc.

The kinds of cases the tribunals hear are limited to their specific area. That is TDSAT can hear only matters related to telecom disputes and not matters of armed forces personnel. So the area of operation of these tribunals are marked out at the beginning itself by the statute under which it's constituted.

The same hold true for the various Regulators like – TRAI, DERC, etc. They regulate the activities of companies which fall under their purview as per the statute.

Thus, the Indian Judicial System is a mix of the Courts and the Tribunals & Regulators, and all these entities working together as part of an integrated system for the benefit of the nation.

Unit-IV: Legal Writing and Research

(a)India's Legal Research and Legal System

Contents

Introduction
1. Judicial Administration in Ancient India
2. Legal System in India during the British Period
3. Constitution of India
4. Union and State Judiciary
5. Independence of Judiciary
6. Law Commission of India
7. Legal Profession
8. Legal Education
9. Manifestations of Legal Literature
10. Law Reporting in India
11. Legal Research Methodology
    11.1. Finding Case Laws
    11.2. Legislative Intent
    11.3. Legislative Intent of Tax Statutes/Excise and Customs, Tariff, Excise Tariff and Service Tax, etc.
    11.4. Research for the Material for Preparing Speeches
    11.5. Law Lexicons/Legal Dictionaries
12. Important Legal Sources in India
    12.1. Commentaries
    12.2. Digests
    12.3. Law Lexicon
    12.4. Encyclopedic Reference Source
    12.5. Manual of Central Acts
    12.6. Statutory Rules
    12.7. Important Law Reports in India
    12.8. Important Academic Law Journals
13. Important Legal Websites in India

Introduction

India's first major civilization flourished around 2500 BC in the Indus river valley. This civilization, which continued for 1000 years and is known as Harappan culture, appears to have been the culmination of thousands of years of settlement.

For many thousands of years, India's social and religious structures have withstood invasions, famines, religious persecutions, political upheavals and many other cataclysms. Few other countries have national identities with such a long and vibrant history.

The roots of the present day human institutions lie deeply buried in the past. This is also true about the country's law and legal system. The legal system of a country at any given time cannot be said to be creation of one man for one day; it represents the cumulative effect of the endeavor, experience, thoughtful planning and patient labor of a large number of people throughout generations.

The modern judicial system in India started to take shape with the control of the British in India during the 17th century. The British Empire continued till 1947, and the present judicial system in India owes much to the judicial system developed during the time of the British.

1. Judicial Administration in Ancient India

Law in ancient India meant "Dharma" in the broader sense. The Vedas, regarded as divine revelation, were the supreme source of authority for all codes which contained what was then understood as law or dharma. The traditional records have governed and molded the life and evolution of the Hindu community from age to age. These are supposed to have their source in the *Rigveda*.

Justice was administered in ancient India according to the rules of civil and criminal law as provided in the *Manusmriti.* There was a regular system of local courts from which an appeal lay to the superior court at the capital, and from there to the King in his own court. The King's Court was composed of himself, a number of judges, and his domestic chaplain who directed his conscience; but they only advised and the decision rested with the King. Arbitrators in three gradations existed below the local courts: first of kinsmen, secondly of men of the same trade, and thirdly, of townsmen. An appeal lay from the first to the second, from the second to the third, and from the third to the local court. Thus under this system there were no less than five appeals. Decision by arbitration, generally of five *(Panches),* was very common when other means of obtaining justice were not available. The village headman was the judge and magistrate of the village community and also collected and transmitted the Government revenue.

2. Legal System in India during the British Period

India has one of the oldest legal systems in the world. Its law and jurisprudence stretches back centuries, forming a living tradition which has grown and evolved with the lives of its diverse people. The history of the present judicial system may be traced back to the year 1726, when a Charter was issued by King George I for bringing about important changes in the judicial administration of the Presidency Towns of Bombay, Calcutta and Madras. The system of appeals from India to the Privy Council in England was introduced by this Charter in 1726.

In order to bring about better management of the affairs of the East India Company, the East India Company Regulating Act of 1773 was promulgated by the King. This Act subjected the East India Company to the control of the British Government and made a provision for His Majesty by Charters or Letters Patent to establish the Supreme Court of Judicature at Fort William at Calcutta, superseding the then prevalent judicial system. The Supreme Court of Judicature at Fort William was established by a letter patent issued on March 26, 1774. This Court, as a court of record, had full power and authority to hear and determine all complaints against any of His Majesty's subjects for any crimes and also to entertain, hear and determine any suits or actions against any of His Majesty's subjects in Bengal, Bihar and Orissa. Two more Supreme Courts, conceived along the same lines as that of the Supreme Court of Calcutta, were established at Madras and Bombay by King George III through Charters issued on 26th December, 1800 and on 8th December, 1823 respectively.

The role of the Privy Council has been a great unifying force and the instrument and embodiment of the rule of law in India. The Judicial Committee of the Privy Council was made a Statutory Permanent Committee of legal experts to hear appeals from the British Colonies in the year 1833 by an Act passed by the British Parliament. Thus, the Act of 1833 transformed the Privy Council into a great imperial court of unimpeachable authority.

The Indian High Court's Act 1861 reorganized the then prevalent judicial system in the country by abolishing the Supreme Courts at Fort William, Madras, and Bombay, and also the then existing Sadar Adalats in the Presidency Towns. The High Courts were established having civil, criminal, admiralty, vice-admiralty, testimony, intestate, and matrimonial jurisdiction, as well as original and appellate jurisdiction.

Provincial autonomy was established in India with the establishment of the Government of India Act, 1935, which introduced responsibility at the provincial level and sought the Union of British Indian Provinces with the rulers of Estate in a federation. As a federal system depends largely upon a just and competent administration of the law between governments themselves, the 1935

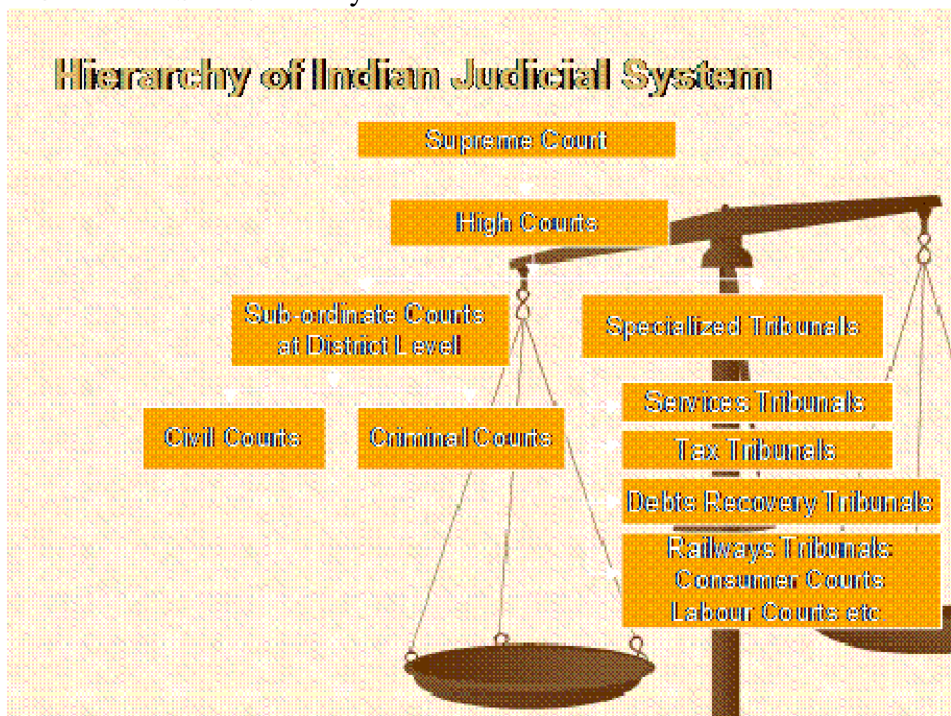
Act provided for the establishment of the Federal Court, forerunner of the Supreme Court of India. The Federal Court was the second highest Court in the judicial hierarchy in India.

The Federal Court was the first Constitutional Court and also the first all-India Court of extensive jurisdiction, and it had Original Jurisdiction in matters where there was dispute between the provinces or federal States. It was also the Appellate Court for the judgments, decrees, or final orders of the High Courts. Thus, the Federal Court of India had original, appellate and advisory jurisdiction. The doctrine of precedent in India also had its roots in Federal Court as the law declared by the Federal Court and Privy Council has been given binding affect on all the courts in British India.

3. Constitution of India

The Indian Constitution is basically federal in form and is marked by the traditional characteristics of a federal system, namely Supremacy of the Constitution, division of power between the Union and State, and the existence of an independent judiciary in the Indian Constitution. The three organs of the State – State, Legislature and Judiciary – have to function within their own spheres demarcated under the Constitution. In other words, the doctrine of Separation of Powers has been implicitly recognized by the Indian Constitution. The basic structure of the Constitution is unchangeable and only such amendments to the Constitution are allowed which do not affect its basic structure or rob it of its essential character. The Constitution of India recognizes certain basic fundamental rights for every citizen of India, such as the Right to Equality, the Right to Freedom, the Right against exploitation, the Right to Freedom of Religion, Cultural and Educational rights, and the Right to Constitutional Remedies. Any infringement of fundamental rights can be challenged by any citizen of India in the court of law. The Constitution of India also prescribes some fundamental duties on every citizen in India.

4. Union and State Judiciary



The Constitution of India deals with the "Union Judiciary," which provides for the establishment and constitution of the Supreme Court.

The Supreme Court, since its inception, was empowered with jurisdiction far greater than that of any comparable court anywhere in the world.

As a federal court, it has exclusive jurisdiction to determine disputes between the Union of India and any state and the states inter-se. Under Article 32, it issue writs for enforcement of fundamental rights guaranteed under the Constitution of India.

As an appellate court, it could hear appeals from the state high courts on civil, criminal and constitutional matters.

It has the special appellate power under Article 136 to grant leave to appeal from any tribunal or court. Thus, it is a forum for the redressing of grievance not only in its jurisdiction as conferred by the constitution, but also as a platform and forum for every grievance in the country which requires judicial intervention.

The Supreme Court, with the present strength of 25 judges and the chief justice, is the repository of all judicial powers at the national level. Supreme Court judges holds office until they reach the age of 65 years.

The State Judiciary consists of a high court for each state and subordinate courts in each district. Each high court consists of a chief justice and a number of puisne judges. The high court judges are appointed by the President after consultation with the chief justice of India and the chief justice of that state. The high court judge holds office until he reaches the age of 62 years.

5. Independence of Judiciary

The principle of the independence of justice is a basic feature of the constitution. In a country like India, which is marching along the road to social justice with the banner of democracy and the rule of law, the principle of independence of justice should not only be treated as an abstract conception but also a living faith.

Independence of justice deals with the independence of the individual judges in relation to their appointment, tenure, and payment of salaries, and also non-removal except by process of impeachment. It also means the "Institutional Independence of the Judiciary". The concept of independence of justice is a noble concept which inspires the constitutional scheme and constitutes the foundation on which rests the edifice of our democratic polity.

It is absolutely essential that the judiciary must be free from executive pressure or influence and this has been secured by the constitution maker by making elaborate provisions in the constitution of India.

6. Law Commission of India

The Law Commission of India was started in 1955 by an executive order. In order to confront new situations and problems which arise from time to time and to amend law which calls for amendment, a body like the Law Commission is absolutely essential. This is because it is a body which is not committed to any political party and which consists of judges and lawyers, who are expert in the field and who would bring to bear upon the problems purely judicial and impartial minds. As the parliament is very busy in day-to-day debates and discussions, its members do not have the necessary time to consider legal changes required to meet the new situations and problems in a constructive manner. For that the Law Commission may be able to serve its purpose effectively.

The function of the law commission is to study the existing laws, suggest amendments to the same if necessary, and to make recommendations for enacting new laws. The recommendations for amendment of the existing laws are made by the commission either *suo motu* or on the request of the government.

Presently, the eighteenth Law Commission is in existence. The Law Commission in India has brought out 207 scholarly reports to date on various legal aspects. The full text for each report is available on the commission's website.

7. Legal Profession

The profession of law is called a noble profession, and lawyers are a force for the perseverance and strengthening of constitutional government because they are guardians of the modern legal system. The first step in the direction of organizing a legal profession in India was taken in 1774 with the establishment of the Supreme Court at Calcutta. The Supreme Court was empowered "to approve, admit and enroll such and so many advocates, Vakils and Attorneys-at-law" as to the court "shall seem meet". The Bengal Regulation VII of 1793 for the first time created a regular legal profession for the companies' courts. Other, similar regulations were passed to regulate the legal profession in the Companies courts in Bengal, Bihar, Orissa, Madras, and Bombay.

The Legal Practitioner Act of 1879 was enacted to consolidate and amend the law relating to legal practitioners. This empowered an advocate/Vakil to enroll on the roll in any high court and to practice in all the Courts subordinate to the high court concerned, and also to practice in any court in British India other than the high court on whose roll he was not enrolled.

After independence of India, it was felt that the judicial administration in India should be changed according to the needs of the time. Presently, the legal profession in India is governed by the Advocates Act of 1961, which was enacted on the recommendation of the Law Commission of India to consolidate the law relating to legal practitioners and to provide for the constitution of the Bar Council and the All India Bar. Under the Advocates Act, the Bar Council of India has been created as a statutory body to admit persons as advocates on its roll, to prepare and maintain such roll, to entertain and determine instances of misconduct against advocates on its roll and to safeguard the rights, privileges, and interests of advocates on its roll. The Bar

Council of India is also an apex statutory body which lays down standards of professional conduct and etiquette for advocates, while promoting and supporting law reform.

8. Legal Education

Legal education in India is regulated by the Bar Council of India, which is a statutory body constituted under the Advocates' Act of 1961. There are two types of graduate level law courses in India:

(i) A 3 year course after graduation; and,
(ii) A 5 year integrated course after the 10 + 2 leading to a graduate degree with honors and a degree in law.

The Bar Council of India rules prescribe norms for recognition of the universities/colleges imparting legal education. A graduate from a recognized law college, under the Advocates Act of 1961, is only entitled to be registered as an advocate with the Bar Council, and any law graduate registered with Bar Council is eligible to practice in any court of law in India.

9. Manifestations of Legal Literature

Legal fraternity may need different types of information, such as case laws, statutory provisions, rules framed under any act, object and reasons of any act, amendment of any act, notifications issued under any particular statute, debates in parliament at the time of enactment of any particular act, or academic articles on a given topic in different situations.

Legal literature manifests itself in many forms such as:

(i) Bare Acts

(ii) Commentaries on specific laws

(iii) Manuals/local acts

(iv) Reports

a) Law Commission Reports

b) Committee/Commission Reports

c) Annual Reports

d) Parliamentary Committee Reports

- Joint Committee
- Select Committee

- Standing Committee

(v) Gazettes

a) Central Government

b) State Government

(vi) Parliamentary Debates

- Constituent Assembly Debates
- Lok Sabha Debates
- Rajya Sabha Debates

(vii) Parliamentary Bills

- Lok Sabha Bills
- Rajya Sabha Bills
- State Legislature Bills

(viii) Law Journals

- Academic Journals (containing articles only)
- Law Reports (containing only the full text of case laws)
- Hybrid, i.e. a combination of both articles and case laws. Some of the journals also publish statutory materials such as acts, amendments, rules, etc.
- Only legislative materials such as acts, rules, notifications, etc.

(ix) Digests

(x) Legal Dictionaries/Law Lexicons

(xi) Legal encyclopedic works: such as American jurisprudence, corpus juris secundum, Halsbury law of England and Halsbury laws of India.

10. Law Reporting in India

The theory of binding force of precedent is firmly established in England. A judge is bound to follow the decision of any court recognized as competent to bind him, and it becomes his duty to administer the law as declared by such a court. The system of precedent has been a powerful factor in the development of the common law in England.

Because of common law heritage, the binding force of precedents has also been firmly established in India, meaning thereby that the judgments delivered by the superior courts are as much the law of the country as legislative enactments.

The theory of precedent brings in its wake the system of law reporting as its necessary concomitant. Publication of decisions is a condition necessary for the theory of precedent to operate; there must be reliable reports of cases. If the cases are to be binding, then there must be precise records of what they lay down, and it is only then that the doctrine of *stare decisis* can function meaningfully.

The Indian Law Reports Act of 1875 authorizes the publication of the reports of the cases decided by the high court's in the official report and provides that, "No Court shall be bound to hear cited, or shall receive or treat as an authority binding on it the report of any case decided by any of the said High Courts on or after the said day other than a report published under the authority of the Governor-General-in-Council."

Though the Law Reports Act gave authenticity to the official reports, it did not take away the authority of unpublished precedents or give a published decision a higher authority than that possessed by it as a precedent. A Supreme Court or high court decision is authoritative by itself, not because it is reported.

The practice of citing unreported decisions thus led to the publication of a large number of private reports. The unusual delay in publication of official reports and incompleteness of the official reports made the private reports thrive, resulting in a number of law reports in India being published by non-official agencies on a commercial basis.

In India, there are more than 300 law reports published in the country. They cover a very wide range and are published from various points of view. A "union catalogue" compiled by the Supreme Court Judges' Library of the current law journals subscribed by the libraries of various high court and Supreme Court judges (appended at the end of this paper) gives details of various law reports published from India. It also gives details of various foreign law reports submitted by law libraries in India, which gives an idea of the "foreign journals" being used by the legal fraternity in the country.

11. Legal Research Methodology

Legal fraternity may require different types of information for different purposes. One's search strategy for retrieving the desired information has to be formulated on the basis of

the "information requirement" at hand. The most common types of information sought by the legal fraternity are:

- Any particular case law
- Case laws on a specific topic
- Legislative intent of any act
- Material for speeches to be delivered
- Legislative history of any particular enactment
- Corresponding foreign law to any statutory provision in India
- Meaning of any particular "word" or "phrase"

11.1 Finding Case Laws

The most common methods for finding the case laws on a subject are "digests" and "commentaries" on particular subjects. Subject indexes given at the end of the commentaries are a very useful aid to find out the desired case law on specific aspect. If there is no commentary on any particular enactment, "AIR Manual" published by M/s All India Reporters, Nagpur can be treated as a very useful source for finding out the case law on any Central Statute.

In the electronic era, legal databases both online and on CD-ROM, are also very useful for finding any particular case law or case laws on specific topics.

11.2. Legislative Intent

In case of any ambiguity while interpreting the provision of any statute, judges have to examine the "legislative intent" of the legislature for enacting a particular legislation. The legislative intent of any provision can be ascertained with the help of the following tools:

- Objects and Reasons of the Act (published in the bill)
- Parliamentary debates
- Law Commission Reports (if the bill has been introduced on the recommendation of the Law Commission)
- Standing Committee/ Joint/Select Committee Reports
- Reports of the Committee appointed by the ministries for enacting/reviewing any existing enactments.

"Objects and reasons" are published in the bill introduced in the Parliament for ascertaining the legislative intent of any particular provision; they are considered very important and, for that reason, the corresponding bill of any particular act has to be examined.

Law Commission Reports, while proposing any new enactment or proposing any amendment in the existing statute, review the legal position on that particular aspect in India as well as in other countries. Hence Law Commission reports are treated as useful tools for ascertaining the legislative intent.

When a bill is introduced in the Upper House or Lower House, sometimes it is referred to a Parliamentary Committee which examines the bill and submits a report to the Parliament. Hence, these reports also contain the background material of any act and can be treated as a useful source for determining legislative intent.

"Parliamentary debates" on any bill are always helpful in assessing the legislative intent of the enactment of any particular statute because they contain the speech given by the law minister at the time of introducing the bill and the specific discussions in the House thereafter.

11.3. Legislative Intent of Tax Statutes/Excise and Customs, Tariff, Excise Tariff and Service Tax etc.

Tax Statutes are amended on a year-to-year basis by the "Finance Act" passed by the Parliament/State Legislatures after the budget session. Whenever the constitutionality of any provision is challenged or there is any dispute in the interpretation of any provision in any taxing statute, courts have to ascertain the legislative intent of that provision. Legislative intent of any taxing statutes may be ascertained with the help of the following documents:

- "Notes on Clauses" given in the Finance Bill/Finance Act.
- "Budget Speech" of the Finance Minister.
- "Parliamentary Debates" related to specific clauses.

In every finance bill there is a note for each clause under the heading "Notes on Clauses," which gives an indication of the purpose for which the corresponding provision is introduced.

Speeches delivered by the Finance Minister of the Union government while presenting the budget in the Parliament or by the State Finance Ministers, while presenting the budget in the state legislatures, are important instruments for ascertaining the purpose of levying a particular tax and serve as an important source of information for the honorable judges for interpreting the provisions of a taxing statute while rendering a decision in any case.

11.4. Research for the Material for Preparing Speeches

Articles published in the law journals on any specific topic are necessary informational resources for writing speeches and can be searched by browsing through the journals, browsing through the legal databases, and browsing through the indexes of the legal articles.

Besides articles, legislative histories of the enactment relating to the topic, objects and reasons, law commission or committee reports, if any, on the topic concerned, and statistics, are important. The internet is a useful tool for retrieving the statistical information on the relevant topic through various governmental websites.

The legislative history of any particular enactment can be traced with the help of the latest Bare Act. After identifying the amendments in a particular act, original amendments are to be retrieved from the government gazettes or journals containing statutory information. Objects and reasons of the particular amendment also give useful insight for the purpose of amendment

in any particular act. The legislation database, developed by the Supreme Court judges' library, is also a very useful tool for ascertaining the legislative history of any central act in India. This database is going to be made available very soon on the website of the Supreme Court.

Corresponding foreign law to any statutory provision in India can be traced with the help of any international legal database containing statutory information, such as Westlaw or LexisNexis. Commentaries on the foreign case laws on the subject may also be examined for identifying the corresponding statutory provisions.

11.5. Law Lexicons/Legal Dictionaries

When the meaning of a particular word or phrase used in any statute is to be interpreted, in case of any dispute between the parties on the interpretation of a particular word, law lexicons/ legal dictionaries are to be consulted in order to find out whether that particular word has been interpreted by any court. And if that word has been interpreted in any decision by any court, the court has to give its decision on the basis of the appropriate meaning of that particular word defined in any decision of any court.

12. Important Legal Sources in India

12.1. Commentaries

<u>CONSTITUTIONAL LAW</u>

1	Seervai H.M.	Constitutional Law of India: A Critical Commentary, Edn. 4, Vols. 3, 1996. Bombay: N.M. Tripathi Pvt. Ltd., 1991-1996.
2	Basu D.D.	Shorter Constitution of India, Edn. 13. Nagpur: Wadhwa & Co., 2001
3	Jain M.P.	Indian Constitutional Law, Edn. 5, Vols. 2. Nagpur: Wadhwa & Co., 2003
4	Datar Arvind P.	Commentary on the Constitution of India, Edn. 2, Vols. 3. Nagpur: Wadhwa & Co., 2007

ADMINISTRATIVE LAW

1	Jain M.P.	Principles of Administrative Law, Edn. 6, Vols. 2. Nagpur: Wadhwa & Co., 2007
2	Wade H.W.R.	Administrative Law, Edn. 9. New Delhi: Oxford University Press, 2005 (Indian Edn. 2004)

INDIAN PENAL CODE

1	Batuk Lal & Nakvi S.K.A.	Commentary on the Indian Penal Code, Vols. 2. New Delhi: Orient Pub. Co., 1860
2	Ratan Lal & Dhiraj Lal	Law of Crime: A Commentary on Indian Penal Code 1860, Edn. 26, Vols. 2. New Delhi: Bharat Law House, 2007.
3	Gour Hari Singh	Commentaries on the Indian Penal Code, Edn. 13 (Abridged) 2006 Allahabad : Law Publishers, 2006

CODE OF CRIMINAL PROCEDURE

1	Mitra B.B.	Code of Criminal Procedure, 1973, Edn. 20, Vols. 2. Calcutta: Kamal Law House, 2003.
2	Ratan Lal & Dhiraj Lal	Code of Criminal Procedure, Edn. 18, Vols. 2. Nagpur: Wadhwa & Co., 2006.
3	Sarkar S.C. & Ors.	Law of Criminal Procedure, Edn. 9, Vols. 2. Nagpur: Wadhwa & Co., 2007

4	Princep	Code of Criminal Procedure, Edn. 19, Vols. 2. Delhi: Delhi Law House, 2008.

COMPANY LAW

1	Ramaiya A.	Guide to Companies Act, Edn. 16, Vols. 3 + 3 Appendix Volumes. Nagpur: Wadhwa & Co., 2004.

INCOME TAX

1	Kanga J.B. & Palkhivala N.A.	Law and Practice of Income Tax, Edn. 9, Vols. 2. New Delhi: Lexis Nexis, 2004.

EVIDENCE

1	Monir M.	Law of Evidence, Edn. 14, Vols. 2. Delhi: Universal Law Pub. Co. 2006.
2	M.C. Sarkar & Ors.	Law of Evidence in India, Pakistan, Bangladesh, Burma & Ceylon, Edn. 16, Vols. 2. Nagpur; Wadhwa & Co., 2007.

CODE OF CIVIL PROCEDURE

1	Mulla D.F.	Code of Civil Procedure, Edn. 17, Vols. 4. New Delhi: Lexis Nexis, 2007
2	Sarkar P.C. & Sarkar S.C.	Law of Civil Procedure, Edn. 11, Vols. 2. Nagpur: Wadhwa & Co., 2006.
3	Thakker C.K.	Code of Civil Procedure, 1908, Edn. 5, Vols. 1-3- Lucknow: Eastern Book Co., 2000-

CONTRACT LAW

1	Pullock F. & Mulla D.F.	Indian Contract and Specific Relief Acts, Edn. 13, Vols. 2. New Delhi: Lexis Nexis, 2006.

ARBITRATION

1	Kwatra G.K.	Arbitration and Conciliation Law of India, Edn. 7. New Delhi: ICA/Universal Law Pub., 2008
2	Markanda P.C.	Law relating to Arbitration & Conciliation, Edn. 6. Nagpur: Wadhwa & Co., 2006.
3	Bachawat R.S.	Law of Arbitration & Conciliation, Edn. 4, Vols. 2. Nagpur: Wadhwa & Co., 2005.
4	Malhotra O.P. & Malhotra Indu	Law & Practice of Arbitration and Conciliation New Delhi: Lexis Nexis, 2006.

INTERPRETATION OF STATUTES

1	Singh, Guru Prasanna	Principles of Statutory Interpretation, Edn. 10. Nagpur: Wadhwa & Co., 2006.

12.2. Digests

1	Surendra Malik	Supreme Court Yearly Digest Lucknow: E.B. Co., 2007.
2		Complete Digest of Supreme Court Cases, Vol. 1-10- (Since 1950- Lucknow: E.B. Co., 2007

3		Supreme Court Millennium Digest 1950-2000, Vol. 1-18. Nagpur: AIR Publications.

12.3. Law Lexicon

1	Aiyar Ramanatha P.	Advanced Law Lexicon: Encyclopedia Law Dictionary with Legal Maxims, Latin Terms and Words & Phrases, Edn. 3, (Revised & Enlarged), Vols. 4. Nagpur: Wadhwa & Co., 2005
2	Aiyar K.J.	Judicial Dictionary, Edn. 13 New Delhi: Butterworths India 2001
3	Prem, Daulat Ram	Judicial Dictionary, Vols. 2 Jaipur: Bharat Law Publications, 1992.
4		Legal Glossary published by Ministry of Law, Justice & Co. Affairs, 2001

12.4. Encyclopedic Reference Source

1		Halsbury's Laws of India, Approx 30 Vols. New Delhi: Butterworths 1999-

12.5. Manual of Central Acts

1	Manohar & Chitley	AIR Manual: Civil and Criminal, Edn. 6, Vol. 1-10, 13-14- Nagpur: AIR Pvt. Ltd., 2004
2		Encyclopedia of Important Central Acts & Rules, Vols. 20, Delhi: Universal Law Publishers, 2004, Reprint 2005

12.6. Statutory Rules

1	Malik & Manchanda	Encyclopedia of Statutory Rules Under Central Acts, Edn. 2
		Allahabad: Law Publishers (India Pvt.) Ltd., 1989.

12.7. Important Law Reports in India

There are approximately 350 law journals, which are being published in India. The most cited law report containing Supreme Court decisions is "Supreme Court Cases (SCC)"followed by "All India Reporter (AIR)" and "Supreme Court Report (SCR)". Major law journals containing the Supreme Court judgments are as under:

1. Supreme Court Cases
2. AIR (SC)
3. Supreme Court Reports
4. Judgment Today
5. SCALE

An analysis of the citations in the Supreme Court shows that "Supreme Court Cases" is the most used law report cited by about 60% of the advocates in the Supreme Court.

12.8. Important Academic Law Journals

1	Annual Survey of Indian Law
	New Delhi: ILI
2	Journal Indian Law Institute
3	Journal of Constitutional & Parliamentary Studies
4	Indian Journal of International Law
5	Indian Bar Review
6	National Law School of Indian Review
7	Journal of Human Rights (NHRC)

13. Important Legal Websites in India

The Supreme Court judges' library has developed some very useful in-house legal databases, namely "SUPLIS" "SUPLIB" and"LEGISLATION". These databases are going to be released very soon on the website of the Supreme Court of India.

192.100.2.61/suplis

1

3.1. SUPLIS (Database of Case Laws)

SUPLIS is an indexing database of case laws decided by the honorable Supreme Court. This database consists of more than 42,000 case laws since 1950. This database is very useful in finding out the desired case laws. As soon as a cyclostyled copy of any judgment is received in the library it is immediately entered in this database after assigning subject headings and a famous case name (if any). This database is unique, as it contains some important features that are not available in other legal databases developed by commercial vendors. Besides retrieval of case laws by subject and case title, it also provides search capability by a "famous case name" (if any) assigned at the time of the entry – for example: "Bhopal Gas Case", "Rajiv Gandhi assassination case," "Mandal Commission Case," etc. SUPLIS also provides "equivalent citations" of case laws so that, in the event that a particular journal is unavailable, that case law could be made available from another journal with the help of this facility. The retrieval menu of the SUPLIS is as under:

SUPLIS RETRIEVAL - Microsoft Internet Explorer

File Edit View Favorites Tools Help

Address http://192.100.2.61/suplis/

RETRIEVAL MENU

CASES CAN BE RETRIEVED THROUGH

DATE OF JUDGEMENT

PARTY NAME

CITATION

JUDGE NAME

PETITION NUMBER

FAMOUS NAME WISE

SUBJECT WISE

192.100.5.56/suplib

13.2. SUPLIB (Database of Legal Articles)

Research articles published in various law reports and academic journals contain valuable information as they are written after comprehensive research on the aspect they deal with. SUPLIB is a database of legal articles published in about 200 foreign and Indian law reports subscribed to by the library. Presently, this database consists of more than 12,000 articles. Immediately after receipt of a journal in the library, important articles are identified, indexed,

and entered in this database under all possible subject headings. This database is very useful for the library staff for identifying the articles needed by the honorable judges on a particular aspect and is one of the most used databases in the Supreme Court Judges Library. Retrieval menu of SUPLIB database is as under:

SUPREME COURT JUDGES LIBRARY

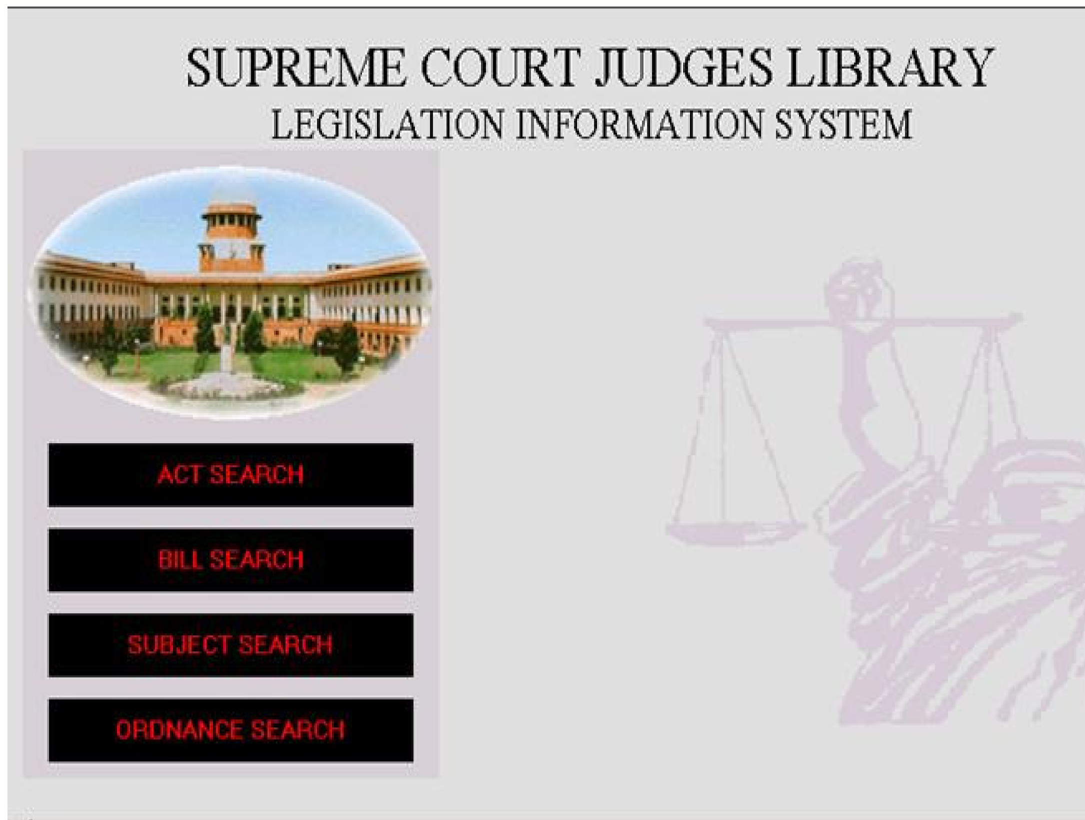
LEGAL ARTICLES RETRIVAL SYSTEM

192.100.2.61/legis

SUBJECT WISE
JOURNAL WISE
TITLE WISE
AUTHOR WISE

3. Legislations (Database of Acts, Rules & all Statutory Materials)

Statutory materials such as bills, acts, joint committee reports, select committee reports, law commission reports, parliamentary and assembly debates, rules, by-laws, schemes, etc, are among the most important and sought-after library materials in any law library. The Legislative Database is a database for central government acts including amendments, rules, bills, and all subordinate legislations relating to central as well as state acts. This database is very useful for tracing the complete legislative history of any particular central or state act. All the amendments in acts, rules, schemes and by-laws framed under any particular enactment could be readily identified and retrieved with the help of their citations / source given in this database. If the text of any particular central act is desired, a link for "India Code," which is a database of the Ministry of Law, is also provided to access the full text of the desired central act. The retrieval menu of this database is as under:



4. Supreme Court of India

This is the official website of the Supreme Court of India. It contains information about the full text of the Constitution of India, the jurisdiction of the Supreme Court, golden jubilee celebration, Rules, former CJI's, present CJI and judges, calendar of the Supreme Court, registrars, and former judges. This site also has links to "Indian Courts", "JUDIS", "Daily Orders", "Case Status", "Cause List", "Courts Websites", and India Code.

The "Equivalent Citation Table" developed by the Supreme Court Judges Library, which gives parallel citations of any case in four major law repots in India, namely "Supreme Court Cases", "AIR(SC)", "JT" and "SCALE," can also be accessed through this website.

5. Parliament of India

This consists of three separate home pages: President of India, Rajyasabha & Lok Sabha.
(i) President of India

This consists of information & photographs of Rastrapati Bhawan a photo gallery of former presidents along with other information, parliamentary addresses, speeches, addresses and parliamentary addresses of the president.

(ii) Rajya Sabha

This contains information about business, members, questions, debates, legislation, and committees. It is useful for retrieving information from Rajyasabha debates, information about the Rajyasabha bills, and various committees constituted by Rajyasabha. It also provides links to the other country's parliamentary sites, as well as legislative sites for all the states of other countries.

(iii) Lok Sabha

This is also a very important site which provides information regarding recent and previous members, committees, procedures of the house, debates, etc. It is useful for retrieving the information regarding any bill pending in the house, debate of the house, procedure of the house and about the collection of the parliament library. It also provides a link to various official sites in the country. A link to all of the sites of various ministries is also provided.

6. TRAI

This is the official site of the Telecom Regulatory Authority of India, which informs about the TRAI Act. The Telecom policy service provides registered agency regulations, which can be retrieved through this site. This site is important for retrieving tariff orders as well as the judgments delivered by the authority.

7. Central Electricity Regulatory Committee

This site is an important site for knowing about the regulations, orders, power data, tariff notifications, and schedules of hearings of the authority. All the orders / decisions of the authority are available on this site in a chronological fashion.

8. SEBI Securities and Exchange Board of India

This site is the official site of the Securities and Exchange Board of India, and provides information on the legal framework of the SEBI, including auto rules. Regulations, orders / rulings of the tribunal as well as of chairman / members, and reports and documents of the boards are also available on this site.

9. Ministry of Company Affairs

This is an important site for knowing any information related to company affairs. Reports of various committees such as company law, notifications and circulars issued by the Ministry of Company Affairs and Information about the vanishing companies, corporate groups and concept paper are available on this site.

10. Ministry of Law & Justice

This is a very important site as it contains a link to "India Code," which provides online access to the full text of any central act of Parliament. It also provides a link to various important legal websites.

11. Law Commission of India

This is a very useful site as it contains the full text of many law commission reports and a list of all law commission reports in the countries. It also contains consultation papers of the law commission on various legal aspects.

12. India Code Information System (incodis)
This website belongs to legislative department of India. This is an important site for retrieving the full text of any of the central acts which are being regularly updated after amendment, if any. The full text of the Constitution of India is also available on this site. It also contains the text of the parliamentary bills / legislative bills, as well as information regarding the bills which are being introduced or passed in the current session of the Parliament. A CD-Rom version of the Constitution of India and the election laws manual could also be ordered with the help of a requisition form available on this site.

13. India Image
This is another important site developed by NIC, which is being framed as, "gateway to the government of India information over the web". This is a very comprehensive site which verbally provides something on everything about the government of India. It contains a Government of India directory, India fact file, and information about any district in India with facts and statistics. Results of various examinations and important documents such as the union budget, economic survey, and India vision 2020 are also available. It also contains government policies, provides links to Indian Railways and Indian Airlines and all other important Indian websites. Other related information could also be retrieved with the help of this site.

14. Indian Judiciary
This is the most important website of the Government of India, which provides invaluable information regarding the judiciary, covering all the cases of the Supreme Court and High Courts (reportable / non-reportable), decided or pending. It also provides information about all of the high courts. Its sub-websites are as follows:

- Judis: Contains information regarding the judgments of the Supreme Court (decided cases) from 1950 to date. It also covers judgments of the high courts.
- Daily Orders: It provides the latest daily orders of the Supreme Court and high courts.
- Courtnic: The current status of any case, i.e. information of all pending and disposed cases including next date of listing, date of disposal, etc, is easily available on this site. It also provides the text of latest orders.
- Causelists: Contains information regarding cause lists, including weekly lists, advance lists, daily lists and supplementary lists of the Supreme Court and high courts.
- Court Web Sites: This provides links to the websites of the high court and some district courts.
- India Code: Can be accessed from the provided link on this site.

(b) Legal Research

Meaning of research:

Generally, the term "research" is taken as an academic activity or as an art of scientific investigation. It is not only an important prerequisite for dynamic social order but also a systematic and objective analysis of information that is discovered. It is an established fact that the research is a foundation of the progress and prosperity achieved and may be achieved in future. Nobody can get specific and deep knowledge on any matter without having research that is why, research plays significant role in gaining knowledge. As a result, research can be defined as a systematic search for attaining deep knowledge.

The Oxford Advanced Learners Dictionary defined the term "research" as a careful investigation or inquiry especially through search for new facts in any breech of knowledge.

Encyclopedia of social science defined it as the manipulation of things, concept or symbols for generalizing to extend, correct or verify knowledge, whether that knowledge aids in construction of theory or in the practice of an art. Exhaustive investigation of a specific subject matters, which has its aim, the advancement of making knowledge. Keeping in view the said definitions, the term "research" can be defined as a method of gaining specific knowledge. It is not only a major factor for human-development but also of civilization. Similarly, research not only plays a signification role in academic scenario but also plays a vital role in practical life of whole humankind. There are various methods used for pursuing research. Method applicable for research depends on the objectives of the research for instance impact analysis, theory inception or experiment, etc. Generally, research methods are divided as qualitative and quantitative, depending on its nature. The former method is understood as descriptive research and the latter as numerical. The qualitative research is most suitable for social research.

Legal Research:

Generally, law is enacted to regulate the human conduct for the welfare of humankind. It is considered that law should be enacted to protect the interest of a person, society, and the county as a whole. The goal of legal research cannot be distinguished from the goal of law. As law is directly related with the social science, its research is also automatically related with the research of social science.

This is the age of democracy and good governance. Democracy and good governance depend upon the rule of law. In democratic society, law is changed for welfare of the people and society along with the pace of time. Alternatively, law shall not be constraint for the development rather it be facilitator. That is why law needs charges. Similarly, legal research is essential to have changes in law for socialization and betterment of the people and society.

Now-a-days, legal research is not limited only on the analyzing of criminal behavior, activities of public, court, public prosecutors, legal practitioners etc. but it also includes the protection of environment of all creatures in the world and the development as well. As a result, legal research plays crucial role for the welfare of the humankind and is more important than others to bring positive changes in our society and at the end in the whole humankind.

Meaning of legal research:

"Legal research is the field of study concerned with the effective marshaling of authorities that bears in a question of law"

"The systematic investigation of problems and matters concerned with such as codes, acts etc. are called legal research."

"Legal research is an investigation directed to discovery of some fact; careful study of a subject."

Keeping in view to the said definitions, we can say here that legal research is an act that discovers the legal principles relevant to a particular problem and it is the foundation for good legal advice.

Primary and Secondary Sources:

Primary sources contain the actual law. Constitutions, court decisions, cases, statutes, treaties and administrative regulations are all examples of primary sources.

Secondary sources are materials, which comment, explain and annotate on these primary sources. Usually, they include treaties, legal periodical, articles, legal encyclopedias, annotations, law dictionaries, commentaries, continuing legal education publications, opinions of the Attorney General, Secretary of the Ministry of Law, Justice and Parliamentary Affairs and other agencies.

On the other hand, finding tools are reference publications, which are used to find out primary and secondary sources. They include digests, indexes to legal periodicals, and indexes to annotations, law dictionaries and citations.

1. Primary Sources: The following sources are considered as primary sources in the legal research by the legal professionals.

- Constitutions,
- Statutes,
- Treaties,
- Court decisions, and
- Administrative regulations.

2. Secondary Sources: The following sources are the secondary sources used in the legal research by the legal professionals.

- Treaties,
- Commentaries,
- Law review/Legal periodicals,

- Articles,
- Continuing legal education publications,
- Law encyclopedia,
- Annotations, and
- Opinions of the Secretary of Justice.
-

Methods/ Techniques of legal research:

In pursuing research for disclosing facts or proving a hypothesis true or false, various kinds of methods can be applied for the successful research. The following research methods collectively or individually can be applied for the successful research as the main methods.

1 Observation:

Information can be received by observing, visiting and viewing the place, society, events or the things pertinent to the study or research. Observation can be taken as primary and reliable source of information. If a researcher is careful, he/she can get the points that may play the significant role in his research or study. Observation is a method that is common in the research of legal and social science. Observation should be guided by a specific research purpose, the information receive from the observation should be recorded and subjected to checks on the trail of reliability.

2 Questionnaires:

In questionnaire method, a researcher develops a form containing such questions pertinent to his study. Generally, the researcher prepares yes/ No questions or short answer questions. In questionnaire method, researcher distributes such forms to the people to whom he/she deems appropriate. The people, to whom the questionnaires have been distributed, should answer that what they have known by filling out the form and return it to researcher.

3 Sampling:

When the subject of research is vague, comprehensive and when each indicator cannot be taken by virtue of financial constraint, time and complexity, etc. then the researcher can randomly collect data/sample depending on the reason. This is called as sampling method. For instance, in a demographic research, part of population represent various groups can be taken into consideration. That is why, it is said that sample is a method that saves time and money.

4 Interviews:

A researcher can receive information sought by him/her asking people concerned through interview. It is a direct method of receiving information. Interview can be generally held asking questions in face-to-face contact to the person or persons and sometimes through telephone conversation. This method is common in the research of legal and social science. In this method, the researcher has to use less skill and knowledge to receive information he/she had sought. Interview is known as an art of receiving pertinent information. In the opinion of P.V. Young, interview can be taken as a systematic method by which a person enters more or less imaginatively into the life of a stranger.

5 Case Study:

Case study is taken as one of the important and reliable methods for legal research. Case study can be defined as a method of research where facts and grounds of each legal issue are dealt with by taking individual case. P.V. Young pointed out that case study is a method of exploring and analyzing of life of a social unit such as a person, a family, an institution, a cultural group or even entire community. Goode and Hatt state that case study is a way of organizing social data so as to preserve the utility character of the social object being studied.

Keeping in view to the matters as referred to in above, we can state here that the case study is a method of legal research to explore and analyze the fact and data of a social unit and to organize social data for prescription of useful character and society.

References

Legal Method: Paper Code: 101

Text Books:

1. Glanville Willains – Learning the law
2. Nomita Aggarwal – Jurisprudence (Legal Theory)
3. B.N.M. Tripathi – An Introduction to Jurisprudence and Legal theory

References:

1. Benjamin N. Cardozo, The Nature of Judicial Process
2. ILI Publication – Indian Legal System
3. ILI Publication in Legal Research and Methodology

Essential Case Law:

1. Raj Kishore Jha v. State of Bihar, AIR 2003 S.C. 4664
2. Commissioner of Income Tax, Hyderabad v. PJ. Chemicals, 1994 Suppl. (3) S.C.C. 535
3. Air India v. Nargesh Mirza, AIR 1981 SC 1829
4. Geeta Hariharan v. Reserve Bank of India, AIR 1999 S.C. 1149
5. Neera Mathur v. L.I.C. 1992 (1) S.C.C. 286
6. D.K. Basu v. State of W.B., 1997 (1) SCC 417
7. Dwrka Prasad Aggarwal v. B.D. Aggarwal, AIR 2003 S.C. 2686
8. Commissioner of Wealth Tax, Meerut v. Sharvan Kumar Swarup & Sons, 1994 (6) SCC 623
9. Shikhar Chand Falodia v.S.K. Sanganeria, AIR 2004 Gau. 19.
10. Grandphone Company v. B.B. Pandey, AIR 1984 S.C. 667
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12. Lachman v. Nand Lal, AIR 1914 Oudh. 123
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17. Nath Bros. Exim. International Ltd. v. Best Roadways Ltd. 2000 (4) S.C.C. 553
18. State of Bihar v. Sonawati AIR 1961 S.C. 221, 231

19. Samta Vedike v. State of Kar2003 CR.L. J. 1003 Kar H.C.
20. Ram Jawaya Kapur v. State of Punjab, AIR 1955 S.C. 549, 556

Unit-I: Meaning and Classification of Law

http://en.wikipedia.org/wiki/Law

http://www.freenation.org/a/f14l1.html

http://www.diffen.com/difference/Private_Law_vs_Public_Law

http://www.diffen.com/difference/Procedural_Law_vs_Substantive_Law

http://www.un.org/esa/socdev/enable/discom101.htm

Unit-II: Sources of Law

http://en.wikipedia.org/wiki/Sources_of_law

Unit-III: Basic Concepts of Indian Legal System

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

http://en.wikipedia.org/wiki/Separation_of_powers

http://en.wikipedia.org/wiki/Rule_of_law

http://www.allahabadhighcourt.in/event/TheIndianJudicialSystem_SSDhavan.pdf

Unit- IV: Legal Writing and Research

http://legalresearch.org/writing-analysis/

http://en.wikipedia.org/wiki/Legal_research

http://www.aallnet.org/chapter/scall/locating/ch3.pdf

http://www.ksl.edu.np/cpanel/pics/imp_legal.pdf

Submitted By: Parul Solanki