

OUR COUNTRY - OUR LAWS: INDIA BADLY NEEDS ITS OWN MODERN LAWS

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INTRODUCTION

India is home to orthodox virtues, great values and diverse traditions. We have all seen this great country with a history of ages and a few centuries in the hands of the Mohammedans and Britishers, after nearly 73 years of long development. The day-to-day growth of the technology sector on the one hand, and the age of robotics on the other hand, is it still too much for today's common Indian to question whether we should adopt such orthodox laws? Why are we indifferent to making our own laws for those of us who have the human resources to provide to many developed countries of the world?

Many of the major laws were made about 180 years ago, and some were made years before and after independence. These long-standing laws have made India's holy constitution one of the largest in the world even today. In the writings of such laws, we have the role of kings, ministers of our country. All of us must appreciate their greatness. Because if you think of the laws in those days with such foresight, you should appreciate their greatness and intelligence. If not, then the conditions are very different from today's conditions of development. The rituals of the day, the social conditions, economic factors, the drastic changes in the field of science and technology development, education and medicine, the unexpected advances in technology, all of these are all major changes in the life, development and civilization of the common man.

In the old days, if a misdemeanour was involved, the perpetrators would be identified immediately, and any attack on women would be punished by such criminals, who would, if necessary, execute harsh punishments and even death sentences. And today, with the increasing technological advances, even the common man who is a victim of crimes, and even the real culprits are unknown, we do not see him as the most punished. How can we move forward with the establishment of a crime-free society and the globalization of the world as a hamlet?

Another important point that we all have to keep in mind is that we are constantly amending laws and making some new laws. But many original laws, such as the Penal Code, the Code of Criminal Procedure, and the Code of Civil Procedure, have been amended several times to make their originality. So, there is no doubt that today's laws, which are often amended more than once, lose their existence.

Some of the most famous opinions on this topic today, in their own words:

It is painful for our politicians to lack the courage and courage to institute new laws – Peta Suresh Kumar, Businessman

Hundreds of years of legislation we use, our national development slows – P. Srikanth Reddy, Software Engineer, USA, NRI

One of the main reasons for the increase in crime rate day by day is the inadequacy of laws, as well as the lack of new legislation – Gajjala Ramya, Advocate – Ranga Reddy District, T.S.

Growing crime denies national development – Chandrashekar, Circle Inspector of Police

The use of the laws of Mohammedan and British is still a sign of our backwardness – Shaik Nesar Basha, Communist Party Activist

That is why we remain a developing country for 73 years – Anantha Karthik Reddy, Australia, NRI

It is no big deal for us to make our own laws nowadays – Satyanarayana, Realtor

Even in this era, when there are wars in the name of castes, religions and regions, the creation of new laws is a laborious process – Shaik Shamsuddeen, Former Principal, KVRR Law College, Hyderabad, India

Our country needs to create our own laws soon – Jany Pasha Mohammed, Farmer

Recently Indian Parliament approves bill to scrap 58 archaic laws –Member of Parliament, Mahabubnagar, Telangana

REVIEW

Laws of India refer to the system of law across the Indian nation. India maintains a hybrid legal system with a mixture of civil, common law and customary, ethics, or religious law within the legal framework inherited from the colonial era and various legislation first introduced by the British are still in effect in modified forms today. Since the drafting of the Indian Constitution, Indian laws also adhere to the United Nations guidelines on human rights law and the environmental law.

Few Important areas of Indian Laws are as follows:

- Indian Constitutional Law
- Criminal Laws
- Contract Laws
- Civil Laws
- Personal Laws / Family Laws (Hindu, Muslim & Christian Laws) etc.

Let us look into the major laws with respect their years of establishment:

Name of the Act	Year	Act No.
The Bengal Districts Act, 1836	1836	21
The Bengal Bonded Warehouse Association Act, 1838	1838	5
The Coasting Vessels Act, 1838	1838	19
Indian Registration of Ships Act, 1841	1841	10
Indian Registration of Ships Act (1841) Amendment Act, 1850	1850	11

Name of the Act	Year	Act No.
Public Accountants' Defaults Act, 1850	1850	12
Judicial Officers Protection Act, 1850	1850	18
Apprentices' Act, 1850	1850	19
Caste Disabilities Removal Act, 1850	1850	21
Forfeited Deposits Act, 1850	1850	25
Public Servants (Inquiries) Act, 1850	1850	37
The Indian Tolls Act, 1851	1851	VIII
The Madras City Land-Revenue Act, 1851	1851	XII
Societies' Registration Act	1860	21
Indian Penal Code	1860	45
Indian Police Act	1861	5
Indian Evidence Act	1872	1
Indian Contract Act, 1872	1872	9
Indian Christian Marriage Act	1872	15
Government Savings Banks Act	1873	5
Majority Act	1875	9
Dramatic Performances Act	1876	19
Negotiable Instruments Act, 1881	1881	26

Name of the Act	Year	Act No.
Transfer of Property Act	1882	4
Bikrama Singh's Estates Act	1883	10
Indian Telegraph Act	1885	13
Land Acquisition Act	1894	1
Indian Stamp Act	1899	2
Ancient Monuments Preservation Act	1904	7
The Indian Coinage Act, 1906	1906	3
Aligarh Muslim University Act	1920	40
Official Secrets Act	1923	19
Bengal Criminal Law Amendment (Supplementary) Act	1925	0
Sikh Gurdwaras (Supplementary) Act	1925	24
Child Marriage Restraint Act	1929	19
Criminal Law Amendment Act	1932	23
Reserve Bank of India Act	1934	2
Insurance Act	1938	4
Criminal Law Amendment Act	1938	20
Drugs and Cosmetics Act	1940	23
Public Debt Act	1944	18

Name of the Act	Year	Act No.
Drugs and Cosmetics Rules	1945	67
Foreigners Act	1946	31
Industrial Disputes Act	1947	14
Banking Regulation Act	1949	10
Chartered Accountants Act	1949	38
Drugs Control Act	1950	26
Emblems and Names (Prevention of improper use) Act 1950	1950	
Representation of the People Act	1951	43
Essential Commodities Act	1955	10
Hindu Marriage Act	1955	25
University Grants Commission Act	1956	3
Hindu Succession Act	1956	30
Hindu Minority and Guardianship Act	1956	32
Interstate River Water Disputes Act	1956	33
States Reorganisation Act	1956	37
Hindu Adoptions and Maintenance Act (HAMA)	1956	78
Wealth-Tax Act	1957	27

Name of the Act	Year	Act No.
Mines and Minerals (Development and Regulation) Act	1957	67
Andhra Pradesh and Madras Alteration of Boundaries Act	1959	56
Prevention of Cruelty to Animals Act, 1960	1960	59
Income-tax Act	1961	43
Unlawful Activities (Prevention) Act	1967	37
The Gold (Control) Act, 1968	1968	45
Punjab Legislative Council (Abolition) Act	1969	46
Prevention of Insults to National Honour Act	1971	69
Delhi Sikh Gurdwaras Act	1971	82
Payment of Gratuity Act	1972	39
Wild Life (Protection) Act	1972	53
Homeopathy Central Council Act	1973	59
Conservation of Foreign Exchange and Prevention of Smuggling Activities Act	1974	52
Sick Textile Undertakings (Nationalisation) Act	1974	57
The High Denomination Bank Notes (Demonetisation) Act, 1978	1978	11
Metro Railways (Construction of Works) Act, 1978	1978	33

Name of the Act	Year	Act No.
Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act	1979	30
Illegal Migrants (Determination by Tribunals) Act	1983	39
Narcotic Drugs and Psychotropic Substances Act	1985	61
Muslim Women (Protection of Rights on Divorce) Act	1986	25
Benami Transactions (Prohibition) Act, 1988	1988	45
Prevention of Corruption Act, 1988	1988	49
Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989	1989	33
Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act	1994	57

Ancient India represented a definite tradition of law, and had a historically independent school of legal theory and practice. The Dharmaśāstras played an important role. The Arthashastra, dating from 400 BC and therefore the Manusmriti, from 100 AD, were influential treatises in India, texts that were considered authoritative legal guidance. Manu's central philosophy was tolerance and pluralism, and was cited across Southeast Asia.

Early during this period, which culminated within the creation of the Gupta Empire, relations with ancient Greece and Rome weren't infrequent. The appearance of comparable fundamental institutions of law of nations in various parts of the planet show that they're inherent in international society, regardless of culture and tradition. Inter-State relations within the pre-Islamic period resulted in clear-cut rules of warfare of a high humanitarian standard, in rules of neutrality, of treaty law, of customary law embodied in religious charters, in exchange of embassies of a short lived or semi-permanent character.

After the Muslim conquest within the Indian subcontinent, Islamic shariah spread with the establishment of Delhi Sultanate, Bengal Sultanate and Gujarat Sultanate. The Corps of Forty also played a serious role by establishing some Turkish law in India.

In the 17th century, when the Mughal Empire became the world's largest economy, its sixth ruler, Aurangzeb, compiled the Fatawa-e-Alamgiri with several Arab and Iraqi Islamic scholars, which served as the main administration in most parts of South Asia. With the arrival of British Raj, there was an opportunity in tradition, and Hindu and shariah were abolished in favour of British common law. As a result, this judiciary of the country derives largely from British system and has few, if any, connections to Indian legal institutions of the pre-British era.

CONSTITUTIONAL AND ADMINISTRATIVE LAW

The Constitution of India, which came into effect on 26 January 1950 is that the lengthiest written constitution within the world. Although its administrative provisions are to an outsized extent supported the government of India Act 1935, it also contains various other provisions that were drawn from other constitutions in the world at the time of its creation. It provides details of the administration of both the Union and therefore the States, and codifies the relations between the federal and therefore the State Governments. Also incorporated into the text is a chapter on the elemental rights of citizens, also as a chapter on directive principles of state policy.

The constitution prescribes a federal structure of government, with a clearly defined separation of legislative and executive powers between the Federation and the States. Each State Government has the freedom to draft its own laws on subjects classified as state subjects. Laws gone by the Parliament of India and other pre-existing central laws on subjects classified as central subjects are binding on all citizens. However, the Constitution also has certain unitary features, like vesting power of amendment solely within the federal, the absence of dual citizenship, and therefore the overriding authority assumed by the Federal Government in the times of emergency.

Criminal law:

The Indian legal code formulated by British during British Raj in 1860, forms the backbone of legal code in India. The Code of Criminal Procedure, 1973 governs the procedural aspects of the legal code. Jury trials were abolished by the govt in 1960 on the grounds they might be vulnerable to media and public influence. This decision was supported an 8-1 acquittal of Kawas Nanavati in K. M. Nanavati vs. State of Maharashtra, which was overturned by higher courts.

In February 2011, the Supreme Court of India ruled that criminal defendants have a constitutional right to counsel. Capital punishment in India is legal. The last execution was conducted on February 28, 2017, when two women, Renuka Shinde and Seema Mohan Gavit, who were guilty of kidnapping and killing a minimum of 13 children under 6 years, were executed at Yerwada Central Jail within the morning. They were also the primary women in India tend to execution.

Contract Law:

The main jurisprudence in India is codified within the Indian Contract Act, which came into effect on 1 September 1872 and extends to all or any India and therefore the state of Jammu and Kashmir. It governs entrance into contract, and effects of breach of contract. Indian jurisprudence is popularly referred to as commercial law of India. Originally Indian Sales of products Act and Partnership Act were a part of Indian Contract act, but thanks to needed amendment these acts were separated from Contract Act. The Contract act is that the main and most used act of legal agreements in India.

Labour Law:

Indian labour law is among the foremost comprehensive within the world. They have been criticised by the planet Bank, totally on the grounds of the inflexibility that results from government wanting to approve dismissals. In practice, there's an outsized informal sector of workers, between 80 or 90 per cent of the labour force, to whom labour rights aren't actually available and laws are not enforced.

Company Law:

The current Indian company law was updated and recodified within the Companies Act 2013.

Tort Law:

The development of constitutional tort law in India began within the early 1980s. It influenced the direction tort law in India took during the 1990s. In recognising state liability, constitutional tort deviates from established norms in tort law. This covers custodial deaths, police atrocities, encounter killings, illegal detention and disappearances. Law commission of India's first report was concerning the Liability of the State in Tort. This report was submitted by the Law commission of India on 11 May 1956. State owes tortious Liability under Article 300 of Indian Constitution.

Tax Law:

Indian tax law involves several different taxes levied by different governments. Income Tax is levied by the Central Government under the Income Tax Act 1961. Customs and excise duties are also levied by the Central government. Sales tax is levied under VAT legislation at the state level.

The authority to levy a tax is derived from the Constitution of India which allocates the power to levy various taxes between the Centre and the State. An important restriction on this power is Article 265 of the Constitution which states that "No tax shall be levied or collected except by the authority of law." Therefore, each tax levied or collected has to be backed by an accompanying law, passed either by the Parliament or the State Legislature. In 2010-11, the gross tax collection amounted to 7.92 billion (Long scale), with direct tax and indirect tax contributing 56% and 44% respectively.

CENTRAL BOARD OF DIRECT TAXES

The Central Board of Direct Taxes (CBDT) is a part of the Department of Revenue in the Ministry of Finance, Government of India.[31] The CBDT provides essential inputs for policy and planning of direct taxes in India and is also responsible for administration of the direct tax laws through Income Tax Department. The CBDT is a statutory authority functioning under

the Central Board of Revenue Act, 1963. It is India's official FATF unit. The Central Board of Revenue as the Department apex body charged with the administration of taxes came into existence as a result of the Central Board of Revenue Act, 1924. Initially the Board was in charge of both direct and indirect taxes. However, when the administration of taxes became too unwieldy for one Board to handle, the Board was split up into two, namely the Central Board of Direct Taxes and Central Board of Excise and Customs with effect from 1 January 1964. This bifurcation was brought about by constitution of the two Boards u/s 3 of the Central Boards of Revenue Act, 1963.

Income Tax Act of 1961:

The major tax enactment is the Income Tax Act of 1961 passed by the Parliament, which establishes and governs the taxation of the incomes of individuals and corporations. This Act imposes a tax on income under the following five heads:

- Income from house and property,
- Income from business and profession,
- Income from salaries,
- Income in the form of Capital gains, and
- Income from other sources

However, this Act may soon be repealed and be replaced with a new Act consolidating the law relating to Income Tax and Wealth Tax, the new proposed legislation is called the Direct Taxes Code (to become the Direct Taxes Code, Act 2010). Act was referred to Parliamentary standing committee which has submitted its recommendations. Act is expected to be implemented with changes from the Financial Year 2013–14.

Goods and Services Tax Law:

Goods and Services Tax (India) is a comprehensive indirect tax on manufacture, sale and consumption of goods and services throughout India to replace taxes levied by the central and state governments. It was introduced as The Constitution (One Hundred and First Amendment) Act 2016, following the passage of Constitution 101st Amendment Bill. The GST is governed by GST Council and its Chairman is Union Finance Minister of India - Nirmala Sitaraman (working finance minister)

This method allows GST-registered businesses to claim tax credit to the value of GST they paid on purchase of goods or services as part of their normal commercial activity. Administrative responsibility would generally rest with a single authority to levy tax on goods and services. Exports would be considered as zero-rated supply and imports would be levied the same taxes as domestic goods and services adhering to the destination principle in addition to the Customs Duty which will not be subsumed in the GST.

Introduction of Goods and Services Tax (GST) is a significant step in the reform of indirect taxation in India. Amalgamating several Central and State taxes into a single tax would mitigate cascading or double taxation, facilitating a common national market. The simplicity of the tax should lead to easier administration and enforcement. From the consumer point of view, the biggest advantage would be in terms of a reduction in the overall tax burden on goods, which is currently estimated at 25%-30%, free movement of goods from one state to another without stopping at state borders for hours for payment of state tax or entry tax and reduction in paperwork to a large extent. GST is applicable from 1 July 2017.

Trust law:

Trust law in India is mainly codified in the Indian Trusts Act of 1882, which came into force on March 1, 1882. It extends to the whole of India except for the state of Jammu and Kashmir and Andaman and Nicobar Islands. Indian law follows principles of English law in most areas of law, but the law of trusts is a notable exception. Indian law does not recognise "double ownership", and a beneficiary of trust property is not the equitable owner of the property in Indian law.

FAMILY LAW – PERSONAL LAW:

Family laws in India are different when Warren Hastings in 1772 created provisions prescribing Hindu law for Hindus and Islamic law for Muslims, for litigation relating to personal matters.[35] However, after independence, efforts have been made to modernise various aspects of personal law and bring about uniformity among various religions. Recent reform has affected custody and guardianship laws, adoption laws, succession law, and laws concerning domestic violence and child marriage.

Hindu Law:

As far as Hindus are concerned Hindu Law may be a specific branch of law. Though the attempt made by the primary parliament after independence didn't achieve bringing forth a Hindu Code comprising the whole field of Hindu family law, laws could be enacted touching upon all major areas that affect family life among Hindus in India. Jains, Sikhs and Buddhists also are covered by Hindu law.

Muslim law:

Indian Muslims' personal laws are based upon the Sharia, which is thus partially applied in India, and laws and legal judgements adapting and adjusting Sharia for Indian society. The portion of the fiqh applicable to Indian Muslims as personal law is termed Mohammedan law. Despite being largely uncodified, Mohammedan law has an equivalent status as other codified statutes. The development of the law is essentially on the idea of judicial precedent, which in recent times has been subject to review by the courts. The concept of the judicial precedent and of 'review by the courts' may be a key component of British common law upon which Indian law is predicated. The contribution of Justice V.R. Krishna Iyer within the matter of interpretation of the statutory also as personal law is critical.

Sunni Law:

- Quran
- Sunna or Ahdis (Tradition of the Prophet)
- Ijma (Unanimous Decision of the Jurists)
- Qiyas (Analogical deduction)

As per Shia Law:

Usooli Shia up

- Quran
- Tradition (only those that have come from the family of the Prophet)
- Ijma (only those confirmed by Imams)
- Reasons

Akhbari Shia:

- Tradition (only those that have come from the family of the Prophet)

Polygamy and triple talaq may be a subject of debate from a while. It has been abolished in many Islamic countries, but still holds its legal validity within the secular country of India. Supreme court asked the central government for its views, to which it replied that polygamy should be done away with.

Christian Law:

For Christians, a definite branch of law referred to as Christian Law, mostly supported specific statutes, applies. Christian law of Succession and Divorce in India have undergone changes in recent years. The Indian Divorce (Amendment) Act of 2001 has brought in considerable changes within the grounds available for divorce. By now Christian law in India has emerged as a separate branch of law. It covers the whole spectrum of family law thus far because it concerns Christians in India. Christian law, to an excellent extent is predicated on English law but there are laws that originated on the strength of customary practices and precedents. Christian family law has now distinct sub branches like laws on marriage, divorce, restitution, legal separation, succession, adoption, guardianship, maintenance, custody of minor children and relevance of ecclesiastical law and all that regulates familial relationship.

NATIONALITY LAW

Nationality law or citizenship law is especially codified within the constitution of India and therefore the Citizenship Act of 1955. Although the Constitution of India bars multiple citizenship, the Parliament of India passed on 7 January 2004, a law creating a replacement sort of very limited dual nationality called Overseas Citizenship of India. Overseas citizens of India haven't any sort of political rights or participation within the government, however, and there are not any plans to issue to overseas citizens any sort law of Indian Passport.

LAW ENFORCEMENT

Law enforcement in India is undertaken by numerous enforcement agencies. Like many federal structures, the character of the Constitution of India mandates law and order as a topic of the state, therefore the majority of the policing lies with the respective states and territories of India.

At the federal level, the various agencies are a part of the Union Ministry of Home Affairs, and support the states in their duties. Larger cities also operate metropolitan police forces, under respective state governments. All senior cops within the state police forces, also as those within the federal agencies, are members of the Indian Police Service (IPS) and Indian Revenue Service (IRS), two of the several sorts of civil services. They are recruited by the Union Public Service Commission.

Police Force:

The federal police are controlled by the central Government of India. The majority of federal enforcement agencies are controlled by the Ministry of Home Affairs. The head of every of the federal enforcement agencies is usually an Indian Police Service officer (IPS). The constitution assigns responsibility for maintaining law and order to the states and territories, and most routine policing—including apprehension of criminals—is administered by state-level police forces. The constitution also permits the central government to participate in police operations and organisation by authorising the upkeep of the Indian Police Service. Indian Police Service (IPS) officers are recruited by the Union Public Service Commission through a competitive nationwide examination. On completion of a nationwide basic public-service course, the Indian Police Service recruits attend the National academy at Hyderabad, Telangana, for training. They are then assigned to particular state or union territory forces, where they typically remain for the remainder of their careers. About 50 percent of the officers are regularly assigned to states or territories aside from their own in an attempt to market national integration.

LAW REFORMS

Government usually appoints Law Commission panels to review and make non-binding recommendations for the law reform. In first 65 years 1,301 obsolete laws were repealed, including 1029 old laws in 1950 by Nehru and 272 old laws in 2004 by Atal Bihari Vajpayee. After that 1,824 such laws were repealed by Narendra Modi government between May 2014 to December 2017.

SURVEY

Objectives of Study:

1. To know the socio economic and demographic characteristics of the respondents
2. To understand the reasons

Following standard and scientific methodology, data collected from 500 respondents from whom 290 are male and 210 are female through direct interaction, telephonic conversation, Email, Social Media platforms etc procedures. After receiving responses from respondents, formulated them with respect to specific questions to respondents divided in six major categories, the reports are as follows:

1. Did you know that all the major laws in our country today are governed by the Mohammedans and the British?

Yes -94

No -6

2. Do you have a minimum understanding of the laws that are being implemented in our country today?

Yes -56

No -44

3. Do you think that the crimes that are escalating day by day in our country and our laws are flawed?

Yes -71

No -29

4. Your opinion on law enforcement in our country today -

Happiness - 11

Aching - 89

5. Are there amendments to our legislation that are in line with what is happening in society today?

Yes - 48

No - 52

6. Do you agree with our country - our laws?

Yes - 93

No - 7

CONCLUSION

It is our misfortune to use the old British laws which are still obsolete today in the 73 years of independent India. Governments are not keen towards establishment of our own laws, in fact arranging themselves just by amending the existing laws. Here they are not taking into consideration that the laws amended frequently lose their originality. The rulers should wake up and work towards framing our own laws. Theory and Research shows that the existing old laws have many loop holes by which criminals are escaping smartly, justice getting delayed, victims losing confidence on Judiciary system. Laws must always interpret the needs, changing customs and procedures. Let us all hope for early steps towards establishment of our own laws replacing British Laws that cease to exist.

REFERENCES

- www.un.org
- www.innovations.harvard.edu
- www.sci.gov.in
- www.lawcommissionofindia.nic.in
- www.thecommonwealth.org
- www.deccanherald.com

- www.socialscience.exeter.ac.uk.
- www.bbc.com
- www.lawyerred.in
- www.qz.com
- www.thehindu.com
- www.thethirdpole.net
- www.wikipedia.com
- www.indianexpress.com
- www.papers.ssm.com
- www.idfc.com

