



MAJOR LEGAL SYSTEMS OF THE WORLD AND THEIR IMPACT ON THE INDIAN LEGAL SYSTEM

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INTRODUCTION: LEGAL SYSTEM

A legal system is a collection of legal Principles, Norms, and Institutions of a country that reflect the social, historical, and cultural characteristics of a particular country. The primary essential requirement of a legal system is a society because law can only exist in a society, and there can be no society without a system of law to regulate the relations of its members with one another.¹

THE NEED TO UNDERSTAND THE LEGAL SYSTEMS OF THE WORLD

The understanding of legal systems that shape our world is evident in the present age of globalization, as the comparative study of the legal systems can contribute to the increment of international trade, Growth of multinational corporations, and exchange of cultural diversity since the legal system of a country is a reflection of social and cultural characteristics of that country and economy of a country is directly influenced by the legal system of that country. Human-made laws are not perfect; therefore, they require progressive development, hence, through the comparative study of the legal systems of the world we can identify the need for reforms and ways and means of reforms for the improvement of a legal system.

CLASSIFICATION OF THE LEGAL SYSTEMS OF THE WORLD INTO LEGAL FAMILIES

Undoubtedly, there is a great diversity of laws in the modern world. To anyone who wants to embark on a comparative study, this diversity may appear to be an insurmountable problem. Comparatists have attempted to identify a limited number of types or categories within which

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¹ David Harris, Cases and material on international law (7th edition, sweet & Maxwell South Asian edition 2011) page 1

this diversity can be organised. This categorization or classification of laws into ‘families’ is done based on the constant and more fundamental elements, rather than the less stable rules found in the law. Such classifications simplify presentation and facilitate an understanding of the world’s contemporary laws. However, the problem is that different writers base their classification on different criteria.²

Two contemporary exponents of Comparative Law, Rene David, and John EC Brierley, recognize three legal families, which occupy an uncontested place of prominence. They are the Romano-Germanic family or Civil law family of legal systems, the Common Law family of legal systems, and the family of Socialist Law. It is to be remembered that there are other systems such as Hindu Law, Muslim Law, or Jewish Law situated outside these three traditions or sharing only part of their conception of things, which prevail in a large number of contemporary societies.³

ROMANO-GERMANIC OR CIVIL LAW FAMILY

The Romano-Germanic family of legal systems also known as the Civil law family of legal systems has been initially evolved in the European continent. This is the largest legal system family in the world. This family of legal systems consists of the countries in which the legal science has been developed based on ‘**Roman Jus Civile**’.

The first corpus juris Justinian code, the compilation of the Emperor Justinian (A.D. 483-565), is the backbone of this family of legal systems, as this code provided the baseline path for jurists further developing the juridical framework of this family of legal systems. A significant role in its development was in the universities of Germanic countries and Latin. Countries, therefore, this family is called the Romano-Germanic family of legal systems to depict the contributions of the universities of both. The primary area of interest of the jurists who evolved and developed it was the composition of theories based on the idea of Justice and Morality, they were less concerned with the Practical implementation or execution and application of those theories.

² N K Jayakumar, Lectures in Jurisprudence (2nd edition, Lexis Nexis) 30-31

³ N K Jayakumar, Lectures in Jurisprudence (2nd edition, Lexis Nexis) 31

DEVELOPMENT

The civil law family of legal systems is considered the largest legal system in the world. In some countries it is completely followed but, in some countries, where there is a hybrid legal system it is partially followed by other legal systems. This family of legal systems has primarily developed in the European continent and, subsequently, in those countries that are influenced by Europe's legal systems.

CODIFICATION

According to the Oxford Dictionary, 'code' means a systematic collection of statutes, the body of law, so arranged as to avoid inconsistency and overlapping.⁴

Codification is a three-step process, which is as follows:

1. Assimilation of scattered laws.
2. Sieving or processing of those laws.
3. Enactment of code (final shape of rules/laws).

The scientific approach to law encouraged the compilation of rules into comprehensive codes in civil law countries. We can distinguish three forms of codification. The early approach adopted in medieval times in Germany and elsewhere was to create codes by compiling existing customary law. A famous example is the *Sachsenspiegel* (Mirror of Saxon Law), which was written by a well-educated knight, Eike von Repgow, in the 1220s to document the laws of Saxony. In northern France in the sixteenth century, a similar attempt to compile and codify customary law was undertaken.⁵

A different concept of codification emerged with the introduction of the Great Codes around 1800. The *Preußische Allgemeine Landrecht* (1794) of Saxony and the French Code Civil (1804) were influenced by ideas of the Enlightenment period. Although these codes represented political attempts to create a rational society through law, they have been accused of revolutionary democratism and "rampant rationalism" (Merryman 1985). This is because they attempted to grant each citizen knowledge of his or her rights, as well as to provide a complete

⁴ B. N. Mani Tripathi, *Jurisprudence the legal theory* (19th Edition, 2012) 271

⁵ *Legal systems of the world a political and social encyclopaedia* (pentagon press 2008) vol I, page 305

list of solutions for any legal complaint, thus reducing the role of the judge to the selection of the relevant provision and denying the jurist further powers of judicial interpretation.⁶

A third approach was taken by the German Civil Code, the *Bürgerliche Gesetzbuch* (BGB). Historically oriented, scientific, and professional, it combined both Roman law traditions and German law developments. Its provisions appear to be rather abstract and scientific without, however, displaying a rationalist zeal. The BGB acknowledged that there must be scope for judicial interpretation by incorporating several general clauses.⁷

Justinian's Code (in Roman Law) is a very important ancient code in the civil law family of legal systems. In many respects, it is like a modern code. Justinian compiled the mass of law which existed in various forms, such as the praetor's edicts, the writings of classical jurists, etc.⁸

INQUISITORIAL PROCEDURE

The inquisitorial system is associated with civil law legal systems, and it has existed for many centuries. It is characterized by extensive pre-trial investigation and interrogations to avoid bringing an innocent person to trial. The inquisitorial process can be described as an official inquiry to ascertain the truth, whereas the adversarial system uses a competitive process between prosecution and defense to determine the facts. The inquisitorial process grants more power to the judge who oversees the process, whereas the judge in the adversarial system serves more as an arbiter between the claims of the prosecution and defense.⁹

DISSEMINATION

This family of legal systems can be seen on a vast part of the globe as it is the largest family of legal systems in the world, this legal system has been spread in Europe and outside Europe (Muslim countries, Far East countries, African and America) though colonization and voluntary reception (non-colonized countries). Through colonization by European nations, the Romano-Germanic family has conquered vast territories where the legal systems either belong or are related to this family. The phenomenon of voluntary “reception” has produced the same

⁶ Legal systems of the world a political and social encyclopaedia (Pentagon Press 2008) vol I, page 305

⁷ *Ibid*

⁸ B. N. Mani Tripathi, *Jurisprudence the legal theory* (19th Edition, 2012) 271

⁹ U N O D C ‘Adversarial versus Inquisitorial legal system’ (published in May 2018)

<https://www.unodc.org/e4j/en/organized-crime/module-9/key-issues/adversarial-vs-inquisitorial-legal-systems.html> accessed 19 February 2025

result in other countries that were not colonized, but where the need for modernization, or the desire to westernize, has led to the penetration of European ideas.¹⁰

Judicial System: Appointment of judges - they are not always required to have a law degree to be a judge in the civil law family of legal systems, provided they have the required quality (expertise in a particular field), therefore, the judgment writing in this family is very concise and precise. Judges are chief investigator officers and their work is to establish facts and examine the testimonies then apply the relevant provisions of codified laws.

COMMON LAW FAMILY OF LEGAL SYSTEMS

The common law system dates from the introduction of feudalism after the Norman conquest of England in 1066. Traditional courts replaced the power of barons and sought to develop a unified, common law – a law common to the entire territory: the King’s law. As the body of judicial decisions grew and became permanently recorded on paper, the rule Precedent (*stare decisis*, which means “to stand decided”) ensured consistency. Similar cases saw similar outcomes and the system offered predictability for future disputes.¹¹

The common law system continues to develop case by case through reasoned court decisions. Gaps in the law, where there is no legislation, are filled by new judicial principles in each case if not already covered by existing precedent. The common law judge does not consult an official codified text before rendering judgment but draws instead upon precedents established by other earlier judicial decisions. Legal scholars write treatises and commentaries on the common law. While these command the respect of the legal profession, they do not constitute law, and judges are not compelled to follow them when deciding cases. The source of common law, therefore, is the judiciary.¹²

The common law is continuously developing and renewing itself. Previous cases are reviewed and commented upon. Legal rules and principles are refined, sometimes reworked or scrapped altogether in favour of new ones. For example, there is more sensitivity today toward gender

¹⁰ Rene David & John E.C. Brierley, *LB-101 - Jurisprudence-I course material faculty of law university of Delhi* (January 2023) 8

¹¹ Peter Bowal and Andy Kirsch, “The World’s Legal Systems” (2010) 25

¹² *Ibid*

and diversity and rapid social and technological change. Re-evaluation of former decisions adds flexibility to the common law.¹³

Adversarial Procedure: Most legal systems are either inquisitorial (sometimes called civilian or civil) or adversarial. Adversarial systems are derived from the model of English courts, whose judges interpret common law, as well as equity, ecclesiastical, statutory, natural, and customary law. Judges are neutral arbiters between the plaintiff and the defendant in civil trials or between the state and the defendant in criminal ones. Cases can be settled at any time before or during a trial. In adversarial systems, the search for the facts in dispute and the applicable law results from adjudication or litigation in which the judge intervenes less often than in inquisitorial systems.¹⁴

Judicial System: Appointment of judges – A law degree is an essential requirement in the common law system to become a judge. The judgment writing in this family is very lengthy, they have to clearly explain the reason for the decision (*ratio decidendi*) and *obiter dicta*.

Dissemination: The common law family of legal systems has been mostly spread through colonization outside Europe and in Europe (only Ireland), voluntary reception of this legal system can be seen as well to some extent. The distribution of the common law throughout the British Empire was not a voluntary reception but an imposition of the law as part of British territorial expansion. English law was ruled effective when England colonized an area without a "civilized" local law. Civil law is the more easily received legal tradition. The convenience of codes rather than case law favours the civil law system in a voluntary adoption process.¹⁵

Family of Socialist Laws: The legal system of the erstwhile Union of Soviet Socialist Republics (USSR) and other socialist countries are included in this family. The distinguishing feature of this family is its revolutionary nature and proclaimed ambition to create the conditions of a new social order in which the very concept of state and law will disappear. Law as such is not important, but subordinate to the task of creating a new economic structure. Since all means of production are under state ownership, private law relationships between citizens are very limited. In the socialist legal system, private law loses its pre-eminence, and practically all law becomes public law, With the fall of the USSR, and the return of many other socialist

¹³ Peter Bowal and Andy Kirsch, "The World's Legal Systems" (2010) 25

¹⁴ Legal Systems of the World A Political and Social Encyclopaedia (pentagon press 2008) vol I, page 6

¹⁵ Legal systems of the world a political and social encyclopaedia (pentagon press 2008) vol I, page 322

states to a liberal democratic order, there now remain only a few members in the family of socialist laws.¹⁶

INDIAN LEGAL SYSTEM

To delve among the laws of India is like bathing in the holy waters of Triveni. It leaves one refreshed and delighted; refreshed from the pleasant contact with almost all the legal systems of the contemporary world, and delighted at the hopeful realization that here in the Indian legal system lie the seeds of a unified, eclectic legal order that may soon grow into maturity and spread its branches, like a banyan tree, all over south and southeast Asia.¹⁷

Three main streams join together to form the Indian legal system. That of the common law is perhaps the most dominant among them. Then there is the stream of laws springing from religion. The third is that of the civil ('romanist') law which energizes the system with unruffled ethical verve and accords comeliness to its contours. Trickle of customary laws cherished by tribal societies and other ethnic communities also flow into the mainstream. Like the Sarasvati near Prayag, the element of civil law is not easily perceptible, though it permeates the entire structure. So, a word of explanation is perhaps warranted.¹⁸

¹⁶ N K Jayakumar, Lectures in Jurisprudence (2nd edition, Lexis Nexis) 32

¹⁷ Joseph Minattur, The Indian legal System, LB-101 - Jurisprudence-I course material faculty of law university of Delhi (January 2023) 14

¹⁸ *Ibid*