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# Legal System in India

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With this thought, we hereby present to you

WHITE BLACK LEGAL: THE LAW JOURNAL



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A

Research Paper

On the Topic

# LEGAL SYSTEM IN INDIA

Submitted in fulfillment of the requirements

For the

W Term End Examination K

Ву

**Prajwal Dwivedi** 

B.A., LL.B.(Hons.)-8101

# **ACKNOWLEDGEMENTS**

I made an effort to do this project. Without the kind support and assistance of many people, however, it would not have been possible. To all of them, I would like to extend my sincere thanks.

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Prajwal Dwivedi

BA LLB

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# **ABSTRACT**

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This project is focused on Indian legal system growth. The Indian Legal System is one of the world's most experienced legal systems. In recent hundreds of years, it has updated and developed additional elements to ingest suspected legal systems worldwide. The Indian Constitution is the source of the Indian legislative system. This article will focus on exceptional changes and their effect on Indian modern law since four noteworthy legal conventions have been adopted in India, namely Hindu, Muslim, British, and the modern, independent Indian. We are based on British Laws in our current framework. The kings who governed India previously followed their own personal or religious laws. Hindus adopted the Dharma principle of obligation, faith, and inseparable characteristics. Dharma means moral rules that are founded on justice. The Muslims then pursued the Qur'an and the sources led by Prophet Mohammad. In the context of the transition from the Mughal law system, lawyers and advocates under the regime still acted accordingly, but usually, they acted as consumer representatives beforehand. In every step of the country, this paper discussed different courts and legal systems. This article attempts every step of the country to investigate the systemic development of the legal system in India. Pure and Applied Mathematics International Journal

## **LITERATURE REVIEW**

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The law in India has developed from divine prescription, through common law and lay law, into the existing legal framework and constitution<sup>1</sup>. India has the world's oldest legal system and the justice system of no other country has a more ancient one. Hindus used the Dharma principle to tell how people should live. Individual sultans had and correctly made very high standards of justice

The East India Company received a charter from Queen Elizabeth I in 1600, allowing it to engage in trade and commerce in India<sup>2</sup>.

With the permission of the kings in the area in question, the East India Company came to different locations. Bombay, Madras, and Calcutta were ruled by the British and named the cities to hold the Presidency. The key energies and spheres behind constitution development are leaders such as Jawaharlal Nehru and Mahatma Gandhi. In the context of the Indian legal system, conflicts in the areas allocated to them are the largest democracy in the globe<sup>3</sup>.

The structure and procedure behind the laws and remedies have increased by the legal system. As a consequence of different phases of conflict, the current legal framework has been established and developed<sup>4</sup>.

# WHITE BLACK METHODS AND METHODOLOGY

The analysis and descriptive study are discussed in this study. Data was gathered from secondary sources for this study.

Data collection methods are

- Books and articles
- Magazines
- Journal

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<sup>&</sup>lt;sup>1</sup> Paranjape, N. V. Studies in Jurisprudence and Legal Theory. 2013.

<sup>&</sup>lt;sup>2</sup> Kulshreshtha, Visheshwar Dayal, and B. M. Gandhi. V. D. Kulshreshtha's Landmarks in Indian Legal History and Constitutional History. 2005.

<sup>&</sup>lt;sup>3</sup>Pandey, Jai Narain, and Surendra Sahai Srivastava. Constitutional Law of India, 2014.

<sup>&</sup>lt;sup>4</sup>Lingat, Robert, and John Duncan Martin Derrett. The Classical Law of India. Oxford University Press, USA, 1998.

# **INTRODUCTION**

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The first major civilization of India flourished in the valley of the Indus River at approximately 2500 BC. The civilization, known as Harappan culture for 1000 years and seemed to be the result of thousands of years of settlement.

Indian social and religious systems have been resisting invasions, famines, religious persecutions, policy upheavals, and many other cataclysms for many thousands of years. Few other countries have such a long and colorful tradition of national identity. The Civilization Valley has one of the world's oldest civilized societies. The idea of Nyaya is based on the scriptures such as Ramayana, Mahabharata, Smriti, and Vedas.

If we start with the view that the legal system started today or only a few centuries ago, this image of contemporary law would offer a skewed and distorted image. The foundations of the present legal system have been founded on past practices and growth.

It can be difficult to understand why the specific structure is as it is without sufficient historical context. Different scholars describe indifferently the development of the Indian legal system. But there was no same theory about Indian legal history. There were different stories. There were different.

The origins of the human institutions of today have been profoundly buried in the past. This also applies to the law and legal system of the country. It is a cumulative result of the Endeavour, experience, thoughtful preparation, and patient labor of many citizens over the years, and not the establishment of an entire nation at any time.

In India during the 17th century, the modern judicial system began to develop with British influence. The British Empire lasted until 1947, and the current Indian judicial system owes a great deal to the judicial system established during British times.

In India, the legal system meets the standard of common law prevailing in the countries that were once British or British Commonwealth members. In India, the jurisprudence is almost the same as in England even though the traditional Indian traditions have been crossfertilized.

Indian Law1 has a long history of 3000 years and a unique mix of English, Hindu, Islamic, and other factors in cultural welfare.

We are based on British law in our present legal framework. In the past, Indian kings practiced their laws of personality or religion. Because of its relationship with Indus.

# HISTORY OF INDIAN LEGAL SYSTEM

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# Sources of Hindu Law –

The Hindu law is thought to be divine law. Via the Vedas God revealed it to the people. The philosophical life ideas described and explained by several wise men in the Vedas (Priyanath)<sup>5</sup>were expounded and refined.

#### Sources of Hindu law:

- 1. Ancient sources: Shruthi, Smiriti, Commentaries and Digest, Customs.
- 2. Modern sources; Precursor, legislation, fairness, and good conscience. The judiciary was built on the principle of dharma in the Hindu regime.

#### Concept of Dharma;

Dharma simply addresses the obligation, faith, and the quality of something or order that is inseparable. Based on the Smiriti and Shruthi (Lingat and Dierett)<sup>6</sup> Vedas. They are created. From the Vedic concept Rita, Dharma derived, which means a straight line. The Law of Nature means Rita. Dharmas signify righteousness-based moral laws. It's all right, fair, and moral to dharma. Dharma seeks the good of the State and its citizens in particular.

#### Judicial Administration of Ancient India;

There was no connection at that time to the Vedic Literature Judicial Organization. The judiciary came to be formed through the philosophy of Dharma later after Kings' rulings. The head of the Justice were the kings.

#### Types of Court;

1. Kings Court: - The King presided over this court to make justice. They were called Adhyaksha or Sabhabathi and Brahmanas advised the King. The court consists of

<sup>&</sup>lt;sup>5</sup> Priyanath, Sen. "The General Principles of Hindu Jurisprudence. By Priyanath Sen, M.A., D.L. Published by the University of Calcutta. 1918." Journal of the Royal Asiatic Society of Great Britain & Ireland. Royal Asiatic Society of Great Britain and Ireland, vol. 52, no. 01, 1920, p. 118.

<sup>&</sup>lt;sup>6</sup> Lingat, Robert, and John Duncan Martin Derrett. The Classical Law of India. Oxford University Press, USA,1998.

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Pradivivaka, the Chief Justice, and three jurisdictions besides the King (Jatar and Paranjape)<sup>7</sup>.

- 2. Principal Court- This Court operated in major cities to hear the controversy.
- 3. Kula- As a collection of relationships, near or far apart, Mitakshara. If the family members fought, the elders of the family resolved it. It's like an informal tribunal.
- 4. Sreni- If a family conflict could not be resolved via the Kula scheme, the case was taken to SreniCourt. In ancient India, the scene court heard guild disputes and resolved commercial disputes.
- 5. Puga- This was a group of people who came from various castes and worked in various fields. This is an informal court as well.

#### LEGAL SYSTEM IN MEDIEVAL PERIOD

The twelfth-century marked the start of an extended period of Muslims, first northern India and later, in nearly every region of the subcontinent, under the Mughals. Islamic Law is now a legal and social legacy of the region•

Two main sources are Islamic law: the Quran and the Prophet Mohammad's Sunna. The five doctrines collectively known as Iman, meaning Faith, underlie Islamic Law. Trust in total harmony and unity of God is the first doctrine. The second philosophy is faith in angels and their role as God's messengers and helpers. Prophetic messengers concern the third doctrine. The fourth conviction is an ultimate decision or a last-doctrine. In 'divine decree end predestination' the fifth basic Islamic belief. The Islamic Law is also founded on religious convictions like the Hindu Law.

The legal systems of Islam and Hinduism have many parallels. The consensus was used in both legal traditions, and the importance of preserving peace was emphasized in both. Human rights do not exist in either culture. Instead, citizens had responsibilities, and all legal systems approach religion and law in the same way.

Primary sources: The primary sources would be those that the Prophet Mohammad guided. These must be followed in the order in which they are mentioned. Formal sources are another name for them. These are the foundations of Muslim personal rule. Quran, Sunnah or Ahmadis, Ijma, Qiyas are primary sources.

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 $<sup>^7</sup>$  Jatar, Nilakshi, and Laxmi Paranjape. Legal History: Evolution of the Indian Legal System. 2012

Secondary Sources: The primary sources are explained or modified by these sources. They are concerned with the needs of modern-day Islamic society. Extraneous sources are another name for them. Any personal laws, such as customs, can be included in the sources. Urf or Taamul (Customs), Judicial Decisions, and Legislations are secondary sources.

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Judicial Administration of Medieval India;

The Medieval Indian Judicial Administration was divided into two categories.

- Administration of the Court System during the reign of the Delhi Sultan (1206-1526).
- Court Administration During the Mughal Period (1526-1755).

#### Administration of the Court System during the reign of the Delhi Sultan (1206-1526).

In medieval India, the Sultan was the sole authority to administer justice in his Kingdom as the head of the state. One of the most important duties of the Sultan was the administration of justice, which was carried out in three capacities in his name.

Diwan-E-Qaza (Arbitrator)➤

Diwan-E-Mazalim (Head of bureaucracy)➤

Diwan-E-Siyasat (Commander-in-chief of Forces)

The Sultan's judicial system was structured based on the Kingdom administrative divisions. The seat of the capital has been systematically classified and graded by the courts. Each court has established its jurisdiction and powers (Rama Rau).

#### Court Administration During the Mughal Period (1526-1755).

The emperor was regarded as a fountain of justice during the Mughal era. Three significant courts were established in Delhi, the capital of the Mughal Emperors in India.

#### LEGAL SYSTEM IN THE BRITISH PERIOD

In pursuit of trade and conquest, early European warriors and traders came to India. The British had the largest effect on the country from all European invaders through their East India Company, a business enterprise founded by London businessmen.

The East India Firm was created in England to promote British trade interests in foreign countries. The members of the company came to India to conduct business during the reign of Jahangir. They founded many factories and became the basis for British rule in India gradually.

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The English understand the importance of a sound legal system in India and have established a judicial system at the very beginning of their administrative careers.

A primary judicial system was developed in the three presidential cities – Calcutta, Mumbai, and Madras. The Supreme Court was then formed in Calcutta in 1774. It's a court of law in England. Similar courts were established in Madras in 1801 and Bombay in 1823. Via letters of law approved by the British Parliament in 1862<sup>8</sup> under the Indian High Court law, certain courts were transferred to the High Court.

The existence of two parallel courts, the Supreme Curtains, outside the President's Cities, and the Mofussil Court, outside the cities of the presidency is a notable feature of the Indian legal system before 1862. The arrangement of the English judiciary has also been replicated to suit the requirements of the English who lived there. By comparison, by primarily administering the Hindu and Muslim rules, the British administration encouraged the development and operation of the Adalat system, which recognized that the foreign judicial structure does not function effectively in indigenous populated areas. In 1862, by creating the high courses that had become the precursors of Indian rule, the judiciary and the failures of the presidential cities were united.

Another important trend in judgments' development is the private council's emergence as the ultimate court of appeal for India. The Privy Council has played a major role in the development of the Indian Legal System. Various rules and codes including the Evidence Rule (1872) (1872)

# **LEGAL SYSTEM IN MODERN INDIA**

The independence of India resulted in some unavoidable modifications to the judiciary system, of which the Supreme Court was the ultimate court of appeal to be replaced by the Privy Council. There is a hierarchical network of courts within the current justice system in India. There are liberal guidelines for lower-to-upper-courts appeals. The Supreme Court, the highest court in the world, implements a high level of justice and encourages a shared approach to the law across the country.

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<sup>&</sup>lt;sup>8</sup> Sharma, S. P. Indian Legal System. Mittal Publications, 1991

#### **GROWTH OF LEGAL PROFESSION IN INDIA**

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Law is an important part of the culture of judicial administration. The report of the Law Commission "A well-functioning justice system takes an efficient and properly trained bar" (1958). Consequently, without a well-structured professional law, the courts would not be able to administer justice effectively.

No defined laws were governing the defenders of the Mayor's courts in the towns of the presidency in 1726, and no definite provision was made for them to be eligible. As a result, there was little legal training or experience for those who practiced law at the time. The Supreme Court of India, the first step in the organizing of the legal profession in India, was founded in 1774 in Calcutta. The Supreme Court is entitled to recognize and register lawyers and supporters. The word advocate was then used to refer to English and Irish lawyers and lawyers in Scotland. At the time it was called 'attorneys' just British lawyers or solicitors. This led to the designation of the Supreme Court exclusively for the British legal system and the interdiction of indigenous Indian lawyers to appear before it. In a similar case, the Supreme Court of Bombay and Madras.

The High Courts of Calcutta, Mumbai, and Madras are founded by law in 1861. Lawyers, vakil, and lawyers in the high court for 11th cases were admitted and enrolled by the high tribunals. The Law of Legal Practitioners was enacted in 1879 to improve and modernize the law governing lawyers. This Act gave the High Court the authority to rule on pleaders' and mukhtars' qualifications and admission to the High Court.

According to the rules of the Chartered High Court, three classes of lawyers have formed: attorneys, advocates, and Vakils. Vakils are those who have earned an LLB from an Indian university and have the same status as lawyers. The non-chartered tribunals also had lawyers, plaintiffs, and mukhtars. Pleaders were enrolled before lower courts to practice after a review by the High Courts. After several years of practice, they became High Court attorneys. Some mukhtars have passed the High Court exam after completing Matriculation, usually in a court of law, in addition to the plaintiffs. As a result, the legal profession in India has been turbulent, with different classes of lawyers.

The government of India appointed an Indian Bar Committee, also known as the "Chamber Committee," in 1923 to report on the suggestions of legal professionals to create an IndianBar. The committee recommended that different groups of legal practitioners combine and form a Bar Council for each High Court. The Indian Bar Councils Act was passed in 1926 by the Central Legislature in response to the Thc Chartiers Committee's recommendations to form bar councils. The supporters and mukhtars of the Mofussil courts were fully de-escalated by this act failed to result in the creation of a unified Indian Bar. Despite the 1926 Act, the Indian legal profession has continued to pursue a single all-India bar.

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The demands of the Indian legal profession were further stimulated in 1950 when the Supreme Court of India was created. As a result, the All India Bar Committee was established in 1951, and the report was published in 1953. We advocated for the development of a single national bar. The Committee also recommended the creation of all Indian bar and state bar councils. It also emphasized the bar's sovereignty, which is comprised entirely of the profession.

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The Act on Advocates was passed in 1961 by Parliament to amend and consolidate the law on lawyers and to create the Tor Bar Assembly and the All-India Bar. The Act establishes an All-India Bar Council and a uniform status for advocates, allowing them to practice law in any part of India and any court, including the Supreme Court.

The bar was united into a single legal entity known as lawyers. The Act creates a Council of State Bars in each state, as well as a Council of Indian Bar in the national capital. The State Bar Council has the authority to:

- > to add people to its list of lawyers.
- > to investigate and rule on allegations of wrongdoing against advocates on its roster; and.
- ➤ to protect the rights, privileges, and interests of its advocates.

  The Indian Bar Council prepares and retains a common advocate position, sets professional behavior and legal training requirements.

# THE CONSTITUTION OF INDIA

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The Constitution of India is the supreme law of the nation. The text lays out the framework that defines the fundamental codes, frameworks, laws, powers, and responsibilities of government agencies, as well as fundamental rights, rules, and citizen responsibilities. It is the longest written constitution in the world. B. R. Ambedkar is known as the "Father of the Indian Constitution," and his declaration has been adopted by the people of India. The Parliament cannot override the Constitution. It went into force on January 26, 1950, after being approved by India's Constituent Assembly on November 26, 1949. The Indian Government Act was replaced as the nation's basic governing text by the Constitution in 1935, and the Indian Dominion became the Indian Republic. India's constitution is commemorated on January 26th as Republic Day. India is declared an autonomous, socialist, secular, and democratic republic by the Constitution, which guarantees justice, equality, and freedom for its citizens while also fostering fraternity.

# **HIERARCHY OF INDIAN COURTS**

The characteristic Its hierarchical court structure is the Indian judicial system. The justice system in India, which has various kinds of courts, has different levels. The courts are organized according to the powers conferred upon them by a rather strong judicial and hierarchical regime. This mechanism is sufficiently powerful to restrict the competence and authority of the court. The Supreme Court of India is at the top of the rank and file, followed by high courts at the state and lower levels with the jurisdiction allotment and exercise of power for the Indian citizens.

### SUPREME COURT OF INDIA

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The Supreme Court of India is the highest in Indian law and was established as the guardian of the country's highest constitution and the highest court in appeals cases under Part V, Chapter IV of the Indian Constitution which recognizes the Supreme Court as the Supreme Court.

Articles 124 to 147 of the Indian Constitution determined the jurisdiction and composition of the Supreme Court. The primary position of this Court is the Court of Appeal.

The Court considers appeals for cases heard in high courts in different States and Union territories in response to the disappointment of related parties. This Court also admits written complaints alleging the incidence of human rights violations and subsequent requests to hear and judge the impact of these occurrences.

This court has been in operation since its first sitting on January 28, 1950, the day the Constitution of independent India went into effect. The Supreme Court has already handled over 24,000 decisions, according to the court's report.

Structure and Application; The Court comprises the Chief Justice and 30 other judges responsible for the operation of the Court. The case is only heard in the Supreme Court.

The English language is very versatile. The Supreme Court is governed by the Rules of the Supreme Court, which were established in 1966.

Article 145 of the Indian Constitution established the same for the regulation of the Supreme Court's procedures and practices. This article continues to upgrade the latest Article following the Supreme Court's Rules of Procedure, 2013.

#### HIGH COURT OF INDIA

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#### Constitution

The High Court is the second important tribunal in India's democracy. Article 141 of the Indian Constitution governs it. They will be governed by the Supreme Court of India's legally binding judgments and orders. The Supreme Court of India is the highest level of the tribunal and is responsible for providing direction to the preceding high courts.

The high courts are the types of courts created as constitutionally approved courts under Article 214 Section IV of Chapter V of the Indian Constitution. The Indian state legal system is overseen by 25 high courts, the largest of which is the High Court of Kolkata.

The jurisdiction of these courts would be limited exclusively to that of states, associations of member states, or Union territories. They have the authority to rule on the jurisprudence of lower courts such as family, civil, and criminal courts by separate district courts. When it comes to the originality of competence in the relevant fields of states and other regional courts, those courts are considered to be the most important civil courts.

These courts are considered to be subject to the status of high courts. However, the high courts primarily exercise their jurisdiction in civil or criminal matters when the low courts prove unable to exercise their jurisdiction according to law-enhanced authorization. These conditions may be created by the lack of financial or territorial competence. There are particular areas in which the right to hear cases relating to company law can be exercised solely in High Courts, as specified in state or federal law.

But the high courts are usually interested in appealing the written petitions conferred on lower courts in Article 226 of the Indian Constitution. The only competence of high courts is also the field of written petitions. The competence of the High Court varies to the extent that territorial competence is regarded.

Official structure and application;

The President of India appoints judges to the High Courts after consulting with the Chief Justice of India, the Chief Justice of the High Court, and the Governor of the state or union territory.

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The decision on the number of judges at the High Court would be dictated mainly given the higher number either of major cases, on average, in recent years, or of the major cases disposed of per judge annually by the high court in the respective countries, on average nationally determined.

In most cases in a given country, the high courts only have permanent benches or divisions of the court. The establishment of circuit benches was made to represent claimants from remote areas and to ensure that the judge's visit was followed by a schedule of activity.

# LOWER COURTS OF INDIA

#### **DISTRICT COURT**

#### Constitution

The composition of district courts in India is largely decided by state governments or union territories' discretion. The number of lawsuits, population distribution, and other factors influences the composition of such courts. The state legislature decides whether a single district should have several District Courts or whether several adjacent districts should be merged based on these factors.

These types of courts typically exercise their district judicial power. These courts are covered by the High Court regulatory authority, which also includes circuit courts. Appeals by the appropriate high court of appeal shall be subject to district court decisions.

Structure and jurisdiction; District tribunals are governed primarily by district magistrates appointed by the governor. The additional responsibility of the District Court proceedings lies with district judges and district assistant judges. These other regional judges have the same powers as district judges for every town that is transferred to a metropolitan area by the State Government. These district courts are entitled to administer the subordinate courts in the same district, which are primarily interested in civil and criminal matters.

In this context it is regarded that the subordinated courts for civil litigation, sometimes referred to as the subcourses, are the Junior Civil Judge Court, the Junior Subcourses, and the Senior Civil Judge Court. All these courts are enhanced by orders. Subordinate courts covering criminal cases are the Second Class Court of Justice, First Class Judge, the Chief

Justice Court, and family courts formed exclusively for matters concerning marriage. The rank of the judge is the same as that of the district judge. In total, 351 regional courts, 342 state courts, and 9 union courts exist.

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# **VILLAGE COURTS**

Structure and Jurisdiction; The village courts are called Lok Adalat or Nyaya Panchayat, which means the Indian courts' justice. This is the micro-level conflict settlement scheme. Through the Madras Village Court Act of 1888, the need for such courts is justified. Following this act, the creation after 1935 took place in various provinces which after 1947 were re-designated as different states.

Since the 1970s, a judge and two assessors have been charging the State of Gujarat for this conceptual model. In 1984 the Law Committee recommended that the citizens of educational achievement train the Nyaya Panchayats in rural areas. The most recent development was observed in 2008 with the launch of the Gram Nyaylayas Act, which sponsors the idea of 5000 mobile courts across the world. These courts are responsible for judging the small cases of civil and criminal offenses that may result in a sentence of up to 2 years in jail. In the big world, where 5000 mobile courts are targeted, statistics of 2012 are currently available, there are only 151 grams of Nyaylayas that are functional. Whilst attempting to find the essential reasons for this failure, it was found that the lawyers, respective government officials, and the police showed reticence over the financial constraints.

#### CONCLUSION

India's legal framework, as it exists today, was not created overnight. It took several years for such a structure to emerge. It has undergone different transformations depending on the situation. The idea of justice is not a recent one; it dates back to ancient times. India's legal history is extensive. 19 A country's legal structure is an integral part of its social system, reflecting the society's social, political, economic, and cultural characteristics. As a result, understanding the legal structure outside of the socio-cultural context in which it functions is challenging. The legal system based on the British model (formal/inherited) is full of technicalities and procedures, which makes it unfamiliar to the majority of Indians (who have a more indigenous legal culture) and restricts access to justice for the weak and illiterate.

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