

THE THREE BEST THINGS ABOUT THE INDIAN LEGAL SYSTEM

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Broadly speaking, the legal system of a country is a part of its social system and as such reflects the social, economic, political and cultural characteristics of that society. Therefore, the legal system has to be understood in the context of socio-cultural milieu in which it operates. A legal system consists of certain basic principles and values, a set of operational norms including rights and duties of the citizens spelt out in the laws - central, state and local, institutional structures for the enforcement of those laws and a cadre of legal personnel, endowed with the responsibility of administering the system.

The Indian legal system is, by and large, the gift of the British rulers. Originally an English transplant with Anglo Saxon roots, the legal system in India has grown over the years, nourished in the Indian soil. As a matter of fact, what was intended to be an English oak, has turned into a large, sprawling Indian banyan tree, whose social roots have descended to the ground to become new trunks. According to one view, the legal system in India is still an alien one to the majority of its citizens whose legal culture is more indigenous and whose contact with the formal legal system, that is, the imported British Model, is marginal, if not altogether non-existent. That is why it is widely believed that the language, technicality and procedure of the inherited legal system are indeed some of the factors that limit access to justice for a vast majority of illiterate, ignorant and impoverished people of the country. Notwithstanding all this, the rights and benefits conferred by the Indian Constitution and various other laws enable people to enjoy the glow of freedom in a highly democratic set up. In the paragraphs below, I would like to highlight atleast the **Three Best Things** about the Indian legal system. These are: **(1) The Written Constitution; (2) The Rule of Law; and (3) Independence of Judiciary**. I would like to deal with each of these points briefly.

(1) THE WRITTEN CONSTITUTION

The constitution of a country is the fundamental law of the land and it is variously described depending upon the nature of the polity and the aspirations of the people in a given society. Constitution is generally a written document and it assumes the character of a unitary or a federal form of government. The Indian Constitution, that is often considered to be one of the most well written documents, declares India to be a sovereign, socialist, secular, democratic republic and represents the collective will of the entire nation, and is, as such, the reservoir of enormous power. It is the cornerstone of our republic. The Indian Constitution, which is a unique blend of rigidity and flexibility, also describes the methodology by which this power conferred on the State is to be exercised for the greatest benefit of the greatest number of people. It is a political document, sometimes also called as the 'Bag of Borrowings' that distributes power of the State amongst different organs, that is, between central

and state governments; legislative, executive and judicial wings of each government and regulates its exercise in its incidence on the people. Our form of government is democratic and republican and the method is parliamentary through the adult franchise. With ninety four amendments in it, the Indian Constitution is one such vibrating document in accordance with which our republic has systematically been governed since independence. One can proudly say that we in India are enjoying the 60th glorious year of our freedom and the one document that has not failed is “Our Indian Constitution” and further that it is our sacred constitution only that we Indians have survived as a single united nation and that is perhaps the greatest thing about the Indian democracy as well as about the Indian legal system.

(2) THE RULE OF LAW

The second important component of the Indian legal system is ‘Rule of Law’. Though the term ‘Rule of Law’ is derived from the French phrase *la principe de legalite* (the principle of legality) that refers to a government based on the principles of law and not of men, in India, the concept of ‘Rule of Law’ can be traced to the ancient scriptures. According to them, Law is the ‘King of Kings’ and that there is nothing higher than the law. In case of Indian democracy in particular, the concept has assumed different dimensions and means that the holders of public powers must be able to justify publically that the exercise of power is legally valid and socially just.

In India, the concept of ‘Rule of Law’ has developed many facets that are not only negative, providing constraints on governmental action, but affirmative, too, imposing an affirmative duty of fairness on the part of government. In the first place, it is obligatory that power should not be exercised arbitrarily, meaning thereby that, it should be exercised within the statutory ambit; and the purported exercise of it would not just be *ultra vires*, but shall, in a true sense of the term, arbitrary. The law courts in India have gone a step further to insist on the specific positive content of the rule of law obligations. These include the rules of natural justice that have to be followed not just in a quasi-judicial action but often also in purely administrative action. Very fortunately, the courts in India have been able making concerted endeavours to establish a ‘Rule of Law Society’ by insisting on ‘fairness’ in every aspect of the exercise of power by the State. It goes without saying that the principle of rule of law runs through the Indian Constitution like a golden thread.

(3) INDEPENDENCE OF JUDICIARY

The third important feature of the Indian legal system is independence of judiciary that is the logical concomitant of the broad adherence to the ‘Doctrine of Separation of Powers’, a doctrine that is traceable to Aristotle, but to which the writings of the thinkers like John Locke and Montesquieu have given a base on which modern attempts to distinguish between legislative, executive and judicial power is grounded. The theory of separation of powers signifies three formulations of structural classification of governmental powers: (i) that the same person should not form part of more than one of the three organs of the government. For example, ministers should not sit in Parliament; (ii) that one organ of the government should not interfere with any other organ of the government; and (iii) that one organ of the government should not exercise the functions assigned to any other organ. In India, though the

doctrine has not been accorded a constitutional status in the strict sense, one of the articles in the Indian Constitution (Article 50) enjoins separation of judiciary from the executive. The Supreme Court of India, in one of the leading cases, has held: “Indian Constitution has not indeed recognized the doctrine of separation of powers in its absolute rigidity but the functions of the different parts or branches of the government have been sufficiently differentiated and consequently it can be very well said that our Constitution does not contemplate assumption by one organ or part of the State of functions that essentially belong to another.” In India, the system of checks and balances operates so as to confer independent jurisdiction to all three organs of the state including judiciary. Under the constitutional framework, judiciary in India has been vested with sufficient powers to act independently and also to step in where other two organs of the state fail to perform the powers assigned to them. The modus operandi adopted in appointments, the fixed tenure of the judges and the power to punish for the contempt are some of the important features of the independence of judiciary in India. It goes without saying that an independent judiciary is the backbone of a successful democracy and we are fortunate that our judiciary is independent and its example is to be emulated by the world.

In the light of the above, one reaches an inescapable conclusion that the Indian Constitution stands tallest amongst all the constitutions of the world as its underlying objectives are the promotion of rule of law that runs like a golden thread through the entire fabric of the Indian Constitution and maintenance of the independence of judiciary.