

AN OVERVIEW OF THE INDIGENOUS FOUNDATIONS OF THE INDIAN CONSTITUTION

Abstract

The Indian Constitution is a remarkable synthesis of indigenous Bharatiya jurisprudence and modern legal thought, reflecting a confluence of ancient traditions and colonial influences. Rooted in dharmic principles, the Indian legal system has long upheld ideals of justice, equity, and duty, as seen in texts such as Arthashastra, Rigveda and the philosophies of Nyaya and Mimamsa schools. These foundational concepts resonate in constitutional provisions such as fundamental rights, directive principles, and decentralized governance. Simultaneously, colonial legal structures introduced rule of law, parliamentary democracy, and codified statutes, shaping the modern constitutional framework. This article explores the influences of Bharatiya jurisprudence on constitutional ideals by examining certain core principles of the Constitution such as secularism, directives principles of state policy and the panchayati raj systems that embody India's indigenous legal heritage alongside Western legal doctrines. Through a doctrinal approach, it argues that the Indian Constitution is not merely an extension of colonial governance but a dynamic document that harmonizes India's rich legal traditions with contemporary jurisprudential principles.

Keywords: Indian Constitution, Indigenous legal traditions, Bharatiya jurisprudence and Dharmic principles

Authors

Dr. Ashutosh Kumar Pandey

Assistant Professor
Department of Political Science
St. Xavier's College, Ranchi,
Jharkhand -834001

Ankita Rituraj

Assistant Professor
School of Law
MATS University
Raipur, Chattisgarh-492013

I. INTRODUCTION

Legal philosophy in India has evolved over centuries, drawing from diverse sources such as *Dharmaśāstra*, Buddhist and Jain doctrines, Islamic jurisprudence, and colonial legal structures. The notion of justice in India is deeply embedded in the principles of *Dharma*, a concept that transcends mere legality and encompasses moral and ethical righteousness. Unlike Western legal traditions, which emphasize codified laws and individual rights, Bharatiya jurisprudence has historically placed greater emphasis on duty-based ethics, societal harmony, and justice as a collective aspiration. Ancient Indian jurisprudence developed through a complex interplay of religious, philosophical, and customary laws. The *Dharmaśāstras*, including Manusmriti, Yajñavalkya Smṛiti, and Narada Smṛiti, provided comprehensive guidelines for governance, social order, and dispute resolution. These texts did not function as rigid legal codes but rather as flexible guidelines that could be adapted to suit changing societal needs. Alongside these texts, Kautilya's *Arthashastra* introduced a pragmatic and political dimension to legal thought, emphasizing statecraft, economic policies, and the role of the ruler in ensuring justice.¹ Buddhist and Jain traditions contributed significantly to Bharatiya jurisprudence by introducing the principles of non-violence (*Ahimsa*), pluralism (*Anekantavada*), and conflict resolution through dialogue. These traditions challenged the rigid social hierarchies upheld by the *Dharmaśāstra* and provided alternative legal and ethical frameworks that emphasized compassion and inclusivity. Similarly, the advent of Islamic rule in India introduced *Sharia*-based jurisprudence, which influenced personal laws, particularly in matters of marriage, inheritance, and property rights. The coexistence of multiple legal traditions led to a pluralistic legal culture that valued diversity and localized dispute resolution mechanisms.² The British colonial period marked a significant transformation in Indian jurisprudence, as indigenous legal systems were gradually replaced by the common law system. The British introduced codified laws, centralized judicial institutions, and legal education that aligned with Western principles of justice. While this legal modernization brought about uniformity and administrative efficiency, it also led to the marginalization of indigenous legal traditions. Customary laws, which had previously played a vital role in local governance, were often disregarded or subsumed under colonial statutes. However, certain aspects of Bharatiya jurisprudence persisted through personal laws governing religious and community affairs.³

The adoption of the Indian Constitution in 1950 marked a pivotal moment in India's legal history. The Constitution sought to harmonize India's rich legal heritage with modern democratic principles. It incorporated elements of Bharatiya jurisprudence while also embracing ideals from Western legal thought. The Preamble, with its emphasis on justice, liberty, equality, and fraternity, reflects the age-old Indian concept of *Dharma*, which prioritizes social harmony and ethical governance. Fundamental Rights and Directive Principles of State Policy (DPSP) embody values that resonate with ancient Indian philosophy, including principles of non-discrimination, socio-economic justice, and community welfare.⁴ One of the key contributions of Bharatiya jurisprudence to the Indian Constitution is the concept of *Sarvodaya* (welfare of all), championed by Mahatma Gandhi and rooted in ancient Indian traditions. This principle is reflected in the DPSP, which

¹ P.V. Kane, *History of Dharmaśāstra* vol. 1 (Bhandarkar Oriental Research Institute 1941)

² Michael Anderson, *Islamic Law in India* (Oxford University Press 2012)

³ J. Duncan M. Derrett, *Religion, Law and the State in India* (Faber & Faber 1968).

⁴ Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (Oxford University Press 1966)

envision a just and equitable society where economic resources are distributed fairly, labor is protected, and marginalized communities are uplifted. The Panchayati Raj system, which promotes decentralized governance, draws inspiration from ancient village assemblies (*Sabhas* and *Samitis*), highlighting the continued relevance of indigenous self-governance models.⁵ Despite these incorporations, the synthesis of Bharatiya jurisprudence with modern legal principles has not been without challenges. One major area of contention is the Uniform Civil Code (UCC), which seeks to replace personal laws based on religious customs with a single set of laws applicable to all citizens. The debate over the UCC reflects deeper tensions between the pluralistic traditions of Bharatiya jurisprudence and the need for legal uniformity in a secular democratic state. Similarly, judicial interpretations of constitutional provisions often grapple with balancing traditional legal principles with contemporary human rights norms.⁶

II. ANCIENT HINDU LEGAL THOUGHT

Ancient Indian legal traditions were largely shaped by *Dharmaśāstra*, which emphasized justice (*Dharma*) as a guiding principle. Manusmriti, Yajnavalkya Smriti, and Narada Smriti articulated legal norms that governed various aspects of life. These texts formed the basis of Hindu law, providing rules on civil, criminal, and procedural matters. They emphasized the concept of *Rita* (cosmic order), which linked law with morality and divine justice. Kautilya's *Arthashastra* (4th century BCE) provided a pragmatic approach to governance, emphasizing rule of law and statecraft. Unlike *Dharmaśāstra*, which was largely based on religious doctrine, *Arthashastra* advocated for a rational and utilitarian approach to law, emphasizing state intervention for economic prosperity and national security. The Vedic texts also played a foundational role in shaping legal thought. The Rig Veda, one of the oldest scriptures, mentions concepts of justice (*Rta*) and truth (*Satya*). The Upanishads introduced the idea of *Karma* (law of action and consequence), which indirectly influenced the notion of justice and legal responsibility.

III. BUDDHIST AND JAIN CONTRIBUTIONS

Buddhist jurisprudence promoted ethical governance and conflict resolution through dialogue. The legal principles laid down by Emperor Ashoka in his edicts emphasized moral conduct, non-violence (*Ahimsa*), and justice for all beings, including animals. The Buddhist councils institutionalized monastic laws (*Vinaya*), which set precedents for collective decision-making and ethical governance. Jainism contributed principles of *Ahimsa* (non-violence) and *Anekantavada* (pluralism), influencing legal interpretations in later periods. Jain philosophy emphasized non-violence even in legal matters, advocating for dispute resolution mechanisms that prioritized conciliation and non-retaliation. These principles influenced later legal codes and dispute resolution frameworks in India.

IV. ISLAMIC AND COLONIAL LEGAL INFLUENCES

Islamic jurisprudence, or *Fiqh*, played a role in shaping India's judicial traditions, particularly in areas of personal law and justice. The Mughal rulers implemented a blend of Islamic law

⁵ M.P. Jain, *Indian Constitutional Law* (LexisNexis 2019)

⁶ H.M. Seervai, *Constitutional Law of India* (Universal Law Publishing 2013).

(*Sharia*) and customary laws to ensure justice for diverse communities.⁷ The emphasis on *Adl* (justice) and *Haqooq-ul-Ibad* (rights of people) resonates with the Indian Constitution's commitment to justice and equality. The advent of Islamic rule in India also introduced *Sharia*-based jurisprudence, influencing property and personal laws. The Mughal legal system incorporated elements of both Islamic and indigenous legal traditions, allowing for a degree of legal pluralism. The *Fatwa-i-Alamgiri*, compiled during Aurangzeb's reign, codified Islamic legal principles but also recognized customary Hindu practices in civil disputes.⁸

The Indian Constitution is deeply influenced by British colonial legal traditions, particularly in areas of governance, justice, administration, and codification of laws. British rule introduced the principle of the rule of law, which remains central to India's legal system through the Indian Penal Code (1860), the Code of Criminal Procedure (1861), and the Indian Evidence Act (1872). The Government of India Act of 1935 laid the foundation for India's parliamentary democracy, federal structure, and administrative organization, elements that were later incorporated into the Constitution. Fundamental rights, enshrined in Part III of the Indian Constitution, were influenced by colonial-era legal protections introduced through acts such as the Indian Councils Act (1892) and the Government of India Act (1919), which provided limited political representation. The Indian Civil Service, established during British rule, evolved into the modern Indian bureaucracy, with constitutional provisions under Articles 309-323 ensuring continuity. Additionally, the codification of laws, including the Indian Contract Act (1872) and Transfer of Property Act (1882), set a precedent for uniform legal standards in India. While India's legal system has evolved to reflect its democratic and pluralistic values, the foundational principles introduced during colonial rule—such as the rule of law, parliamentary democracy, and administrative structure—remain integral to its functioning.⁹ The legacy of British colonial law, therefore, continues to shape the legal and constitutional order of independent India.¹⁰

V. THE EVOLUTION OF CUSTOMARY LAW

Customary laws played a significant role in Bharatiya jurisprudence, particularly in village-level dispute resolution and self-governance. Local traditions and community customs often functioned as binding legal norms, regulating matters such as marriage, inheritance, and land ownership. The *Panchayati Raj* system, an ancient form of local governance, enabled villages to resolve disputes autonomously through elders' councils (*Gram Sabhas*), a practice that continues in modified forms today. During the colonial era, British administrators initially recognized customary law, particularly in rural India, but later attempted to standardize laws

⁷ Suchandra Ghosh & Anindita Chakrabarti, Religion-Based 'Personal' Law, Legal Pluralism and Secularity: A Field View of Adjudication of Muslim Personal Law in India, Working Paper Series of the HCAS "Multiple Secularities – Beyond the West, Beyond Modernities" 16. Leipzig University, 2019, <https://ul.qucosa.de/api/qucosa%3A36147/attachment/ATT-0/>

⁸ John Pack, Skander Gasmi, Islamic Jurisprudence and Secularism: A Comparative Analysis of Modern Concepts, https://www.researchgate.net/publication/383122939_Islamic_Jurisprudence_and_Secularism_A_Comparative_Analysis_of_Modern_Concepts?channel=doi&linkId=66bdbb7c145f4d35535a9f36&showFulltext=true

⁹ Vrinda Narain, Postcolonial Constitutionalism in India: Complexities and Contradictions, 25 S. CAL. INTERDISC. L.J. 1 (2015), available at <https://gould.usc.edu/why/students/orgs/ilj/assets/docs/25-1-Narain.pdf>.

¹⁰ *ibid*

through codification, undermining traditional dispute resolution mechanisms. Post-independence, the Indian legal system attempted to reintegrate these practices within a formalized legal framework, as seen in the revival of Panchayati Raj institutions under the 73rd Constitutional Amendment Act, 1992.¹¹

VI. THE INFLUENCE OF NATURAL LAW AND DHARMA

The concept of natural law in Indian jurisprudence is closely related to the idea of *Dharma*, which governed both individual and state conduct. Unlike Western notions of natural law that focus on individual rights, Indian jurisprudence emphasized duty-based ethics, where justice was inherently linked to moral righteousness and societal harmony. Ancient Indian thinkers considered law as an extension of cosmic order (*Rta*), implying that laws should align with ethical and spiritual principles. In contrast to positivist legal theories, which separate law from morality, Bharatiya jurisprudence inherently linked legal norms to ethical and religious duties. This synthesis of moral and legal principles influenced early constitutional debates in independent India, particularly in the framing of the Directive Principles of State Policy (DPSP). The influence of *Dharma* is evident in Indian judicial interpretations, where courts often invoke principles of natural justice in constitutional and administrative law cases. The Supreme Court of India, in cases such as *Kesavananda Bharati v. State of Kerala*, upheld the doctrine of the basic structure of the Constitution, drawing parallels to the immutable nature of *Dharma* in Indian jurisprudence.

VII. INDIAN CONSTITUTION AND ITS RELATION TO BHARATIYA JURISPRUDENCE

The Indian Constitution reflects a unique blend of Western legal frameworks and indigenous Bharatiya jurisprudence. Though the framers of the Indian Constitution were not directly or consciously influenced by principles embedded in ancient texts such as the *Dharmaśāstras* or *Arthashastra*, the underpinnings of the constitution are based on the values of justice, duty, and governance. The Preamble of the Indian Constitution, which enshrines ideals of justice, liberty, equality, and fraternity, echoes the foundational values of *Dharma*. The Indian Constitution acknowledges personal laws as an essential aspect of its legal framework, governing matters such as marriage, divorce, inheritance, and adoption for different religious communities. Article 25 guarantees the freedom of conscience and the right to profess, practice, and propagate religion, which forms the constitutional basis for the existence of personal laws.¹² Similarly, Article 26 allows religious denominations to manage their own affairs, reinforcing the autonomy of personal laws.¹³ However, Article 44, a Directive Principle of State Policy, envisions a Uniform Civil Code (UCC) to bring uniformity in civil matters while balancing religious pluralism.¹⁴ Despite this, personal laws continue to operate separately for Hindus, Muslims, Christians, and other communities under various statutes such as the Hindu Marriage Act, 1955, and the Muslim Personal Law (Shariat) Application

¹¹ Archana Vaidya, 30 years after the 73rd Constitutional Amendment, Panchayati Raj institutions still leave a lot to be desired; HP a case study
<https://www.downtoearth.org.in/governance/30-years-after-the-73rd-constitutional-amendment-panchayati-raj-institutions-still-leave-a-lot-to-be-desired-hp-a-case-study>

¹² INDIA CONST. art. 25

¹³ INDIA CONST. art. 25

¹⁴ INDIA CONST. art. 44.

Act, 1937. The judiciary has played a pivotal role in reconciling personal laws with constitutional mandates.

1. Directive Principles of State Policy (DPSP) and Dharma

The Directive Principles of State Policy (DPSP), enshrined in Part IV of the Constitution, are non-justiciable guidelines aimed at creating a welfare state. Although taken from the Spanish Constitution, DPSPs reflect the moral and ethical underpinnings of Bharatiya jurisprudence. These principles, inspired by *Dharma*, aim to establish social justice and economic welfare, akin to the *Rajdharma* (duty of the ruler) emphasized in Kautilya's *Arthashastra*. The Supreme Court of India has often invoked the DPSP to interpret constitutional provisions in a manner that aligns with the moral and ethical values of Indian society. In *Kesavananda Bharati v. State of Kerala*¹⁵, the Court reinforced the importance of the DPSP in achieving the Constitution's broader goals, reflecting the influence of Bharatiya jurisprudence in ensuring justice and equity.

2. The Panchayati Raj System: A Reflection of Customary Law

The Panchayati Raj system in India embodies the essence of self-governance, decentralization, and participatory democracy. Rooted in ancient traditions and sanctioned by modern constitutional provisions, it reflects the core principles of Bharatiya jurisprudence. Ancient texts and traditional governance structures discussed village assemblies (*sabhas*) and councils (*samitis*) responsible for dispute resolution and administration. The principle of decentralization, found in these historical contexts, is mirrored in modern Panchayati Raj institutions, which seek to empower local communities in governance and justice administration. The 73rd Amendment to the Indian Constitution (1992) institutionalized the Panchayati Raj system, mandating the devolution of powers to local bodies.¹⁶ This constitutional provision aligns with the principle of *Gram Swaraj*, a self-regulated community system rooted in ethical governance and justice.¹⁷ Bharatiya jurisprudence, which prioritizes the moral and ethical dimensions of law, finds expression in the Panchayati Raj system's focus on consensus-building, customary justice, and community welfare. In Bharatiya jurisprudence, *dharma* serves as the guiding principle for legal and political institutions. The Panchayati Raj system operationalizes this principle by promoting justice and social harmony at the grassroots level. Traditional dispute resolution mechanisms within panchayats often emphasize reconciliation (*samadhan*) rather than punitive measures, reflecting the jurisprudential ethos of restorative justice.¹⁸

3. Secularism and Tolerance

Secularism in India is a distinctive concept that integrates religious pluralism with constitutional principles of equality and justice. Unlike the Western notion of secularism, which often implies a strict separation between religion and state, Indian secularism

¹⁵ 1973 4 SCC 225

¹⁶ INDIA CONSTITUTION, art.243

¹⁷ Ministry of Panchayati Raj, Gov't of India, *Annual Report 2021-22* (2022), available at <https://panchayat.gov.in/documents/annual-report-2021-22.pdf>.

¹⁸ Law Comm'n of India, *Report No. 277: Legal Framework for Alternative Dispute Resolution* (2018), available at <https://lawcommissionofindia.nic.in/reports/Report277.pdf>.

acknowledges the role of religion in public life while ensuring that the state remains neutral and does not favor any particular faith. The foundation of this model can be traced to the principles of traditional Indian jurisprudence, which emphasize *Dharma*, justice (*Nyaya*), and tolerance. Indian secularism, often described as "sarva dharma sambhav" (equal respect for all religions), is a modern legal principle enshrined in the Constitution, particularly through Articles 25 to 28. It differs from Western models by emphasizing the state's equidistance from all religions rather than strict separation. This approach has roots in traditional Indian tolerance, seen historically in periods like the Mughal Empire, where different religious communities coexisted. The Mughal Empire, particularly under Akbar, developed policies of religious tolerance and pluralism, known as *Sulh-e-Kul* (universal peace).¹⁹ This principle allowed the coexistence of multiple religions under state protection, an idea that influenced India's secularism as enshrined in Articles 25-28 of the Indian Constitution. Akbar's policies also contributed to the formation of a syncretic legal system that accommodated Hindu, Muslim, and customary laws, setting a precedent for India's post-independence legal pluralism. This synthesis is evident in the Constitution's protection of religious freedom while ensuring state neutrality. The concept of *Nyaya* (justice) in Indian jurisprudence is not merely about adjudication but also about fairness and inclusivity. The ancient Indian legal system recognized the coexistence of multiple religious and customary laws under overarching principles of justice.²⁰

VIII. CONCLUSION

The Indian Constitution stands as a testament to the seamless integration of Bharatiya jurisprudential thought and modern legal frameworks. While colonial legal structures provided the foundation for codified laws and governance, India's indigenous legal traditions continue to shape its constitutional ethos. Concepts of dharma, justice, and duty resonate in fundamental rights, directive principles, and the decentralized governance model. Ancient texts such as the Arthashastra, and Vedas have influenced legal principles that emphasize righteousness, fairness, and duty, aligning with constitutional ideals of justice, liberty, and equality. The Constitution's ability to balance tradition with progress ensures that India's legal system remains dynamic and adaptable. Moreover, the influence of Bharatiya jurisprudence extends beyond philosophical thought to concrete legal structures. The Panchayati Raj system, deeply rooted in village governance traditions, has been institutionalized through constitutional provisions to promote participatory democracy. Similarly, the emphasis on social justice, enshrined in the Directive Principles of State Policy, reflects the ancient Indian notion of governance as a means of ensuring societal welfare rather than mere rule enforcement. These indigenous principles coalesce with modern democratic ideals to create a constitutional framework that is both historically grounded and forward-looking.

The ability of the Indian Constitution to evolve while remaining anchored in its historical traditions underscores its resilience and relevance. It is not merely a product of colonial

¹⁹ Satish Chandra - HISTORY OF MEDIEVAL INDIA,
<https://dn790001.ca.archive.org/0/items/satishchandrahistoryofmedievalindia/Satish%20Chandra%20History%20of%20Medieval%20India.pdf>

²⁰ Law Comm'n of India, *Report No. 277: Legal Framework for Alternative Dispute Resolution* (2018), available at <https://lawcommissionofindia.nic.in/reports/Report277.pdf>.

inheritance but a dynamic instrument that reflects the country's rich philosophical and legal heritage. By harmonizing Bharatiya jurisprudence with contemporary legal doctrines, the Constitution ensures that India's governance model remains both contextually rooted and globally relevant, serving as a guiding framework for justice, equality, and democratic governance in the modern era.