

COMPARATIVE ANALYSIS OF THE JAPANESE AND INDIAN CONSTITUTION

by

Hamza Kazmi

Abstract: This research paper provides an in-depth comparative analysis of the legal systems of Japan and India, exploring both their similarities and differences. Despite their distinct cultural, historical, and social contexts, both countries have developed robust legal frameworks that reflect their commitment to justice, equality, and the rule of law. The paper begins with an overview of the historical evolution of each legal system. Japan's legal framework, rooted in civil law traditions influenced by European models, underwent significant transformations during the Meiji Restoration, establishing a system characterized by codified statutes and a centralized judiciary. Conversely, India's legal system, a product of British colonial rule, combines common law principles with customary laws, reflecting its diverse and pluralistic society. This juxtaposition highlights how historical contexts shape contemporary legal practices. The paper also examines the role of constitutional law in both countries. Japan's post-World War II Constitution, which enshrines principles of pacifism and human rights, has fostered a distinctive legal culture that prioritizes individual rights. In India, the Constitution serves as a foundational document that reflects its commitment to democracy, secularism, and social justice, providing a framework for the protection of a wide array of rights while accommodating cultural diversity. Through this analysis, we aim to highlight the intricate interplay between legal traditions and modern governance in both nations.

KEYWORDS: MEIJI RESTORATION, CONSTITUTION, LEGAL FRAMEWORK

INTRODUCTION

The legal systems of Japan and India represent two distinct yet influential frameworks that reflect their unique historical trajectories, cultural contexts, and socio-economic realities. As two of the world's largest democracies, these nations not only embody rich traditions of law and governance but also face contemporary challenges that shape their legal landscapes. This research paper aims to conduct a comparative analysis of the legal systems of Japan and India, shedding light on their structural similarities and differences, the impact of historical events, and the evolving nature of law in response to globalization.ⁱ

Japan's legal system, rooted in civil law traditions, emerged significantly during the Meiji Restoration in the late 19th century. This period marked a pivotal transformation as Japan sought to modernize its institutions in response to Western imperial pressures. The establishment of a codified legal framework facilitated the creation of a centralized judiciary, which emphasized procedural efficiency and uniformity. The post-World War II Constitution further entrenched democratic principles, human rights, and a commitment to pacifism, shaping a legal culture that values individual rights while maintaining a strong emphasis on societal harmony.

In contrast, India's legal system is a complex amalgamation of common law principles inherited from British colonial rule and a rich tapestry of customary laws and practices. The Constitution of India, enacted in 1950, serves as a foundational document that embodies the nation's commitment to democracy, secularism, and social justice. This legal framework not only recognizes a wide array of fundamental rights but also accommodates the diverse cultural and religious practices that characterize Indian society. As a result, India's legal landscape is marked by a pluralistic approach, often necessitating a balancing act between modern legal norms and traditional practices.

HISTORICAL EVOLUTION OF LEGAL SYSTEM IN JAPAN AND INDIA

The legal system in Japan has undergone significant transformations throughout its history, shaped by cultural, political, and social changes. Its evolution can be divided into several key periods:

1. Ancient and Feudal Japan (Up to 1868)

Indigenous customs and traditions had a significant influence on legal systems in ancient Japan, where informal conflict settlement techniques were commonplace in communities. In the seventh century, a centralized bureaucratic system based on Chinese legal concepts was developed with

the Taika Reforms.ⁱⁱ During this time, laws were codified in documents like the "Yōrō Code" (718) and the "Taihō Code" (701), which outlined the framework for administrative law and governance. Throughout the feudal period, the samurai, a warrior class, ruled over Japan, especially starting in the 12th century. With local lords (daimyō) implementing their own moral codes, or "bushi" rules, the legal system decentralized. During this time, loyalty and honor were valued over individual rights and social order.¹

2. The Meiji Restoration (1868)

The legal system in Japan underwent a significant change with the Meiji Restoration. The Meiji administration implemented a number of changes that were modeled after Western legal systems in an effort to modernize and fortify the state. With the passage of the "Civil Code" (1896), which was based on the French civil law system, extensive legal frameworks pertaining to contracts, property, and civil rights were adopted. These developments were mirrored in the founding of contemporary tribunals, like the Supreme Court in 1947. During this time, German-inspired criminal law was also introduced, which resulted in the "Penal Code" being passed in 1907. The goal of these changes was to establish a cohesive legal system that would support Japan's goals of becoming a contemporary nation-state.ⁱⁱⁱ

3. Post-World War II Era (1945 Onwards)

Significant legal reforms were brought about by the Allied Occupation after Japan's surrender in World War II. The 1947 Constitution, which is sometimes called the "Postwar Constitution," placed a strong emphasis on democratic governance, the abolition of war, and fundamental human rights. With the establishment of the judicial review principle by this document, courts are now able to evaluate the legality of legislation and government activities. With the adoption of the "Law on the Organization of Courts" in 1949, the legal system underwent additional restructuring to guarantee independence and effectiveness. In order to safeguard civil liberties and advance social justice, new laws were adopted and the Supreme Court was given more authority.^{iv}

Historical Evolution of the Legal System in India

The legal system in India has a rich and complex history, shaped by diverse cultural, religious, and political influences over millennia. Its evolution can be understood through several key periods:

1. Ancient India (Up to 1200 CE)

The roots of India's legal traditions can be traced back to ancient texts such as the Vedas and the Dharmashastras, particularly the Manusmriti, which laid down the principles of Dharma (moral law) and Varna (social order). These writings provide rules for governance, societal duties, and private behavior. Village elders frequently mediated disputes, with a strong emphasis on local norms and rituals.

2. Medieval India (1200 CE - 1700 CE)

Several dynasties, notably the Mughals, brought new legal ideas and customs with them. A consolidated legal system combining local customs and Islamic law (Sharia) was established by the Mughal Empire. Courts were set up to deal with both civil and criminal disputes, with the Emperor acting as the supreme judge. During this time, existing Hindu laws were codified alongside Islamic rules, creating a diverse legal system.^v

3. British Colonial Rule (1757 - 1947)

During British colonial control, India's legal system underwent its most profound upheaval. Common law ideas were brought by the British, creating a legal system that was very different from customary Indian ways of doing things. In the 18th century, the East India Company founded courts, which were later extended during the British Raj. During this time, there were some significant legal advancements, such as:

- The Regulating Act of 1773, which created the Supreme Court of Calcutta and signaled the start of an official judicial system.
- The Indian Penal Code (1860) created a unified legal system for all of India by codifying criminal law using English ideas.
- The Criminal Procedure Code (1973) and the Civil Procedure Code (1908) established uniform procedures for both criminal and civil cases, respectively.

In addition, the British instituted a legal education program that paved the way for the founding of law schools.

4. Post-Independence Era (1947 Onwards)

India attained independence in 1947, and the foundation of the country's legal system was the new Constitution, which was ratified in 1950. India was made into a sovereign democratic republic by the Constitution, which also established a system of government, a set of fundamental rights, and guiding principles for public policy.

Among the salient characteristics of the legal development that followed independence are:

- **Judicial Review:** the authority of the judiciary to assess the constitutionality of laws and executive actions.
- **Public Interest Litigation (PIL):** A procedure that facilitates access to justice by enabling people to request judicial intervention in cases involving public interest.
- **Legal Aid and Reforms:** Efforts to strengthen social justice through the revision of legislation and the provision of legal aid to underprivileged populations.

COMPARITIVE ANALYSIS OF CONSTITUTION

The Constitution of Japan is the highest law of the land. It was primarily drafted by American officials during the Allied occupation following World War II. Officially enacted as a revision of the Meiji Constitution of 1890, it was promulgated on November 3, 1946, and came into effect on May 3, 1947. This constitution establishes a parliamentary system of governance and guarantees essential human rights. Unlike the Meiji Constitution, which granted the Emperor supreme political authority, the new constitution redefines the Emperor as "the symbol of the State and the unity of the people," assigning him a purely ceremonial role and placing sovereignty in the hands of the people within a constitutional monarchy. Often referred to as the MacArthur Constitution, "Post-war Constitution" (Sengo-Kenpō), or the "Peace Constitution" (Heiwa-Kenpō), it was developed under the guidance of U.S. General Douglas MacArthur, the Supreme Commander for the Allied Powers, during the post-war occupation. Japanese scholars reviewed and modified the document before its adoption. This constitution replaced Japan's earlier system of semi-constitutional monarchy and stratocracy with a parliamentary monarchy.

One of its most notable features is Article 9, which renounces Japan's right to engage in warfare and prohibits the maintenance of military forces. However, Japan maintains de facto military capabilities through the Self-Defense Forces and hosts a significant American military presence. The Japanese Constitution is the oldest unamended constitution in the world. At approximately 5,000 words, it is relatively concise, being less than a quarter the length of the average national constitution.^{vi}

The Constitution of India is the supreme law of India. It frames fundamental political principles, procedures, practices, rights, powers, and duties of the government. It imparts constitutional supremacy and not parliamentary supremacy, as it is not created by the Parliament but, by a constituent assembly, and adopted by its people, with a declaration in its preamble. Parliament cannot override it. The world's longest constitution is the Indian's constitution. At its commencement, it had 395 articles in 22 parts and 8 schedules. It consists of approximately 145,000 words, making it the second largest active constitution in the world. Currently, it has a preamble, 25 parts with 12 schedules, 5 appendices, 448 articles, and 101 amendments. The constitution of India was adopted on the 26th of November, in the year 1949. However, it came to effect on the 26th of January, 1950. It was adopted by the Constitution Assembly. Dr. B. R. Ambedkar, the chairman of the Drafting Committee, is widely considered to be the architect of the Constitution of India. After the adoption of the constitution, The Union of India became the contemporary and modern Republic of India

The constitutions of India and Japan, while originating from different historical and cultural contexts, share several similarities that reflect common democratic principles and the promotion of human rights:

1. The basis for democratic governance

Both constitutions provide out the foundation for democracy. They place a strong emphasis on the people's sovereignty, guaranteeing that the people's will is the source of the government's power.

2. Defense of Essential Rights

The constitutions of Japan and India both contain clauses that protect people's liberties and rights.

India: Rights including equality, freedom of speech and expression, immunity from discrimination, and the right to constitutional remedies are guaranteed under the Fundamental Rights enshrined in Part III.

Japan: Chapter III of the Constitution provides essential human rights, including the freedom of speech, of the press, of assembly, and the right to a dignified existence.

3. Rule of Law

Both constitutions uphold the principle of the rule of law, which means that laws apply equally to all individuals, and no one is above the law. This principle ensures accountability and fairness within the legal system.

4. Separation of Powers

Both constitutions establish a clear separation of powers among the executive, legislative, and judicial branches of government, promoting a system of checks and balances.

India: The Constitution delineates the powers and responsibilities of the President, Parliament, and the judiciary.

Japan: The Constitution similarly defines the roles of the Emperor, the National Diet, and the judiciary.

6. Emphasis on Peace and Security

Both constitutions express a commitment to peace and the rejection of war as a means of settling international disputes.

India: The Preamble emphasizes justice, liberty, and fraternity, while promoting peaceful coexistence.

Japan: Article 9 renounces war and prohibits the maintenance of military forces for warfare, reflecting a strong commitment to pacifism.

7. Social Justice

Both constitutions recognize the importance of social justice and aim to promote the welfare of all citizens.

India: The Directive Principles of State Policy (Part IV) provide guidelines for the state to ensure social and economic justice.

Japan: The Constitution includes provisions that promote social welfare and the well-being of its citizens, highlighting the importance of economic and social rights.

CONCLUSION

The legal systems of Japan and India, while rooted in distinct historical and cultural contexts, exhibit significant similarities and differences in their constitutional frameworks, principles of justice, and judicial practices. Both countries emphasize the rule of law, equality, and the protection of individual rights, reflecting their commitment to democratic governance. As they navigate contemporary legal challenges, the ongoing evolution of their legal systems will continue to be informed by shared values and principles.

REFERENCES

ⁱ C. B. R. Murthy, *Comparative Constitutional Law*.

ⁱⁱ Maria I. M. Oda, "The Role of the Judiciary in Japan: A Historical Perspective."

ⁱⁱⁱ Constitution, Meiji. "The Meiji Constitution". *www.britannica.com*. The Editors of Encyclopedia Britannica History. Retrieved 4 May 2022.

^{iv} Matsui, Shigenori. *The Constitution of Japan: A Contextual Analysis*. Oxford: Hart Publishing, 2011. ISBN 978-1-84113-792-6.

^v Goes into Effect, New Japanese Constitution. "May 3, 1947, New Japanese Constitution goes into effect". *www.history.com*. History.com Editors. Retrieved 4 May 2022.

^{vi} Constitutional revision research project: Web archives". Reischauer Institute of Japanese Studies, Harvard University. 2007. Archived from the original on 9 March 2010.