



CLASSIFICATION OF LEGAL SYSTEM

In the previous lesson, you must have understood the meaning and concept of law. You are aware of the meaning of law and its different components. Is it interesting? Now you might have started thinking about the Legal Systems all over the world. Initially you might wonder how many Legal Systems might be in the world, but you would be surprised to know that although each country has its own legal system, yet all of them are connected to each other on the basis of common traits and features. These features are common because their sources are very few and can be counted on fingers, and there lies the basis of classification of legal systems. In this lesson, you will understand the different Legal Systems of the world based on broad classifications on the basis of common traits and features. On the basis of such classification, the Legal Systems of the world can be divided into four broad categories: (a) Common Law System, (b) Continental Legal System, (c) Socialist Legal System, and (d) Legal System amongst International Institutions and countries *inter se*. We will discuss these different Legal Systems in this lesson one by one.



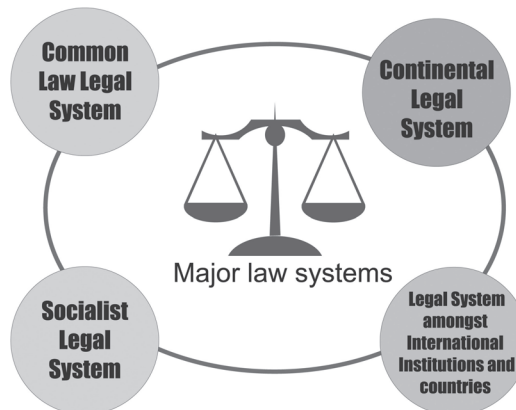
OBJECTIVES

After completing this lesson, you will be able to:

- explain the meaning of ‘Common Law System’ and its importance;
- understand the importance of ‘Continental Legal System’ in influencing the development of many other legal systems;
- understand the ‘Socialist Legal System’ and its impact on the development of other legal systems; and
- know the functioning of International Institutions and the ‘Legal System’ amongst International Institutions and countries or International Legal System.

2.1 COMMON LAW SYSTEM

Do you know the meaning of 'Common Law'? This question is important. When this question is asked to a lay-man, he/she would say that 'Common Law' means law which is commonly applied. But that is not the meaning of the term 'Common Law'. 'Common Law' is the name of a family of different legal systems of the world which follow common features and traits albeit with small deviations.



Those common features which are shared by a member of the family of Common Law are:

- (a) authority of the judgments delivered by higher courts and tribunals;
- (b) composition of judicial institutions;
- (c) adversarial system of court proceedings, and the role of judge, and
- (d) the importance of Acts, Statutes, and other legislations passed by competent authorities.

Common Law System has influenced the development of many legal systems of the world, such as India, England, U.S.A., Canada, and Australia. Actually, the origin of Common Law is believed to have been in England and so wherever the British Empire spread its sovereignty, the Common Law System was imposed. We will discuss and understand the four common features of this legal system briefly in the following paragraphs.

- (a) **Authority of the judgments delivered by Higher Courts and Tribunals:**
In 'Common Law System', you would observe that the judgments rendered by the High Courts and Supreme Court (or the Superior Courts) enjoy authority and powerful position. Those judgments have to be obeyed by the lower Courts and Tribunals in a similar case as the decisions of higher courts enjoy authoritative power in law. If the lower courts would not abide by the decisions of the higher courts, the judgments of the lower court can be challenged and it may become a nullity. Do not think that this feature is present in other legal systems. Other legal systems do not place such reliance on the authority of the judgments of the higher Courts. So the judgments of High Courts or Courts of higher/appellate jurisdiction may not be authoritative or binding on lower Courts in a legal system which is not a member of Common Law family. The authority of judgments of the higher Courts is given the technical name '**judicial precedent**'. Thus, we can say that the judgments of higher courts are judicial precedents and they must be followed by the lower Courts in similar cases. For example in India, the



Notes



judgments of Bombay High Court are 'judicial precedents' for all the lower Courts coming under the jurisdiction of that High Court and they are bound by it. India is thus a member of Common Law family of legal systems.

- (b) **Composition of Judicial Institutions:** Second common feature of the Common Law family is that the judges of the Courts are highly skilled persons who have specially studied the discipline of law and possess practical experience in legal administration either as advocates or judges. A judge, in other words, cannot be a lay person or even a scientist. He must be a person of legal background, either as an advocate or a judge or at least with a degree in law. This feature of Common Law makes the judicial institutions a separate set of professional persons. This might be one of the reasons why the judgments rendered by them are technical and based upon the finer details of the bare provisions of law. This leads to a better quality of judgment due to which these judgments carry authority when they are rendered by experienced judges or advocates. As an example, you can say that in India the judges at the trial Court or District Court are selected on the basis of an entrance examination where the minimum eligibility is a degree in law and the judges of High Courts and Supreme Court are selected from among those with at least 10 years of practice as advocates or judges. Persons outside the legal background cannot become judges of the State or Central government. So, the social background of judges in Common Law system is not diverse, but very limited.
- (c) **Adversarial System of Court Proceedings and the role of Judge:** Another feature of Common Law system is that the Court Proceedings are focused on the adversarial nature, where the disputing parties have engaged advocates who act like adversaries in the court of law and each advocate fights tooth and nail against the other in order to win the case. The judge in the court acts like a neutral observer listens patiently to the advocates of each party. You might have seen in the films that the judges say 'Order, order', when there is commotion in the court or the advocates start leveling comments. That is not exactly the power of the judge in the 'Common Law System', but the judge does not play an active role in going beyond the evidence presented by both the adversary advocates. They depend upon the skills of the advocates who present their best possible case before the neutral judge. It does not matter to the judge whether the truth of the matter has been revealed by the advocates in the case or not. He/she has to be satisfied on the evidence presented by the advocates only. He/she does not take any interest in establishing the truth underlying the claims of the disputing parties.
- (d) **Acts, Statutes passed by Competent Authorities:** A very important feature of Common Law system is that though the legislations passed by competent authorities such as the Parliament and Legislatures are given an authoritative place which is binding on the judges, whenever the judges find any gaps in the Acts or Statutes passed by the Parliament, they can make suitable

interpretations to fill the gap in these Acts. In other words, the judges and advocates of the Common Law system would think that the Acts are very abstract and the rules contained in those Acts are very general in nature. These general and abstract rules are incapable in themselves to be applied in all facts and circumstances. Facts of every case would be so peculiar that it would be very difficult to apply the general and abstract form of rule which may need suitable additions and interpretations. That addition and interpretation is as important as the bare provision of general and abstract law. For example, the punishment prescribed by the Act passed by Indian Parliament for the commission of murder ranges from life imprisonment to death penalty. However, it has not been prescribed in what situations punishment would be life imprisonment or death. The judges have filled this gap and made their own addition into the law by holding that the 'rarest of rare cases' would be suitable for the death penalty whereas the others would only get life imprisonment.

**Notes****Do you know**

The origin of the 'Common Law' is linked to royal power. It was developed as a system in those cases where the peace of the English Kingdom was threatened, or when some other important consideration required, or justified, the intervention of royal power. It seems, essentially, to be a Public Law, for contestations between private individuals did not fall within the purview of the Common Law Courts save to the extent that they involved the interest of the Crown or Kingdom.

**ACTIVITY 2.1**

Find out in your local Town the way in which the Courts function and the advocates argue their cases. Observe keenly the behavior of the Judges and their dress. Make a list of the things which you believe, are the characteristic traits of 'Common Law'. Do you think that India follows the Common Law pattern in its Legal System?

**INTEXT QUESTIONS 2.1**

1. What do you mean by 'Common Law System'?
2. Mention any three characteristics of 'Common Law System'.

2.2 CONTINENTAL LEGAL SYSTEM

The Legal System followed by the countries in the mainland of Western Europe (which is commonly referred to as 'Continent' as distinguished from the island



Notes

of England) is referred to as Continental Legal System. The origin of 'Continental Legal System' can be traced to the old age Roman Empire of the 5th century A.D. You might have heard about the Roman Emperor Justinian (A.D.483-565) during whose time many rules and regulations were compiled and were called 'Code'. From that time onwards, this legal system spread all over Europe, including England for some time. In the rest of the world, this legal system was imposed during the era of colonialism during the seventeenth and eighteenth centuries. Now you may find this legal system present in many countries of Southern America and parts of Africa. As you might be aware that in India, even French and Portuguese had come to establish their suzerainty for some time and during that period they had successfully imposed their legal system in those places, such as Pondicherry, Goa, Daman, and Diu.

You may identify the 'Continental Legal System' on the basis of the following salient features:

- (a) importance of Acts, Statutes passed by the Parliament or competent authorities;
- (b) composition of judiciary;
- (c) power of the judges to make law; and
- (d) inquisitorial approach of the court proceedings.

We will discuss these features again with respect to 'Common Legal System'.



Figure 2.1: Court

- (a) **Importance of Acts, Statutes passed by Competent Legislature:** The Acts passed by the Parliament or the competent authorities receive the highest importance in this legal system. Authority of the competent legislature is to assimilate the scattered rules and then draft them according to the modern conditions and get them passed in the Parliament. This is called the process of 'Codification of Rules'. For example, Rules assimilated and framed in the area of crimes are called 'Penal Code'. These rules passed by the Parliament are then applied by the judges in the resolution of disputes. Judges regard the rules framed by the Parliament as supreme and do not try to change it by asserting their own authority as in the Common Law

family. They may give their own interpretations of the vague language used in the Act, but they would say that it would be not binding except upon the parties to the dispute. Interpretations of the rules framed by the Parliament are given not by the judges but by the legal scholars and academicians. The abstract law passed by the Parliament is given high regard even by the judges and advocates.

- (b) **Composition of Judiciary:** Judiciary constituted in the Continental Legal System is from diverse fields as a person of any background can be a judge in this legal system. Persons who have specialized knowledge of any particular field may be appointed as judges. Thus, an engineer or a Doctor or a Scientist may become a judge. There is no requirement to study law as a separate discipline for a requisite number of years and practice in the court of law thereafter. So the judges of the higher courts or trial courts are appointed from diverse backgrounds and without the need of a degree in legal education. Legal education is also imparted in the countries which follow 'Continental Legal System', but that is not the only mandatory requirement to become a judge. In India too, you might find that a technical member is sometimes appointed by the court to assist them in arriving at a conclusion in which any technical problem is also involved.
- (c) **Power of the judges to make law:** Judges in 'Continental Legal System' do not make laws and their judgements do not carry authority except in the dispute before the court. They apply the laws made by the legislature and cannot make the law themselves. In other words, the judgements rendered by the judges of even the higher courts do not enjoy the status of 'judicial precedents' as in the Common Law System. Their judgements are given respect by the judges in other cases but they are not bound by them. For example, the judgements given by the highest court of appeal in France, namely, 'Court de Cassation' are not binding on all courts of France. However, the judgement of that Court is given high respect in the judicial bodies. The judges of the highest court cannot strike down the law passed by the legislature; they can only apply the law passed by the legislature. One of the advantages of this system is that the voluminous judgments of courts would not have to be read by the lawyers to know the law which is the case in 'Common Law System' and an advocate has not only to know the law passed by the Parliament and legislatures, but also the judgments delivered by the higher judiciary.
- (d) **Inquisitorial approach of the court proceedings:** Unlike the passive role of the judges in finding the truth and being dependant on the ability of the advocates to establish the fact of the matter, the judges in the 'Continental Legal System' play active roles in finding the truth. The approach followed in the court proceedings is not adversarial in nature but 'inquisitorial' (the term 'inquisition' means investigative). The judges do not simply act as a referee between the prosecutor and the defense but they actively investigate



Notes

**Notes**

the matter themselves with the co-operation of all disputing parties and try to establish the truth by collection of evidence. Collection of evidence is thus not the sole responsibility of the advocates but the judges too. Judges may go to the scene of the crime and collect evidence on their own if they think that the evidence produced by the advocates of the disputing parties leave some doubts as to the establishment of the truth. Judges are not passive observers but active participants in the quest to establish the truth. In India, you may see the application of this approach in the fact finding commissions established by the government. You may have heard of ‘Nanavati Commission of Inquiry’, established by the Gujarat Government to inquire about the actual facts related to ‘Godhra Riots of 2002’.

**Do you know**

‘Continental Legal System’ originated in Europe and was found by the scholarly efforts of the European Universities (in particular, German) in the twelfth century on the basis of the compilations of the Emperor Justinian of the Roman Empire. Therefore, this legal system is also referred to as “Romano-Germanic Legal System”. In this Legal System, law has evolved primarily for historical reasons, as an essentially private law, as a means of regulating the private relationships between individual citizens.

**ACTIVITY 2.2**

Inquire from your family members whether they have ever heard of ‘1984 Sikh Massacre’ and the several Commissions of Inquiry constituted by the government to establish the facts. Try to collect as much information as possible on these kinds of Inquiry Commissions.

**INTEXT QUESTIONS 2.2**

1. What are the salient features of Common Law System?
2. Discuss the important traits of Continental Legal System.
3. Do you think that India’s legal system is a combination of ‘Common Law’ and ‘Continental Legal System’ or is it primarily influenced by ‘Common Law System’ with only a few features of Continental Legal System?
4. The origin of the ‘Common Law’ is linked to ‘Royal Power’.(True/False)
5. In ‘Common Law System’ the Judgements rendered by High Courts and Supreme Court enjoy authority and powerful position. (True/False)
6. India is a member of Common Law family of Legal Systems.(True/False)

7. The origin of Common Law can be traced to the old age Roman Empire of the 5th century A.D. (True/False)

2.3 SOCIALIST LEGAL SYSTEM

An important legal system which has influenced the development of many other legal systems of the world is called 'Socialist Legal System'. This Legal System was adopted by those countries which had started following socialist and Marxist philosophy especially after the First World War of 1914-19. You might be aware that the socialist philosophy was practically adopted by the former U.S.S.R. and China. When the U.S.S.R. disintegrated in the late 1980s, all breakaway countries adopted this Legal System with some modifications, such as Ukraine, Kazakhstan, and Uzbekistan. Apart from China, other countries, such as Mongolia, North Korea and Cuba follow this legal system. You cannot say that this legal system is quite different from Common Law and Continental Legal System. Instead you must know that the 'Socialist Legal System' has been influenced by Continental and Common Law systems. However, there are certain features of this legal system which have distinguished it from other legal systems. Those features are:

- (a) legal rules are not considered permanent;
- (b) importance of public law;
- (c) no judicial review of administration and law passed by the legislature; and
- (d) great influence of Continental Legal System.

We will discuss these features one by one in the following paragraphs.

- (a) **Legal Rules are not considered permanent:** According to the adherents of this legal system, law is considered to be of temporary character and a time would come when law will not be necessary to govern. The moment every body would become economically equal, there would be no requirement of law. To promote economic equality, courts and law are required. Law, in 'Socialist Legal System', is of revolutionary nature. Unlike Continental Legal System where law is of static character, the 'Socialist Legal System' throws away any law which promotes private property and wealth. For example, when the former U.S.S.R. adopted Socialist Legal System, all the laws promoting private and commercial rights were abolished. Those laws were called 'bourgeoisie law'. Socialist laws are revolutionary in the sense that they do not recognize old laws which sustained capitalism based on private rights and free markets. It aims to overthrow those power relations which build a capitalist system.
- (b) **Importance of Public Law:** In 'Socialist Legal System', Private Law has no space and all law has to be in the nature of 'Public Law' which means that all law deals with State matters or public matters, such as Constitutional



Notes



Law, Administrative Law, and Criminal Law. By Constitutional Law, we mean that law which determines the nature of the State and the structure of the government. It is above and superior to the ordinary law of the land. Administrative Law deals with the structure, powers and functions of the organs of administration, the limits of their powers etc. Private Law, which regulates and governs the relations of citizens with each other, is either abrogated or is given less importance than the Public Law. Examples of Private Law are the law of torts, contract, property, and intellectual property rights. In 'Socialist Legal Systems', many branches of Private Law have shifted and have become a part of Public Law. Thus, Law of Contract which was considered to be a law regulating the contractual freedom of individuals has also now been substantially controlled and the freedom to contract has been severely restricted in this Legal System.

- (c) **No judicial review of administrative action and law passed by the legislature:** Socialist Law theorists traditionally argue that the legislature is conceived to be the supreme expression of the will of the people and beyond the reach of judicial restraint. Legislation, not judicial decisions, is recognized as the sole source of law. They do not believe in the theory of 'separation of powers' according to which the legislature, executive, and the judiciary are independent and separate from each other. Instead, it believes in the unity of all State organs and above all superiority of legislature. It is assumed that the legislative body is responsible for maintaining the constitutionality of State actions and that constitutional review could not be exercised by extra-parliamentary bodies, such as the judiciary. The Constitutions of socialist countries are recognized as the supreme legal force. The judiciary cannot have the power to review the law passed by the legislature and rules framed by the executive under the authority of legislature. The power of 'judicial review' is considered as a tool of the bourgeoisie.
- (d) **Influence of Continental Legal System:** The 'Socialist Legal System' is greatly influenced by the 'Continental Legal System'. The members of the socialist family of legal systems are those countries which formerly belonged to the 'Continental Legal System' and the characteristics of that Legal System are still preserved in it except the importance of Private Law. The judges do not enjoy the power to authoritatively interpret the law and to modify it. Judicial precedents cannot be made by the judges who enjoy only the power to apply the given laws and promote social and economic justice thereby. Further, the court proceedings are not adversarial in character but it follows the inquisitorial approach and public prosecution is regarded as provider of justice rather than punishing the offenders. The legal field is also not strictly divided amongst criminal, civil, and intellectual property. This legal system is an integrated one where lawyers may move from one area to another (e.g., from criminal to civil law or from being a defense attorney to a prosecutor) without additional entrance requirements.



INTEXT QUESTION 2.3

1. What do you understand about ‘Socialist Legal System’? Discuss its salient features.
2. Do you think that India should adopt Socialist Legal System? Assess the advantages and disadvantages of this legal system for India.
3. Write five lines each about Public and Private Law.
4. In Socialist Legal System, Private Law has no space and all law has to be in the nature of ‘Public Law’. (True/False)
5. In Socialist Legal System, ‘Legislation’ not ‘Judicial decisions’, is considered as the sole source of Law. (True/False)
6. The Socialist Legal System is greatly influenced by the Continental System. (True/False)

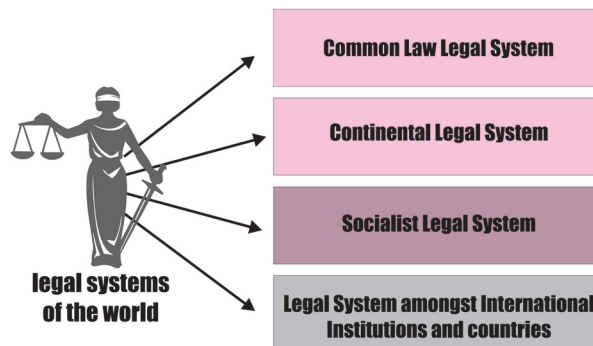


Notes

2.4 LEGAL SYSTEM AMONGST INTERNATIONAL INSTITUTIONS AND COUNTRIES *INTER SE* OR INTERNATIONAL LEGAL SYSTEM

Open a newspaper, listen to the radio or watch television or surf the internet, and you will be confronted with events of international nature. Allegations of human rights abuses, killing of civilians during an armed conflict, impact of climate change, and disputes between nations are but a few examples of such events. It is in the context of these events and this interdependence of the countries in the era of globalization that you might think of a different kind of legal system. The legal system which caters to these issues and challenges is known as International Legal System. In this legal system, the legal principles are formulated with a view to promote interactions amongst nations, international institutions and organizations. You can say that without an International Legal System in place, there cannot be a possibility of international peace and security and if international peace and security is not maintained, then there would be no development all over the world. It is for this reason that International Legal System which is a new phenomenon, has taken birth in the twentieth century, especially after the First World War. For the sake of your convenience, this legal system can be understood by four specific examples: (a) Role of Treaties, (b) United Nations, (c) European Union, and (d) SAARC.

- (a) **Role of Treaties:** Treaties are a form of agreement between or amongst countries and international organizations which are regulated by International





Notes

Law. There are around two hundred countries and several hundreds of international organizations, such as the United Nations, World Trade Organization, World Intellectual Property Organization. You might wonder how these countries and international organizations would interact with each other? Do you not think that mutual agreement is one possible way out to achieve that objective? This kind of agreement is called by various names such as Treaty, Convention, Pact, Covenant, Protocol, Charter, and even simply an Agreement. You might know the names of several such Treaties. The famous examples may be: Versailles Treaty, Kyoto Protocol, Pact of Paris, Charter of the United Nations, and International Covenant on Civil and Political Rights. These Treaties bind the Nations to carry out their responsibilities according to their provisions. If they would not observe those responsibilities, it would amount to breach of a treaty and some kind of compensation would have to be paid by the violating country. There is a fundamental principle in this legal system which says: “Treaties must be observed in good faith”. This principle has become a guiding factor in the continued observance of treaties in International Legal System.

- (b) **United Nations:** The United Nations is central to the whole international legal system because it has several principal organs, specialized agencies, committees and commissions. It was established in 1945 on the basis of the Charter of the United Nations. You might have known about General Assembly, Security Council, Economic and Social Council, World Health Organization, UN Educational, Scientific, and Cultural Organization. One of the Commissions of the United Nations, International Law Commission (ILC), has been instrumental in drafting many Treaties which are subsequently adopted by the countries and international organizations themselves. Mention must also be made about the role of the Security Council. The Security Council is one of the principal organs of the United Nations and in fact, the most powerful one. It is the executive wing of the United Nations and has been vested with all powers to maintain international peace and security.



Figure 2.2

(c) **European Union (E.U.):** European Union is a remarkable regional International Organization which has economically and politically united the majority of European countries. This regional union was established on the basis of Maastricht Treaty of 1993 and Lisbon Treaty of 2009. The EU has developed a common market for the member countries of EU, which is very significant. They have established an exclusive area called 'Schengen area', in which a passport is not required to enter anywhere in the whole area which includes as many as 22 EU countries and 4 non-EU countries. This Union is also distinguishable from other organizations in the sense that the Lisbon Treaty authorizes the EU to conclude treaties which would enjoy primacy over the national legislations. Key principles of EU law include fundamental rights as guaranteed by the Charter of Fundamental Rights and as resulting from constitutional traditions common to the EU's States. The Treaties are primary legislation of the EU, supported with secondary legislation (regulations, directives, and decisions).

(d) **South Asian Association for Regional Co-operation (SAARC):** South Asian Association for Regional Co-operation was established on 8 December 1985 by the South Asian countries of India, Bangladesh, Bhutan, Pakistan, Nepal, Sri Lanka, and Maldives. Afghanistan also became a member of this organization in 2007. Many Agreements and Conventions have been concluded under the auspices of SAARC, such as Agreement on South Asian Free Trade Area (SAFTA), Agreement on Avoidance of Double Taxation, Convention on Combating and Prevention of Trafficking in Women and Children for Prostitution, Regional Convention on Suppression of Terrorism. It has launched visa exemption scheme also whereby for some defined categories of entitled persons, there would be no requirement of a visa to enter any country of 'SAARC'. These are some of the remarkable achievements of this regional organization which works on the basis of treaties recognized by the International Legal System.



Notes



ACTIVITY 2.4

Find out some of the offices of International Organizations in your city or State capital. List the names of treaties on the basis of which these international organizations work. Collect pictures of those organizations and paste it in your copies and in your diary.



INTEXT QUESTIONS 2.4

1. Discuss the salient features of International Legal System.
2. What do you mean by 'Treaties'? Do you think that Treaties are an important factor in the development of International Legal System?

**Notes**

3. Compare the structure and working of European Union and South Asian Association for Regional Co-operation (SAARC). Evaluate the merits and demerits of both these Regional Organizations.

4. **Fill in the Blanks**

- (i) The United Nations was established in (1945, 1948)
- (ii) The South Asian Association for Regional Co-operation (SAARC) was established on
(8th December 1985/8th December 1945/8th December 2007)
- (iii) European Union (E.U.) includesEuropean countries.
(22/26/28)

**WHAT YOU HAVE LEARNT**

In the whole world, there are four broad classes of Legal Systems. These are:

- (a) Common Law;
- (b) Continental Legal System;
- (c) Socialist Legal System; and
- (d) Legal System amongst International Institutions and Countries 'inter se'.

Common Law countries are those in which four major components are present. These are :

- (a) Binding authority of the judgement delivered by higher courts and tribunals;
- (b) Composition of judicial institutions from a limited field;
- (c) Adversarial system of court proceedings and the role of judge is neutral; and
- (d) Importance of Acts, Statutes passed by competent authorities with a condition that whenever the judges find any gaps in the Acts or Statutes, they can make suitable addition and interpretations.

Adherents to Continental Legal System follow four major characteristics :

- (a) Binding authority of Acts, statutes passed by competent legislature and judges regard these Acts as supreme and do not try to change them by asserting their own authority;
- (b) Composition of judicial institutions from a diverse field;
- (c) No binding authority of the judgements delivered even by higher courts & Tribunals; and
- (d) Inquisitorial approach of the Court proceedings

Socialist Legal System is that system in which Private Law is given little importance whereas Public Law is regarded as Supreme. Judiciary normally does not review administrative actions and laws passed by the legislature.

**TERMINAL EXERCISES**

1. What do you mean by 'Common Law Family of Legal System'? Explain.
2. Describe the main components of 'Continental Legal System'.
3. Can the judiciary review the administrative acts and rules framed by it? Give reasons.
4. What kind of Legal System is present in the United Nations? Discuss briefly.
5. Match the major legal systems in column 'A' with their corresponding application in countries given in column 'B'.

A	B
(a) Socialist Legal System	European Union
(b) Common Law Family	Spain
(c) Continental Legal System	Pakistan
(d) Legal System amongst International Institutions	Russia

**ANSWER TO INTEXT QUESTIONS****2.1**

1. 'Common Law' is the name of a family of different Legal Systems of the world which follow common features and traits albeit small deviations.
2. The three characteristics of Common Law are :
 - (i) authority of the Judgements delivered by higher courts and tribunals;
 - (ii) Composition of Judicial Institutions; and
 - (iii) Importance of Acts, Statutes and other Legislation passed by competent authorities.

2.2

1. The salient features of Common Law System are as follows :
 - (a) judgements rendered by the higher courts enjoy binding authority, which is technically known as 'judicial precedent';

**Notes**



Notes

- (b) judges of the courts are highly skilled persons who have special knowledge of law and are experienced in the administration of justice;
 - (c) court proceedings are based on the adversarial nature and the judges play a passive role; and
 - (d) laws passed by the legislature enjoy the same status as 'judicial precedents'.
2. The important traits of Continental Legal System are as follows :
- (a) judgements rendered by the higher courts do not enjoy binding authority and are not regarded as 'judicial precedents';
 - (b) judges of the courts are not essentially from a legal background but from diverse fields, such as arbitration, engineering, medicine, accountancy;
 - (c) court proceedings are not adversarial in nature, but are called 'inquisitive' and the judges play an active role; and
 - (d) laws passed by the legislature enjoy the highest authority.
3. I think that India's Legal System is primarily influenced by 'Common Law System' with only a few features of Continental Legal System because of the following factors:
- (a) Higher Judiciary enjoys a high status in the whole legal system and its judgments are authoritative;
 - (b) Court proceedings are adversarial in nature; and
 - (c) Judges are highly skilled.

However, some of the features of Continental Legal System are also present, such as

- (a) presence of tribunals in which judges are appointed from any field, including from the formal judiciary; and
 - (b) the court proceedings are not adversarial.
4. True
5. True
6. True
7. True

2.3

1. 'Socialist Legal System' means a Legal System in which some of the basic features are present, namely (a) law is considered to be of revolutionary character and not static (b) Public law is given more prominence than any other branches of law (c) Acts of administration and the laws passed by the

legislature are normally not reviewed. The examples of such a legal system are : Russia, China, Mongolia, North Korea.

2. I do not think that India should adopt Socialist Legal System because India has been following Common Law System for the last two hundred years and adopting another legal system would be costly and chaotic. There is no need to adopt another system, but instead to reform the existing system. However, the advantages of Socialist Legal System in India would be : (a) judiciary will not waste its time in reviewing the law passed by the Parliament/State Legislatures (b) majority of time consumed by the lower courts in settling private disputes would be saved. The disadvantages of Socialist Legal System would be (a) private property, which is considered a status symbol for every individual, would not be legally protected (b) arbitrary acts of executive would increase.
3. Public Law means that branch of law which deals with state matters or public matters, such as Constitutional Law, Administrative law, and Criminal law. The nature of public law is different from private law. Private law regulates and governs the relations of citizens with each other. Examples of Private Law are : Law of Torts, Contract, Property. Socialist Legal System deals with Public Law and not Private Law.
4. True
5. True
6. True

2.4

1. The salient features of International Legal System are :
 - (a) In lieu of Acts/Statutes, Treaties play important role. Treaties are binding on a country which becomes a party to it;
 - (b) Role of the United Nations to make treaties and enforce the judgments of the International Court of Justice;
 - (c) Role of the European Union to make treaties in the European region and enforce the judgments of European Courts of Justice; and
 - (d) A mixture of Common Law and Continental Legal System
2. Treaties are “Agreements” between or amongst countries and International Organizations which are regulated by International Law and not the domestic law of the country where the treaty was signed. Yes, I think that Treaties are an important factor in the development of international legal system because they are binding on state parties and the behavior of states may be regulated by them. Examples of Treaties may be : (a) Versailles Treaty (b) Charter of the United Nations, (c) Kyoto Protocol.

**Notes**



Notes

3. The structure and working of European Union and South Asian Association for Regional Cooperation are compared as follows:

EU	SAARC
(a) Applicable to western Europe and some parts of Eastern Europe	(a) Applicable to South Asia
(b) Acts on the basis of ‘Lisbon Treaty’	(b) Acts on the basis of Declaration on Regional Cooperation, 1983
(c) Treaties concluded by EU enjoy primacy over National Law	(c) Treaties concluded by SAARC enjoy primacy over National Law.
(d) Primary legislations are called “Treaties” and secondary legislations are called “Regulations”, “Directives”, and “decisions”	(d) No such classification.

Merits of these Regional Organisations

- (a) Broader area of application of the Law
- (b) Protects the Region from the influence of other Legal Systems

Demerits :

- (a) Multiplicity of Regional Organisations
- (b) No uniformity in International Legal System

- 4. (i) 1945
- (ii) 8th December, 1985
- (iii) 22.