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LEGAL SYSTEM OF JAPAN AND ITS COMPARISON WITH INDIA

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INTRODUCTION:

Japan an island country on the eastern edge of Asia is an archipelago (an extensive group of islands) and has the third highest economy in the world. Its capital is Tokyo and has a population of 123.9 million and covers an area of 377,975 sq km. Fumio Kishida was elected as the Prime Minister in August 2024 of Japan. It shares borders with China, North Korea, South Korea, Russia and Taiwan. Their Government system is a parliamentary system with a constitutional monarchy. The chief of the state is the emperor and the head of the state is the Prime Minister.

Japan is also the member of the Asia-Pacific-Economic-Cooperation (APEC) and the Trans-Pacific Partnership (TPP). Japan's highest mountain is Mount Fuji at an elevation of 12,388 feet. Japan's national flag is known as Nisshoki and its national anthem is known as Kimi Ga Yo. Japan has a diverse culture in terms of food, tradition, art and culture. Its famous dish is Washoku Dish which has a 400 years old history. In authentic Japanese form it is called Kaiseki which consists of one soup dish, one main dish and two side dish. Other Japanese cuisines consist of Tempura, Sushi, Shimi, Soba, Udon, Yakitori and Shabu Shabu. Japan has a rich culture of dance and music which includes the Bon Odori dance which is performed at summer festivals in every city. Other dance such as Nihon Buyo is also performed at stage while wearing Kimonos with Japanese fans and ropes. Kabuki² is one such traditional dance dramas of Japan which tells about Japan's history, lifestyle and society. Kendo and Sumo are very popular traditional sports in Japan. Traditional festival known as Matsuri is also practiced in Japan. The earliest Japanese religion is Shinto. Religions such as Buddhism, Christianity and Confucianism came in 19th and 20th century are also followed in Japan. Wafuku is the term used for the Japanese clothing and Nagajuban is called to the cloth worn beneath the Kimonos. During summer or family events a special kimono is worn called as Yukatas. A wedding Kimono called Uchikake is worn by men and Shiro-Maku a white wedding gown is worn by

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² <https://www.britannica.com/art/Kabuki> | Kabuki | By the Editors of Britannica

women. The Hakama are skirt like garments worn by Japanese men and women and also worn with Kimono.

HISTORICAL BACKGROUND:

Japan's legal system is a civil law legal system.³ It is a mixture of 2 different cultural and legal traditions: One is Indigenous Japanese and the other is Western. Before Japanese disintegration from west Japanese law independently derived from the western principles. Before 1868 Japan had developed a system of commercial law based entirely on custom. Chinese Law influenced Japan's other legal fields such as public law and criminal law but Japan's commercial law was entirely indigenous. The 1868 Era was also known as the "Meiji Era". Japan wants to construct an economical, legal, political structure preserving its national independence. Japan legal system is influenced by Germans and France. The Meiji constitution established a constitutional monarchy and introduced modern principles of law. The Civil Code based on German Civil Code established a more structured legal system. The Japanese legal system is closely related to European legal system. The 1947 Japanese Constitution consists of 31 articles and 3 principles: the sovereignty vested in the Japanese people (Article 1), Fundamental human rights (Article 11), Pacifism (Article 9). The 1947 constitution also grants women's rights in article 14 which talks about equal opportunity for both men and women. The 1947 constitution also says that all the people are equal under the law and there shall be no discrimination on the basis of caste, creed, political, social or economic relations.

LEGAL SYSTEM OF JAPAN:

Japan's legal system follows a civil legal system influenced by German and French legal principles along with U.S. law during the post World War 2. Japan's legal system is codified which means laws are written and organised into codes. Japan legal system is based on written statutes such as Civil code, Penal code and Commercial code. It has a constitutional framework which includes separation of power between judiciary, executive and legislative branches. Japan also has tradition of Alternative Dispute Resolution (ADR) which are used in civil matters when the plaintiff and the offernder does not want to go to court and mediate without the interference of court with the help of arbitration. Supreme Court is the highest court in Japan. Below the Supreme Court there are High courts, District courts, Family courts and Summary

³ <https://blog.ipleaders.in/a-comparison-between-civil-law-countries-and-common-law-countries/> | A comparison between civil law countries and common law countries | By Vivek Maurya

courts. Judges in Japan follow the codes very strictly. Japan's Civil Code came in 1896 a body of private laws.

Japan's Civil Code⁴ has been classified into five parts:

Part1:General rules Part2:Real rights Part3:Claims Part4:Relatives Part 5:Inheritance

Part 1 which consists of general rules are divided into 2 parts which is family law and property law. Family law is divided into part 4 and part 5 which is relatives and inheritance and property law is divided into part 2 and part 3 which is real rights and claims. The Roppo⁵ is a collection of Japanese laws and a pillar for Japan's legislation and regulations. Roppo comes from the enactment of six fundamental codes: the Constitution, the Civil Code, the Code of Civil Procedure, the Commercial Code, the Criminal Code and the Criminal Procedure. The first legislation enacted in Japan was the criminal code of 1880. Roppo includes administrative law of both central and local government. The National Diet is the supreme body of Japan consisting of House of Councillors (upper house) and House of Representatives (lower house).

LEGAL SYSTEM OF INDIA:

The Indian legal system follows a common law system acquired from British colonial heritage and work on documented court precedents. The Supreme Court, High courts and Subordinate courts and Municipal makes up the India's legal system.⁶ The supreme court is the highest court of India and the decisions are binding on all the lower courts. Powers are separated between the judiciary, executive and legislature at the central level. The constitution of India is both rigid and flexible.

COMPARISON BETWEEN INDIA AND JAPAN LEGAL SYSTEM:

Japan follows the civil legal system whereas India follows the common law legal system. Both Indian and Japan constitution are codified. Indian legal system has been derived from sources mainly British colonial whereas Japan legal system has been derived from Chinese, French and Germany. Both legal systems have separation of powers between judiciary, legislature and executive. Indian legal system is a mix of statutes, regulations like the Bharatiya

⁴ <https://www.britannica.com/topic/Japanese-Civil-Code> | Japanese Civil Code | By the Editors of Britannica

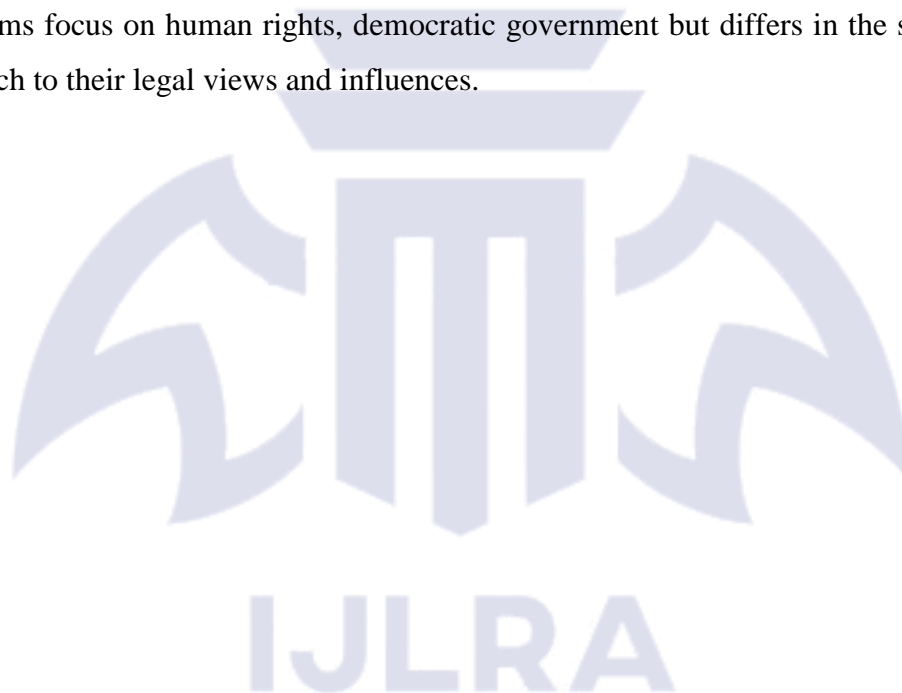
⁵ <https://www.japantimes.co.jp/life/2014/08/25/language/arming-legal-systems-greatest-weapon/> | Arming yourself with the legal system's greatest weapon | By Colin PA Jones

⁶ <https://blog.ipleaders.in/indian-legal-system-an-overview/#:~:text=The%20main%20sources%20of%20law,borders%20of%20the%20states%20concerned.> | Indian legal system: an overview | By Tarini Kalra

Nyaya Sanhita, the Bharatiya Nagarik Suraksha Sanhita and the Civil Procedure Code whereas Japan legal system works on six codes called Roppo⁷ which includes Civil code, Commercial code etc. In India, civil disputes are solved by the help of Civil Procedure Code whereas in Japan, civil disputes are resolved by the help of ADR⁸. Indian legal system came into force in 1950 whereas Japan legal system came into force in 1947.

CONCLUSION:

India's legal system is a mix of common law, religious law and personal laws with an active judiciary role. In contrast with Japan has a civil law system with not much active judiciary. Both systems focus on human rights, democratic government but differs in the structure and the approach to their legal views and influences.



⁷ Id

⁸ <https://www.lexology.com/library/detail.aspx?g=13ad28f0-8c07-4508-8e0b-46e7e8a9f567#:~:text=One%20of%20the%20most%20commonly,carry%20out%20the%20conciliation%20proceedings> | A general introduction to dispute resolution in Japan | By Mori Hamada and Matsumoto