STUDY ON HISTORY AND DEVELOPMENT OF CIVIL JUSTICE SYSTEM IN INDIA

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INTRODUCTION

'The lawyer without history is a mechanic, a mere working mason.'[1]

India, being one of the largest nations in the world has a very systematic and strong judicial system. The system is in such a way that it is made easy for every citizen to approach the court to solve their issues and its effective functioning is one of the reasons why people of India trust the system though it is time taking. In order maintain the trust and belief of people in the system; the judicial organisations have come up with many speedy trails procedures in recent times.

The judicial system of India is mainly classified into three hierarchical courts. They are: Supreme Court, High Court, Sub-ordinate courts. The rules to be followed along with the procedure to go forward while awarding the justice is clearing mentioned through various acts and laws of which Constitution forms a basic and fundamental part alongside Civil Procedure Code and Criminal Procedure Code dealing with offences classified into various forms for better understanding.

But prior to these hierarchical courts i.e. Post-Independence, the history of the evolution of civil justice attempted at codification and consolidation of the laws. The phase of British period from 1600 A.D to 1947 A.D and the Post-Independence Period from 1947 onwards help build a structure of court for India.

Indian courts called as 'Lok Adalats' or the 'People Court' have been created. And these courts seek to promote the informal resolution of disputes by way of conciliation and compromise.

[1] JAIN M.P., "*OUTLINE OF ANCIENT HISTORY",* 5th Edition, Page 1.

Apart from the above mentioned division of courts, Panchayat system also forms a very important infrastructure in the judicial system as they try and solve the matters in the rural areas; thus resulting in the speedy disposal of the cases along with efficiency in the delivery of justice to the actual victim.

Hence, Reflection on the evolution of the meaning of the phrase 'access to justice', yields a number of results and this research is to understand and conclude that the needs of the society have changed, have grown in complexity to such an extent that a new approach to ensuring access to justice is needed, and will continue to change in future, but perhaps more important is the fact that much debate on the parameters of such new approach has been stimulated.

Research Objectives

The researcher's main objective is to study and analyze the History of Civil Justice System in India with respect to the other rulings and the bringing up of the civil courts.

The research would concentrate to achieve an understanding of how civil laws have come up and changed according to the changing social patterns. The research will also contain an analysis of the evolution/ history of the civil justice system and the administration of justice started from the 16th century till date. It concentrates on the types and working of the courts developed during the period its advantages and disadvantages. The recent laws made due to the flaws of the earlier are also lighted up in this research.

It is therefore to Understand that just like other countries have created a means for civil justice to their people, similarly, In India, courts are known as 'Lok Adalat's' or 'Peoples Courts' are created[2]. What interest the researcher here is analyze that these courts have been modelled on the ancient cultural system of Panchayats known in the rural areas of India and governing legislation has incorporated concepts familiar to those using the courts.[3]

Research Methodology

The methodology of this thesis can be described as 'doctrinal'. Terry Hutchinson and Nigel Duncan have described doctrinal research as 'research into the law and legal concepts'. In that

[2] These courts are organized in terms of the Legal Services Authorities Act, 1987.
[3] Bhatt, *'A round table justice through Lok-Adalat-a vibrant-ADR-in India'* (2002).

context, this thesis presents research into the history and development of civil justice System in India, combining a description of primary resources and interpretative comments to identify principles by which to understand its exercise. As such, this thesis researches the law by analysing legal decisions and legal instruments, such as statutes, international conventions, and judicial decision-making in order both to identify legal practice and legal principles, and to draw normative conclusions on the regulation of extraterritorial jurisdiction.

In order to understand the evolution of civil justice administration in India and to examine the administrative set up established for civil justice, a detailed historical analysis of the legal and economic scenario of pre-independence and post-independence India has been made.

The research of this project is entirely on secondary data and thus this data is analysed by the researchers.

The research so adapted is completely Qualitative, where the comparison of the different Indian Judiciary decisions and analytical methods are drawn. The analytical method will be thus come with an outcome of result done after the research. The methodology of this thesis can be describes as both, Doctrinal as well as Non-Doctrinal. The Data so collected and secondary data and are analysed. The review and the study is occurred from various books and e-books and e-data. A critical evaluation of all the facts and information are analysed. It is a pure and a basic research for knowledge.

The research is thus, hereon, has been divided into parts for better understanding.

Research Questions

The battle for an accessible civil justice system cannot be fought on a single front. Reforms should, however, be a continuous process aided by systematic evaluation and reassessment. To learn this in detail, the researcher is keen to understand the analyze the working and evolution of civil justice system in India with its back lacks and recommendations

According to Currie[4], the Solution to access to justice problems lies in a multidisciplinary approach in which justice system partner with communities, interest groups and institutional sectors. Similarly, here the questions are to analyze the civil justice system in India.

1. How were civil laws established in India?
2. How have these civil laws changed with time in India?
3. Does the behaviour of the society help in forming the civil laws?
4. What are the most recent changes in these laws and why were they made?
5. What other changes need to be brought in the Civil Laws of the country for the development of the legal and judicial system of the country.

REVIEW OF LITERATURE

The Literature Review is quite on the Basis of what the secondary data has and what the authors throughout the paper have quoted.

"It has been mentioned that there is a network of judicial courts in India. The Supreme Court is the highest independent court and the judges of this Court are appointed by the President of India on the recommendation of the Collegium of the five most senior judges of the Supreme Court. The President in second judge's cases was seen to be bound by the elevation of the judges that had been opted and chosen by the Chief justice of India. The supreme Court has three types of Jurisdiction one being the original, second is the appellate and the third is the advisory jurisdiction. Under original jurisdiction, the Supreme Court decides disputes "between the government of India and one or more [s]tates or between the government of India and any [s]tate or [s]tates on one side and one or more [s]tates on the other or between two or more [s]tates."[5] . Appellate court means that the cases that are originally suited and then challenged in the higher court are called as the appeal court or the appellate court; this might usually be for review, revision or reference of the cases.

[4] Hurter Estelle, "*Access to Justice-to dream the impossible dream*" JSTOR.
[5] Supreme Court of India, Jurisdiction of the Supreme Court (Dec. 20, 2016), available at http://www.supremecourtofindia.nic.in.

"The Indian civil justice system resembles and acts its common law in counterparts. It's features is to coordinate, though, the pyramid structure of judicial authority, emphasizes more on the formal procedural justice dominated by litigants of equal status who are engaged in the adversarial processes, and also provides binding or win-lose remedies. Emphasis is placed on the law laid down by the Supreme Court of India. India, follows the doctrine of precedent as against the importance of law enacted by Parliament, which prevails in civil law countries. Precedent refers to the old cases of history or past to which the Judgement are meant to be as just, fair and reasonable."

"The practical application of this civil justice system in a country like India has achieved a varied mixed results. Some observers have recently emphasized the positive role played by a strong Indian judiciary in increasing and stabilising the accountability of democratically elected people. Yet, the others believe that the adversarial procedural justice system in india has failed from its inception. As India celebrates its seventieth year of independence, and as it thus pursues economic liberalization efforts, it is time to assess its civil justice process and to facilitate the design of long-needed reforms. Based on the views of a broad array of legal experts in India, the judiciary in India is the sole arbiter of the Constitution, the authoritative interpreter of the will of the people, and the protector of the freedom and liberty of the people.[6]"

Ruma Pal, (Rtd. SC, J.) in his "*Judicial Oversight or O*verreach" said "Parmanand Singh in his book Protection of human Rights mentioned that, to access to legal information may also lead to the cancellation, diffusion or defiance of liberate judicial directions, weak communication channels accompanied by well-nurtured and well-structured barriers stated by Lower Echelon legal actors.

HYPOTHESIS

The work of Warren Hasting has left a deep impact on the administration of justice in the history of India. Though there are flaws, but the evolution of such administration is to be appreciated. He adopted the "trial and error" method as it helped in uprooting the evils of the existing judicial and executive systems and never hesitated.

[6] H.R. Khanna J. in ADM Jabalpur v. Shivakant Shukla, Air 1976 Sc 1207.

The stages of administration of justice were of great significance. The evolution of Sadar Nizamat Adalat and Diwani Adalat under the rule of Warren Hasting gave light to the working of the courts in matters of civil cases[7]. The Adalat's were therefore had the functions to hear appeals from the lower courts, refer to the matters of civil nature by the governor general in council and to exercise control and supervision over the lower court.

The courts have usually enjoyed a great amount of legitimacy in the eyes of the governments of India as well as the civil society, especially in the post–internal emergency period. The governmental institutional balance has been undergone a huge shift in the sense that, since the 1980s, and especially in the 1990s, the governmental system has come to be driven largely by the judicial, whereas in the Nehru and Indira Gandhi eras, it had driven mostly by the executive and the legislature. The courts have generally supported central values, but in recent years, there has been a greater tendency to protect the states, at least in some important fields such as cases related to the exercise of the union's power to take over state administration under emergency provisions of the Constitution.

"The people of the case, are the judge of Judges and that,every trial is a trial of our judicial system. Therefore, its strengths and weaknesses, its success and failure, its utility and credibility as a necessary organ of State has impact on our civilised society. The respect it would evoke and the confidence would therefore inspire the world, would depend on the hopes and aspirations of the people, if the common man in quest of justice, in keeping the scales even in any legal combat between the rich and the poor, between state and citizen 'without fear or favour'. There is anyway, a need today for the change in our mental attitude, if weaknesses have crept in the system, they cannot be willfully brushed under the carpet nor can criticism be silenced by threats of contempt of court.

Its thus quoted "Reverence for the courts in order to be real and spontaneous has to be earned through the test of truth. If weaknesses and drawbacks have crept into the system they have to be set right"

[7] Vyasa V. & Bhanot S.D., " *Ancient India"* (Delhi: royal Publications, 1995).

HISTORICAL BACKGROUND OF CIVIL JUSTICE SYSTEM IN INDIA

JUSTICE SYSTEM IN PRE- BRITISH ERA

- **UNDER HINDU KINGS AND EMPERORS:**

The laws which we follow today mainly the personal laws relate back to the ancient India [8]where Kautilya wrote **ARTHASHASTRA** and Manu described the administrative working in his **MANUSMRITI**.

The kings had the absolute authority and were assisted by ministers who advised and assisted them in the decision making process. In those, days a complaint was known as **KRIYA**, while the proceedings were known as **VYAWAHARA.**[9]

There were no written laws or rules; whatever was declared by the king was considered to be the law. The ministers of the king were mostly scholars from the priestly class and the Kshatriya casts who were well- aware of the customs, rituals, practices and volksgeist of the people.

The personal law of Hindu's was the only law that was dominant in these times and has been developed by many.

The entrance of Muslim rulers into India marked the development of society of kingdoms also leading to the formation of roots of secularism in India.

- **UNDER MUGHAL RULERS:**

The Mughals entered Hindu territories initially for trade and then slowly started conquering the regions of Hindu rulers. The law in those days were broadly classified as Civil law and Criminal law.

Criminal law was applicable to all irrespective of religion, unlike the civil law which was divided into **Followers** and **Non- followers**. Followers were those who believed in the same

[8] Jois R. , "*Seeds of Modern Public Law in Ancient Indian Jurisprudence"* (Lucknow: eastern Book Company, 1990).
[9] Takwani C.K. , "Civil Procedure", ed. 8, (2017).

faith as that of the king, while non- followers are those whose faith and belief differed from that of the king.

Though there are allegations that Muslim rulers tried to supress the faith of Hinduism, if one studies into the existing circumstances of those days it is evident that the suppression was only by a very minor number of rulers and hence the whole Mughal reign cannot be alleged for the same. For example, the system of Daasi and Sati were prevalent during these times among Hindus, but the same behaviours were considered to be a sin under Islamic law which was followed by the Mughal rulers.

JUSTICE SYSTEM IN BRITISH ERA

When Britishers entered India and have established East India Company, their initial focus was to integrate their rule in such a way that it is easy for them to conquer whole of India and to make it a colony of British. That is one of the reasons why they have initially did not interfere in the personal laws of people and have introduced their laws in the criminal matters and mattes related to society as a whole.

Their aim in establishing their common British system in India was to achieve two- fold objective as to make it easy for them to collect the revenue for the sustainment and maintenance of East India Company and also to create a uniform and people- friendly justice system which is parallel to that in England so as to make the administration easy.

The work to then create such a judicial system for India was vested in the hands of Warren Hastings, the then Governor General of British India.

- **WARREN HASTINGS:**

Warren Hastings was the first Governor General of British India. He was known for his service and knowledge about the locality of Calcutta, but he was totally disappointed with the working judicial institutions and was wexed up with the corruption in the administration in Bengal.

He constantly tried to make sure that the judicial system is approachable and also that it delivers justice in favour to the person who is the right without any bias from the part of either the judge or any other external factor.

His main contributions in this regard are the JUDICIAL PLANS of 1772 and 1774.[10]

- **JUDICIAL PLAN 1772:**

He divided the territories into small districts to ensure speedy justice where small disputes were resolved in **SMALL CAUSE ADALATS**. A respected person of the village was chosen as the head and it was under his discretion that the judgments were pronounced. It must be observed that the heads were well aware of their position and their responsibility in the society and so the concept of corruption has come down.

Above the Small causes adalat, there were courts known as **MOFUSSIL DIWANI ADALAT**, in every districts and were headed by collectors. This court dealt with the civil matters except for the matters related to succession of zamindari property, which was dealt by Governor General and the council directly.

Also, with regard to that of personal laws, Muslims had MUSLIM LAW i.e., Quran while Hindus had HINDU LAW i.e., Shastra's. Since, the British Officials were not well versed with the personal laws, Kazi's in case of Muslims and Pundits in case Hindus were appointed to assist the authorities.

While Diwani adalat dealt with the civil matters, **MOFUSSIL FOZDARI ADALAT** , also known as **NIZAMAT ADALAT** was set up to look into the Criminal Justice. The classification of cases into civil and criminal proved to be efficient in the process of delivery of justice.

Above all these courts were **SARDAR DIWANI ADALAT** and **SARDAR NIZAMAT ADALAT.**

Though the system proved to be efficient in the delivery of justice, it vested too much power in the hands of collector. Also, there was a scarcity of adalat's to resolve the matters speedily and to correct all these errors Hasting remodelled the plan and introduced a reform in 1774.

- **JUDICIAL PLAN 1774**:

In order to ensure that there were reasonable numbers of adalat for people to approach, Hasting divided the district's into smaller jurisdictions; also the collectors were replaced by Diwans.

[10] Shambhavi Ravishankar, "*Understanding the Creation of the Indian Judicial System*",(2015).

Diwan was responsible to collect the revenue and to head Mofussil Diwani Adalat. But, even this system had backlashes as there was no scrutiny on the decisions or the works of the Diwan, which led to an increase in the corruption in the system.

- **LORD CORNWALLIS:**

He introduced reforms in all the possible judicial spheres. He has introduced three judicial plans in the years 1787, 1790, 1793 respectively.

- **JUDICIAL PLAN 1787:**

The main aim during Cornwallis era was economy, as East India Company had to repay the loan to crown. Two main objectives of the plan were dealing with revenue administration and administration of justice.

In order to achieve fair justice, he reduced the number of districts and by bringing back the collector- system. A new officer known as registrar was appointed to deal with petty issues, whose decisions gained finality only on the approval of the collector.

This plan was a great failure as the collector was vested with huge powers and was simultaneously over- burdened. Also, the civil and criminal judicature were over- lapping, which made the system even more in-efficient.

- **JUDICIAL PLAN 1790:**

In this plan a new hierarchy of courts was established. The lowest courts were magisterial courts, above which was the Court of Circuit and finally Sardar Nizamat Adalat was the superior court. The collector was to head the magisterial courts. This plan dealt with pure criminal judicature with minimal effect on the civil judicature.

- **JUDICIAL PLAN 1793:**

This plan re-modified the entire judicial system by bringing more accountability in the system.

Major reforms of the plan were:

1. Mofussil Diwani Adalat was re- organised and collector was no longer involved in the judicial administration.

2. It is decided that all the cases will be dealt in the open court to ensure transparency.

JUSTICE SYSTEM POST – BRITISH ERA

Post British era there have been many significant changes in the Indian Judiciary as well as the society due to the changing focus of the bench of the higher courts. Though the basic framework of the court system has not been much modified, the working and administration of the judiciary has been evolving since then.

Some of the major reforms are[11]:

- **The National Legal Services Authority (NALSA)**
  In 1987, NALSA has been constituted to monitor and implement the legal services available under Legal Services Authority Act, 1987. The main function of the organisation was to ensure free legal services and to organise Lok-Adalat's for amicable Dispute resolution.

- **Lok- Adalat**
  Lok- Adalat system, is an out-court dispute settlement system, where the parties are suggested to compromise to avoid further delay and loss in the delivery of justice.

- **Alternative Dispute Resolution**
  In order to decrease the increasing burden on courts, alternative justice delivery systems were introduced like mediation, arbitration etc. to save the costs for the parties and also to keep the matters private and solve them in a speedy process without the actual intervention of the court.[12]

[11] Chandra M Verma, "*Judicial Reforms in India."*

[12] Singh A., " *Law of Arbitration & Conciliation and Alternative Dispute Resolution System*" (10th ed., Lucknow: eastern Book Company, 2013)

ANALYSIS OF INDIAN JUSTICE SYSTEM: PRE AND POST INDEPENDENCE

The Indian judiciary that we see today was not the same from the start, it has taken decades together for the judiciary to become independent in true sense and work for the society.[13]

PRE INDEPENDENCE ERA

When Britishers came to India and started inculcating their habits into Indians and applying their laws, there was a great revolution from the Indians. The system was not liked by Indians as not only it bifurcated the law for Indians and Britishers for doing the same wrong, but it was also not uniform, though there was a said court system.

One of the main problems was that, the judges presiding over the bench were mostly Britishers and so was unfamiliar to the language of the locals, which needed intermediators to be involved for communication, which has led to obstruction of justice many-a-times. Also, the common law introduced by British was not applicable in personal issues, and the personal laws of Hindus and Muslims were thereby applied to resolve such matters. The judges were equally un familiar with these personal laws and so were required to be assisted by the religious scholars.

Lord Cornwallis, through what is known as **The Cornwallis Code** or **Bengal Regulations**, initiated to apply British laws in India in whole sense to make sure that there is equality before law and has thus led to the introduction of a secular judicial system in India. He has clarified the customary practices in order to make them specific and to ensure rigidity in personal laws as well.

He has also made a clear distinction between the civil and criminal laws to ensure better efficiency of the judiciary.

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[13] Jois R , *"Seeds of Modern Public Law in Ancient Indian Jurisprudence"* (Lucknow: eastern Book Company, 1990).

Later, under T. B. Macaulay, a law commission was established to codify the Indian laws leading to the establishment of legislatures by the Charter Act, 1833.

The Government of India Act, 1935 has led to further systematization of the Indian courts by establishment of federal court

POST INDEPENDENCE ERA

Post- independence, Privy councils were abolished by the Abolition of Privy Council jurisdiction act, 1949. The judiciary was broadly divided in Supreme Court, High Court and the Sub- ordinate Courts.[14]

The Supreme Court of India:-

The Supreme Court is the highest court in India, till date and has both original and appellant jurisdiction on whole of Indian territories (except for the state of Jammu and Kashmir).

High Courts:-

High Courts were initially established under British Act, 1961. They have appellate, original, civil and criminal jurisdiction over all the lower courts with in the state.

Sub- ordinate Courts:-

The various civil and criminal courts working under the laws, which are created though legislations, are collectively known as Sub- ordinate Courts.

Evolution of Civil Procedure Code

The first ever uniform Civil Procedure Code for the whole country was enacted in the year 1859. Before the Code that was introduced in 1859 India never had a uniform civil code for the whole country. There were different civil procedure systems in different parts of the country. The introduction of this uniform civil procedure code was however not applicable to the

[14] Vidhi, "*Difference of Indian Judiciary: pre and post- independence*", (2017).

Supreme Courts in the Presidency Towns and nor to the Presidency Small Cause Courts. Few amendments were made to the Civil Procedure Code enacted in 1859 in order to make it applicable to the whole of British India uniformly but still there were many defects in the Code and therefore, a new Civil Procedure Code was enacted in the year 1877. There were shortcomings in the new Code which lead to enactment of a new code in 1882 which was amended time to time. Later in the year 1908, the present Civil Procedure Code was enacted. The Code of 1908 was amended by two important Amendment Acts one in 1951 and another in 1956. There were a few defects in the amendments made by the two acts though the Code as a whole worked satisfactorily. In various reports of "the Law Commission many recommendations were made, after considering which following points were highlighted due to which the Government had decided to bring forward a bill for the amendment of the Civil Procedure Code, 1908:

"After carefully analysing the reports of the Law commission and understanding the needs of the people the Code was amended in the year 1976. The major changes made in the Code by the Amendment Act, 1976 were:

These were a part[15]

i. The doctrine of res judicata, meaning, **"a matter already decided by a competent court**", was to be made more effective. Section 11 of the Civil Procedure Code, 1908 deals with the Res Judicata. According to Section 11, a court shall not try any issue in which the parties and subject matter are same and already been decided by a competent court. Res Judicata is based on the following principles:

    a) A person should not be vexed twice for the same cause.
    b) There should be an end to litigation, in the interest of the state.
    c) Every decision of the court must be accepted as correct and conclusive.

[15] Moitra A.C. & Monir M. "*Law of Estoppel & Res-Judicata*" (4th ed., Delhi: universal law house, 2015).

ii. The power to transfer proceedings from one High Court to another High Court was given to the Supreme Court in order to maintain the superiority of the Supreme Court and to maintain a check by the Supreme Court.

iii. Freedom from attachment of a portion of salary to all salaried employees was granted by the amendment.

iv. Prior to the amendment there were no restrictions imposed on appeal and revision but through this amendment, restrictions were imposed on the right of appeal and revision.

v. The strictness to be followed under Section 80 which provides for giving notice before the institution of a suit against the government or a public officer was reduced.

vi. Provisions were made to ensure timely and proper filing of the written statements and other documents.

vii. New Order 32–A was inserted in order to provide a special litigation concerning the affairs of a family.

viii. The scope of Summary Trials was substantially widened.

ix. There was abolishment of the practice to pass preliminary and final decree in certain suits.

x. Other important changes were made to provide relief to the poorer sections of the society.

The amendments made by the Amendment Act, 1976 were not found sufficient. With a view to depose of civil cases expeditiously, Justice Malimath Committee was appointed by the Government. In accordance with the recommendations of the Committee, the code was amended by the Amendment Act, 1999. The failure of the objective of The Amendment Act of 1999, i.e., speedy and expeditious trial resulted in The Amendment Act of 2002 which was enacted to reduce the delays faced at the different levels of the litigation. The main motive behind the amendment of 2002 was to ensure fair and natural justice and providing of a speedy remedy by eliminating troublesome delays in disposal of the cases."

"According to the amendment,

i. "The delivery of the summons must be made to the defendant without fail within 30 days from the date of filling of the suit. This is a step towards ensuring a speedy trial."

ii. "The Written Statement must be filed by the defendant within 30 days. However, if the Court thinks fit, this period of 30 days may be extended up to 90 days by the Court."

iii. "The penalty imposed for the non-appearance and default has been increased to Rs.5000. This has been done so that a trial can proceed without any hindrances."

iv. "In a case of decree for payment, if the judgment debtor fails to pay the required amount due to any reason then, he can be detained in the civil prison. However, if such default is for payment of less than Rs.2000 then, he cannot be detained in civil prison."

v. "While executing a decree there is a case of attachment of salary then, the monthly salary up to Rs.1000/- and two third of the remaining salary exceeding Rs.1000/- is not to be attached."

vi. "The amendment paved its ways to the new and more efficient methods for the purpose of settlement of disputes, like Arbitration, Conciliation and Mediation. A very effectively working example of which is Lok Adalat."

vii. "A provision has been made for the defendant to avail compensation for all the expenses incurred by him for the case and also for any loss or injury including the loss of reputation caused to the defendant because of his arrest or attachment of his property."

viii. "The amendment made a provision that, if the value of the subject matter of a suit is below Rs.1000 the, such disputes could not be appealed."

ix. "If a single judge of a High Court adjudicates a case whether in the original or appellate jurisdiction, no appeal would be entertained against the order of the single judge of the High Court."

x. "If the subject matter of a suit is for the recovery of money not more than Rs.25,000/- no second appeal would be entertained."

xi. "The Court may adjourn the framing of issues for a period not exceeding seven days while examining the witnesses or examining the documents presented before the court."

xii. "Any party to the suit would not be given more than 3 adjournments during the hearing of any suit."

xiii. "The Court will pronounce the judgment once the trial is over. The Court shall endeavour to the pronounced judgment within 30 days from the conclusion of hearing. But, in the case of any exceptional or extraordinary circumstances, the court may fix any day beyond the period of 30 days but within a period 60 days from the conclusion of the hearing."

xiv. "Private alienation of any property after its attachment was made void."

This has been the evolution of the Code of Civil Procedure. From the time that the Code was enforced many changes have been made to it by way of amendments to serve the society in a better possible way. The Law Commission Reports played a very important role in making of the amendments. Also, Committees were set up by the Government to understand what is to be changed in the Code for a better judicial procedure. Many changes have been made from the initial Code of Civil Procedure enacted in 1908 to the amendment made to the Code in 2002 there have been a lot of changes keeping in view the aim to provide free and fair trial to all.

SHORTCOMINGS OF THE CODE

Law is dynamic. This means that law is subjected to the changes to meet the demanding needs of the society to which it concerns. Though the law is subjected to changes, the paramount principle of law on which it lies upon is based on the Latin maxim salus populi suprema lex esto[16]. The Code of Civil Procedure dates back to 1908 which governs the entire spectrum of civil fraternity suits in the country. From the time that it has been enforcement, it has been amended many times for the speedy and expeditious trial of the suits. Despite the radical changes in due course of time, the society still faces the delaying issues due to humongous pending lawsuits in the court. All the amendments made to the Code were done time to time depending on the need of the society and effective and efficient working of the judiciary.

[16] Meaning "*the good of the people shall be the supreme law*".

Though numerous efforts are made still there are a few shortcomings in the Code which need to be rectified and addressed to for the purpose to serve justice to the society.

Various efforts have been made by the law makers to improve the procedural code of civil proceedings by amending the act at certain intervals. These amendments seek to ensure fair trial and speedy justice. In 1999, a bill was formulated to amend the Civil Procedure Code but it was discarded as it was met with great resistance and strikes from lawyers. Hence, a new amendment code was formulated in 2002 which is called the Code of Civil Procedure (Amendment), 2002. The act of 2002 was met with little resistance and proved to be more effective than the one in 1999. But still this does not give a complete fair means of justice. The Code still has some drawbacks which need to be addressed.

In our country, legal aid is the most fundamental component for the safeguarding of the existence of the rule of law in the society. It was rightly stated by *Justice Blackmun in Jackson v. Bishop*[17] that to achieve justice, money should not be a hindrance. The idea of justice should not be related to monetary terms as every person deserves an equal opportunity to be represented adequately in the justice provision mechanism. Under the Code of Civil Procedure Order XXXIII, Rule 9A deals with the concept of free legal aid. This order requires for all the bodies of the Government to follow the rule and that a poor person should not be disadvantaged or denied justice over a richer person on the basis of finances. Under this Order the court is asked to provide a lawyer or pleader if the poor person is not in a condition to afford one.[18] Though existing provision are present in the Code of Civil Procedure, effective measures need to be taken as to ensure actual happening of what is stated in the statute. Similarly, there are provisions in the Code of Civil Procedure for speedy trials but in reality we don't see that happening. Justice delayed is justice denied. If there is a dispute now and the remedy is given after 20 years then such justice is not really justice as the purpose was to be served long back which was not. The Civil Procedure Code under Section 89 provides for settlement of disputes outside the Court by means of arbitration, mediation and conciliation which was done with an aim to settle matters outside the Court with legal authority as to lessen the burden on the court and to ensure speedy justice. But, due to many factors like, **Vacancies in Judiciary,** Inadequate

[17] 404 F.2d 571 (8th Cir. 1968).
[18] [1979] 184 SCR (3).

number of courts, judicial officers not able to tackle those cases involving specialized knowledge, Abuse of Public Interest Litigation, Lack of adequate arrangement to monitor, track and bunch cases for hearing, Frequent Transfer of judges, Role of administrative staff of the court, Large number of appeals, Delay in serving of summons by the court, Non-appearance of parties at the day fixed for hearing the aim of providing speedy trial is not being accomplished.

The drawbacks of the Code of Civil Procedure do now include that certain provisions are not present in the Code which need to be added to the Code by way of amendment but that, these provisions mentioned in the code are not applied effectively. The shortcoming is just that the Code is not effectively applied. The Code should be made stricter and penalties and fines must be imposed on anyone not following and provisions of the Code. It is very difficult to properly implement and law in a country as big and diverse like India and to implement a code which uniformly governs all the civil matters of the nation it is a big task. Main focus should be on the proper, effective and efficient implementation of the Code.

COURT SYSTEM

The Indian federation was formed mainly by the division of a centralized unitary state after the independence from the British rule in the year 1947 and operates under a parliamentary-federal constitution which establishes both the union and the constituent states, makes extensive provision for their respective institutions, powers, and functions within the federation of India. India's constitutional courts – the Supreme Court and state high courts – play a very important role in developing Indian federalism.

The Indian judiciary is an integrated system which is bound at all the levels by the law laid down by the apex courts but with administrative autonomy of the high courts and lower courts in the states. The courts play a vital role in the interpretation of the Constitution, which is particularly evident in at least two aspects. First, the Supreme Court brought the doctrine of unamendability of the "basic structure" of the Constitution[19] in the case of Keshavanada

[19] Shukla V.N. , "*The Constitution of India*" (M.P Singh, ed., 9th ed., Lucknow: eastern Book Company, 1994).

Bharati (1973). Second, the formed constitutional courts, the Supreme Court and the state high courts, made the proclamation of president's rule in a state under Article 356 subject to judicial review so as to check the political abuse of this power (e.g., S.R. Bommai, 1994, and Rameshwar Prasad, 2006).

The Constitution allows and gives the Supreme Court and the High courts with the original and appellate jurisdiction under Articles 131 and 131(A), 132, 133, and 134(A). The Supreme Court's original jurisdiction includes the union-state and also the interstate disputes regarding the, federal division of powers and fundamental rights of citizens. The Supreme Court's appellate jurisdiction includes, appeals from the high courts in civil matters, criminal matters, and other proceedings, when any high court certifies that the dispute raises valid and substantial questions of law regarding the interpretation of the Constitution, the Supreme Court may also grant "special leave to appeal" in "any cause or matter passed or made by any court or tribunal in the territory of India" (Article 136, Clause 1).

CRUCIAL PROCEDURES AND THE CPC

Procedures before the courts are brought into by filing of petitions by the concerned parties, including the government. The locus standi procedure is still in the norm, but the higher courts have saved and kept it for public interest litigation, which can be initiated by any third party, which may be a civic or a non-governmental organizations or individuals intervening on behalf of the victims who are suffering injustice. These types of proceedings can be started by a postal letter to the court by the victim or by a "suo motu" cognizance of a matter taken up by a judge or judges on a bench called Coram.

The attorney general or the solicitor general who were prior to the modern era called as Vakeels have a special statutory powers to file a contempt or other proceedings on behalf of the executive. The law officers and the concerned parties may request to transfer a case from one court to another for specific reasons that has to be mentioned with due regard. In certain cases, the Supreme Court bench can itself amalgamate similar types of cases to be heard together in the interests of such efficiency and uniformity of justice by the courts. Indian courts follow the system of adversarial adjudication prevalent in the common law countries as distinguished from the inquisitorial system practised in civil law countries.

On complaints filed by appellants to the court of original jurisdiction, the respondents file their reply. After hearing the parties concerned represented by their advocates and examining the witnesses, the court decides a case on its merits. Certain special remedies are used by the courts to resolve litigation or to get it enforced. Amicus curiae are occasionally appointed by the courts on behalf of an exceptionally aggrieved party to help reach a correct decision.

The Code of Civil Procedure in India

Adjudication by the courts in India has generally led to a positive and continued harmonious functioning of the system of cooperative federalism established under the Constitution of India. " Although, the preparation for the Indian Codification began at the earliest and started at the 'thirties of the last century, all the Indian Codes belonged to that period, since the Mutiny, when we have had already been a sovereign power in the country for a hundred years. The very first Code to appear was that relating to the Civil Procedure, passed in 1859, and quickly followed by the Indian Penal Code in the 1860's and the Code of Criminal Procedure in 1861. The Civil Procedure Code of 1859[20], which was intermediately amended, was superseded by a new Act in 1882; and that Act is still in force, though, up to the end of 1901 it had already been amended by no fewer than that of the seventeen Acts of general and seven of local application. It is also thickly encrusted with the Case-law of a vast number of decisions.[21]

CONCLUSION

The image of the courts in India is the ultimate analysis depending, not only upon the architectural beauty and spaciousness of the Court building, It also does not depend upon the finely cut robes of the members of the bench and bar or other trapping of court. Likewise the image of courts does not depend upon the long arguments, the number of authorities cited and erudition displayed in judgements, important though they are, it depends essentially the way the cases are handled and upon the extent of confidence the courts inspire in the parties to the cases before them upon the promptness or absence of delay in the disposal of cases, upon the

[20] Ray S., " *Textbook on the Code of Civil Procedure*", (3rd ed., Delhi: universal law house, 2015).

[21] Mulla D.F. "*the key to Indian practice-A summary of the Cope of Civil Procedure* (11th ed, Lucknow;EBC Pub, 2015)

approximation of the judicial finding of fact with the realities of the matter. We must remember that in the final analysis, the people are the judge of Judges and that every trial is a trial of our judicial system. Its strengths and weaknesses, its success and failure, its utility and credibility as a necessary organ of State has impact on civilised society.