EVOLUTION OF INDIAN LEGAL SYSTEM

Written by ***Vanshika Kasturi***

2nd Year, BA LLB(Hons), Damodaram Sanjivayya National Law University

"Law and order exist for the purpose of establishing justice and when they fail in this purpose, they become the dangerously structured dams that block the flow of social progress."

~ Martin Luther King

INTRODUCTION

One of the most versed legal systems in the whole human history is 'The Indian Legal System'. From time immemorial the lives of the native people were guided by the native laws which varied from time to time and place to place. In the absence of a nation state, in its true spirit, there was no surprise to find nonexistence of a codified legal system applicable to the whole sub- continent. The ancient Indian system transfigured into medieval and from medieval to modern with the changing times. Our Contemporary Legal system is grounded on British Laws.

India one of the most primeval civilized systems in the world, by virtue of its affiliation to Indus Valley Civilization, followed the decrees kings who ruled India as per their own Personal or Religious Laws. The concept of Nyaya (justice) finds a mention and in-depth explanation in ancient Indian scriptures. One of such ancient Indian scripture is '*The Nyaya-sutras'* which were probably composed around the 2nd century BCE by Akshapada Gautama. There were four core themes of the *Nyaya-sutra*s. These are examinations of opposed views, art of debate, means of valid knowledge and. Syllogism. These ancient traditions and development have given grounds for present legal system.

Akshapada 'enumerates five members or sentences as constituting a syllogism, viz,[i]

1. proposition (pratijna),
2. reason (hetu),
3. an explanatory example (udaharaṇa),
4. application (upanaya)

5. And conclusion (nigamana).[ii]

Vatsayana, the commentator on the *sutra*s, referred to some logicians who held a theory of a ten membered syllogism. The *Vaiseshika-sutra*s give five propositions as constituting a syllogism but give them different names.

LEGAL SYSTEM IN HINDU PERIOD

Sources of Hindu Law:

It is believed that the Hindu law is a divine law. It was revealed to the people by God through Vedas. Various sages have expounded and refined the conceptual ideas of life mentioned and explained in the Vedas (Priyanath)[iii].

"Punishment governs all mankind; punishment alone preserves them; punishment wakes while their guards are asleep; the wise consider the punishment (danda) as the perfection of justice."

-Shraddhadeva Manu

Sources of Hindu law were divided into:

1. Ancient sources: Shruthi, Smiriti, Commentaries and Digest, Customs.
2. Modern sources: Equity, Justice and Good Conscience, Precedent, Legislation during Hindu regime, the judicial administration was based on the concept of Dharma.

Concept of Dharma:

Dharma literally deals with duty, religion and inseparable quality of the thing or order. It is formed based on the Vedas such as Smiriti and Sruthi. [iv] Dharma was derived from Vedic concept Rita which means straight line. Rita means Law of Nature. Dharma signifies moral laws based on righteousness. Dharma is anything that is right, just and moral. Dharma aims for the welfare of the state and mainly to its people.

Concept of Nyaya:

According to the concept of nyaya in ancient india, the king who governs justice in harmony with sacred law (Dharma), evidence (vyavahara), history (samstha) and edicts of kings (Nyaya) which is the fourth will be able to conquer the whole world bounded by the four quarters

(Chaturantam mahim). Not only this doctrines as Res Judicata (prang nyaya) were au fait to Indian jurisprudence; that all trials, civil or criminal, were heard by a bench of number of judges and seldom by a judge sitting singly; that the decrees of all Courts except the King were subject to appeal or review according to fixed principles; that the fundamental duty of the Court was to do justice "without favor or fear".[v]

Types of Court:

1. Kings Court: King used to preside over this court to render justice. Brahmanas counseled the king and they were called Adhyaksha or Sabhabathi. Apart from king, the court consists of Pradivivaka- chief Justice and three juries (Jatar and Paranjape) .[vi]
2. Principal Court: This Court was conducted in large towns to hear the disputes.
3. Kula: Mitakshara as consisted of a group of relations, near or far. When squabble occurred by the family members, it was resolved by the elders of the family. It is a type of an informal court.
4. Sreni: If the family dispute not settled in Kula system, then the matter was taken to Sreni Court. And the sreni court heard guild disputes and settled commercial matters in ancient India.
5. Puga: This was a connotation of persons drawn from various castes and following different occupations. This is also an informal court.[vii]

Legal system during Mauryas:

“All men are my children. As for my own children I desire that they may be provided with all the welfare and happiness of this world and of the next, so do I desire for all men as well …… I have enforced the law against killing certain animals and many others, but the greatest progress of righteousness among men comes from the exhortation in favor of non-injury to life and abstention from killing living beings”.

-Emperor Ashoka

Asoka should be credited for going beyond simply preaching abstract ideas of administration and justice. He attempted to give practical guidance to his subjects about Dharma and Nyaya in edicts that he ordered, which were inscribed on rocks and stone pillars for all to see. Called

the Rock and Pillar Edicts, these stone documents were written in the language of the common people. By making the edicts easily reachable to one and all, Asoka tried to bind together the diverse peoples of his empire while he gave them an exclusively practical and compassionate code of ethics to live by.

Mention of Justice in these edicts:[viii]

- Judges will be independent and will exercise uniformity in procedure and punishment.
- Wrongdoers should be forgiven as much as possible.
- Capital punishment should be used with restraint and the condemned should have three days to appeal their sentence.
- "It is good not to kill living beings."

Kautilya's Arthashastra on Law and Justice:

"Dharma is law in its widest sense—spiritual, moral, ethical and temporal. Every individual, whether the ruler or the ruled, is governed by his or her own dharma. To the extent that society respected dharma, society protected itself; to the extent society offended it, society undermined"

-Kautilya, the Arthashastra

Kautilya maintained that it is essential duty of government to maintain order. He defines 'order' broadly to include both social as well as order in the sense of preventing and punishing criminal activity. Arthashastra thus contains both the civil law and criminal law. Kautilya ascribed a lot of importance to 'dharma'. According to him, 'the ultimate source of all law is dharma'. He appealed in the name of 'dharma' to the sense of honour and duty and to human dignity, to moral responsibility and to enlightened patriotism. It's quite intelligible that the judge in the Arthashastra was called 'dharmashta' or upholder of dharma. He maintained that so long every 'Arya' follows his 'svadharma' having due regard to his 'varna' and 'Ashrama' and the king follows his 'rajdharma', social order will be maintained.[ix]

Kautilya's emphasis on duties of King in maintaining law and order in the society is so much that he writes in Arthashastra, *"because the King is the guardian of right conduct of this world*

with four 'varnas' and four 'ashramas' he [alone] can enact and promulgate laws [to uphold them] when all traditional codes of conduct perish [through disuse or disobedience]."[x]

The King was looked upon an embodiment of virtue, a protector of dharma. He too was governed by his dharma as any other citizen was. Thus, if any actions of the King went against the prevailing notion of dharma, associations and/or the individual citizens were free to question him. He recalls every time that 'dharma' alone is guiding star for every king, or rather every individual and that following 'dharma' one shall have a life of dignity while social order prevailing in society.

He remarks, *"A King who administers justice in accordance with 'dharma', evidence, customs, and written law will be able to conquer whole world"*. Kautilya recognized the importance of rational law or King's law and its priority to 'dharma', 'Vyayhara' and 'charitra'. He maintained that King's law was to be in accordance with the injunctions of the three Vedas wherein the four 'varnas' and 'ashramas' are defined. King was not the sole interpreter of dharma. In fact, there was no specific institution vested with the authority of interpreting dharma. Every individual was deemed competent to interpret it. This was an important factor in ensuring the non-religious character of the Vedic state.[xi]

Kautilya did not view law to be an expression of the free will of the people. Thus sovereignty – the authority to make laws, did not vest with citizens. Laws were derived from four sources – Dharma (scared law), Vyavahara (evidence), Charita (history and custom), and Rajasasana (edicts of the King). Kautilya prescribe that any matter of dispute shall be judged according to four bases of justice. These in order of increasing importance are:[xii]

- 'Dharma', which is based on truth
- 'Evidence', which is based on witnesses
- 'Custom', i.e. tradition accepted by the people
- 'Royal Edicts', i.e. law as promulgated.[xiii]

Legal system under Guptas:

The judicial system was far more developed under the Guptas than in earlier times. Several law-books were compiled during this period and for the first time civil and criminal laws were

clearly demarcated. Theft and adultery fell under criminal law, disputes regarding various types of property under civil law.[xiv]

Elaborate laws were laid down about inheritance. As in earlier times, many laws continued to be based on Varna differentiation. It was the duty of the king to uphold the law, and try cases with the help of Brahmana priests. The guilds of artisans, merchants, and others were governed by their own laws. Seals from Vaishali and from Bhita near Allahabad indicate that these guilds flourished during Gupta times.[xv]

JUDICIAL ADMINISTRATION OF MEDIEVAL INDIA

The Judicial Administration of Medieval India was divided under the following two heads:

- Administration of Court System during the Delhi Sultan (1206-1526)
- Administration of Court system during the Mughal Period (1526-1755)[xvi]

Administration of Court System during the Delhi Sultan (1206-1526):

In medieval India the Sultan, being head of the state, was the supreme authority to administer justice in his Kingdom. The Administration of Justice was one of the important functions of Sultan, which was actually done in his name in three capacities.[xvii]

- Diwan-E-Qaza (Arbitrator)
- Diwan-E-Mazalim (Head of bureaucracy)
- Diwan -E-Siyasat (Commander-in-chief of Forces)

The Judicial system under the Sultan was organized based on the administrative divisions of the Kingdom. A systematic classification and gradation of the courts existed at the seat of the capital. The powers and Jurisdiction of each Court was clearly defined (Rama Rau).

Courts which were established at the capital of the sultanate may be stated as follows:[xviii]

1) The Kings Court: The Kings Court presided over by the sultan, exercised both original and appellate Jurisdiction on all kinds of cases. It was the highest court of appeal in the realm. The sultan was assisted by two reputed Muftis highly qualified in laws.[xix]
2) The Court of Diwani-E-Mizalim: It is the highest court of criminal appeal
3) The Court of Diwani-E-Risalat: It is the highest court of Civil Appeal. The above two courts presided over by Sultan but in his absence; the Chief Justice Qazi-ul-Quzat presided over these court.
4) Sadre Jehan's Court and Chief Justice Court: Were the Separate Court attated with the chief justice court for assistance.

Administration of Court System during Mughal Period 1526 to 1755: [xx]

During the Mughal Period, the emperor was considered as the Fountain of Justice. At Delhi, which was the capital of the Mughal Emperors in India, three important courts were established.

1) The Emperors Court: The Emperor Court was the highest Court of the Empire. The Court had Jurisdiction to hear original civil and Criminal Matters.
2) The Chief Court: It is the next Important Court at Delhi and it was presided over by the chief justice to hear civil and criminal matters and hears appeals from the provincial Courts.[xxi]
3) The Chief Revenue Court: It is the third important court at Delhi and it was the highest Court of appeal to decide revenue cases and it was presided over by Diwan-e-ala.

IMPACT OF JUDICIAL POLICIES OF THE BRITISH ERA ON THE CURRENT JUDICIAL SYSTEM IN INDIA

The Laws:

The judicial system as we know it today did not unexpectedly appear post-independence from the British regime.[xvii] It evolved largely due to the impetus and working of the British administration, whose motives for laying the foundation for our legal system were admittedly

not for our own management, but for their own ease where justice and law and order were concerned. One of the primary concerns for the British rulers was that there were semantic and cultural differences in this country that were far beyond their understanding. Each religion had its own peculiar way for dealing with the same kind of offences, ranging from very severe to very lenient. Women and children were rarely even protected by these ways. There was also no standard per say for:[xxii]

1. Evidence gathering/recording
2. Admissibility of Evidence
3. Procedures to be followed while meeting out justice
4. Qualifications as to who could arbitrate disputes
5. What parameters and laws would apply while resolving disputes?
6. What, if any, were the exceptions to these laws and parameters

It became clear, very early on, that because of India's religious and cultural diversity, the British had a very complicated task where deciding which law to apply and to whom. They had to create a system that would ensure justice, while ensuring that there is no offence is caused to the customs and religious sentiments of the party to the dispute, or his/her community. Lord Hastings' plans were very successful in this regard as they maintained the societal equilibrium desired by the British; it became easier to administer Hindu law to Hindus, and Muslim law to Muslims, and thus ensured that India could be ruled smoothly without any major upset.[xxiii]

This was not enough to tackle the defects of our highly unorganized judicial system, where justice was usually served by the King or the local village head or in most cases, the religious leader. In the years 1780 and 1872, the doctrine of equity, good conscience and justice was added to the judicial systems of Bombay, Madras and Punjab respectively. Later, via the Central Provinces Laws Act, 1875, as under Section 6, this doctrine was made the standard for adjudication of disputes in all provinces of the British Indian Empire, whereby Judges would use their reasoning and logic and moral conscience along with the relevant personal law (Hindu or Muslim or the like) in deciding the dispute. Where the cases in India were appealed and would reach the English Courts, such as the Privy Council, they too were to pay heed to Indian customs and traditions when deciding the issues.[xxiv]

There was no standard in the judgments passed and the concept of precedents *(stare decisis)* was highly diluted because each court gave its own decision based on the advices of the religious advisor, in order to maintain peace. More often than not, the judgments were unfair and some were even patently arbitrary, being made according to the whims of the advisor. This is why the British felt the need to create some standard. They did so by codifying existing practices and customs into one document and then formally enacting it as a law.

These documents were prepared by a learned Law Commission, which was first created under the Charter Act of 1833. The first Law Commission was duly created in 1835, with its control under the Governor-General of India. Some of the contributions of the four pre-independence law commissions of India were:[xxv]

1. First Law Commission, though largely unsuccessful, managed to begin to codify what is the Indian Penal Code today.
2. Second Law Commission completed the codification of the Penal Code, and went on to codify the Civil Procedure Code, Law of Limitation, and the Criminal Procedure Codes, as we know them today.[xxvi]
3. Third Law Commission started off by drafting a code for succession & inheritance for Indians who were not Hindus or Muslims. They then moved on to revise the Criminal Procedure Code suggested by the earlier commission. It then drafted the Contract Law, Negotiable instruments law, Insurance Law, Evidence Law, and Property Law that we use today.
4. Fourth Law Commission made revisions to both the Civil Procedure and the Criminal Procedure Codes, while also codifying the law on Negotiable Instruments and Transfer of Property & Easements Laws. They also drafted a code on Trusts Law.

The Court Structure:

The Court structure that we have today, in addition to the actual laws itself are greatly due to the efforts of the British Government. Their motives for creating such a large system that has continued to exist well after independence may not have been the most noble; it is however impossible to deny or discount their presence in our legal system today. What existed prior to the modifications and consolidations by the British hand, was a largely unorganized area which

gave decisions that were neither fair, nor could be brought to scrutiny via any standard. The very enactments of the British legislature in India are to be credited for the setting up of a definite court structure.[xxvii]

The following points summarize the exact evolution of the current hierarchy of courts, in the form that they existed prior to Independence:[xxviii]

- The Regulating Act, 1773: In 1773, the King promulgated the Regulating Act, 1773, which posited the setting up of a Supreme Court of Judicature at Calcutta. The Letters Patent Appeal was issued in 1774 and this new court was made a court of record with the power to hear all matters and pass orders and judgments for the same. The Supreme Courts at Madras and Bombay were set up in 1800 and 1823 respectively.[xxix]
- The High Court's Act, 1861: With this Act, the Supreme Courts were abolished and, in their place, High Courts were established at Calcutta, Madras and Bombay. They had the status of being the Highest Courts in the respective Provinces.[xxx]
- The Federal Court of India: Under the Government of India Act, 1935, the High Courts continued their existence. The only difference was that they were made subordinate to one main Court – namely the Federal Court of India. This Court adjudicated and resolved conflicts between the High Courts of different provinces and settled points of law that were in doubt. It was also empowered to resolve disputes between the provinces itself.[xxxi]

Post-Independence the Constitution of India, has a similar hierarchy, with the Supreme Court on top (replacing the Federal Court of India) and the various state High Courts (replacing the Provincial High Courts), with various other courts under the High Courts.

CONCLUSION

History encompasses of the progress, fruition and expansion of the judicial system in the country and sets forth the historical course whereby a legal system has come to be what it is ultimately. The legal system of a country at given time is not formation of one man or of one day but is the accumulative produce of the efforts experience, considerate preparation and

enduring hard work of a large number of people through generation. With the coming of the British to India the judicial system of India altered from what it was in the Mughal period where mainly the Islamic regulation was followed before that the Hindu rules were followed. The legal system at present in India endures a very close similarity to what the British left with. From this study, it is apparent that the insignificant supposition misses the mark as the contemporary judicial system is well cultured and has advanced to its finest.

BIBLIOGRAPHY

- Trishala A, Lakshmi T and Rajesh Kumar S,“ Physicochemical profile of Acacia catechu bark extract –An In vitro study”, International Research Journal of Multidisciplinary Science & Technology, Volume No. 3 , Issue No. 4.
- Dr.Lakshmi T and Rajeshkumar S “In Vitro Evaluation of Anti cariogenic Activity of Acacia Catechu against Selected Microbes”, International Research Journal of Multidisciplinary Science & Technology, Volume No. 3 Issue No. 3.
- Eugen Lang, Maurice. *Codification in The British Empire and America*. Law book Exchange. pp. 78–92.
- Supreme Court Summary of the Evolution of the Judiciary, http://supremecourtofindia.nic.in/supct/scm/m2.pdf.
- Srivastava, Ramesh Chandra. Development of Judicial System in India under the East India Company, 1833-1858. 1971.
- Char, S. V. Desika (1983). *Readings in the constitutional history of India, 1757-1947*. Delhi: Oxford.
- Pandey, Jai Narain, and Surendra Sahai Srivastava. *Constitutional Law of India*. 2014.
- Paranjape, N. V. *Studies in Jurisprudence and Legal Theory*. 2001.
- Priyanath, Sen. “The General Principles of Hindu Jurisprudence. By Priyanath Sen, M.A., D.L. Published by the University of Calcutta. 1918.” *Journal of the Royal Asiatic Society of Great Britain & Ireland. Royal Asiatic Society of Great Britain and Ireland*, vol. 52, no. 01, 1920, p. 118.
- Puri, S. K. *Lectures on Indian Legal and Constitutional History*. 1992.

- Rama Rau, M. S. *Studies in Indian Legal History and Indian Constitutional History*. 1970.
- Roy, Tirthankar, and Anand V. Swamy. *Law and the Economy in Colonial India*. 2016.
- Sharma, S. P. *Indian Legal System*. Mittal Publications, 1991.
- Singh, Mahendra Pal. *Outlines of Indian Legal & Constitutional History*. Universal Law Publishing, 2006.

REFERENCES

[i] Pratijñāhetūdāharaṇopanayanigamanāny avayavāḥ. N. S., 1. 1. 82.
[ii] Lingat, Robert, and John Duncan Martin Derrett, The Classical Law of India. Oxford University Press, USA, 1998.
[iii] Priyanath, Sen. "The General Principles of Hindu Jurisprudence. By Priyanath Sen, M.A., D.L. Published by the University of Calcutta. 1918." 'Journal of the Royal Asiatic Society of Great Britain & Ireland'; Royal Asiatic Society of Great Britain and Ireland, vol. 52, no. 01, 1920, p. 118.
[iv] Lingat, Robert, and John Duncan Martin Derrett', 'the Classical Law of India'; Oxford University Press, USA, 1998.
[v] Kulshreshtha, Visheshwar Dayal, and B. M. Gandhi. V. D. Kulshreshtha's Landmarks in Indian Legal History and
Constitutional History. 2005
[vi] Jatar, Nilakshi, and Laxmi Paranjape; 'Legal History: Evolution of the Indian Legal System'. 2012.
[vii] Lingat, Robert, and John Duncan Martin Derrett. The Classical Law of India. Oxford University Press, USA, 1998.
[viii] BRIA 14 4 b,' the Edicts of Asoka', Constitutional Rights Foundation, https://www.crf-usa.org/bill-of-rights-in-action/bria-14-4-b-the-edicts-of-asoka, accessed on 20th May 2020.
[ix] 'Arthashastra: An Insight in Kautilyan Views on Law and Justice!', https://www.youthkiawaaz.com/2011/12/arthashastra-an-insight-in-kautilyan-views-on-law-and-justice/m , accessed on 20th May 2020.
[x] Ibid.
[xi] 'Arthashastra: An Insight in Kautilyan Views on Law and Justice!', https://www.youthkiawaaz.com/2011/12/arthashastra-an-insight-in-kautilyan-views-on-law-and-justice/m , accessed on 20th May 2020.
[xii] Ibid.
[xiii] Ibid.
[xiv] System of Administration during Gupta Age', https://www.historydiscussion.net/history-of-india/system-of-administration-during-gupta-age/2243, accessed on 20th May 2020.
[xv] Ibid.
[xvi] International Journal of Pure and Applied Mathematics, Special Issue, Volume 120 No. 5 2018, 347-358
[xvii] Ibid.
[xviii] Ibid.
[xix] Sharma, S. P. Indian Legal System. Mittal Publications, 1991.
[xx] Jatar, Nilakshi, and Laxmi Paranjape. Legal History: Evolution of the Indian Legal System. 2012.
[xxi] Ibid.
[xxii] Char, S. V., Desika (1983), '*Readings in the constitutional history of India,' 1757-1947*. Delhi: Oxford. ISBN 0-19-561264-7.
[xxiii] Ibid.
[xxiv] Ibid.

[xxv] Dyanesh Kumar, *Essay on the Impact of British Rule on Indian Administration*, (Sep, 27, 2011), http://www.preservearticles.com/2011092714107/essay-on-the-impact-of-british-rule-on-indian-administration.html
[xxvi] Ibid.
[xxvii] Eugen Lang, Maurice, '*Codification in The British Empire and America,'* Lawbook Exchange. pp. 78–92.
[xxviii] Supreme Court Summary of the Evolution of the Judiciary, http://supremecourtofindia.nic.in/supct/scm/m2.pdf (visited on October 25th may, 2020).
[xxix] Srivastava, Ramesh Chandra. Development of Judicial System in India under the East India Company, 1833-1858. 1971.
[xxx] Ibid.
[xxxi] Ibid.