

## THE DEVELOPMENT OF INDIAN LEGAL SYSTEM

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### Abstract

This research paper is based on the development of Indian legal System. The Indian Legal System is one of the most seasoned legal systems in the whole history of the world. It has modified and in addition created in the course of recent hundreds of years to ingest surmising from the legal systems over the world. The Constitution of India is the wellspring of the Indian Legal System. This paper will center around the exceptional changes and their impact in modern Indian legal system since India has been the home of four noteworthy legal conventions, Hindu, Muslim, British, and that of modern, independent India. Our Present Legal system is based on British Laws. Before that, the kings who ruled India followed their own Personal or Religious Laws. Hindus followed the concept of Dharma which deals with duty, religion and inseparable quality of the thing or order. Dharma signifies moral laws based on righteousness. Then the Muslims followed Quran and the sources that the Prophet Mohammad directed. Amid the move from Mughal legal system, the advocates under that regime, advocates, too took action accordingly, however they generally proceeded with their before part as customer agents. This paper talks about various court systems and the legal system followed in each phase of the country. This paper attempts to study the systematic evolution of the legal system in India in each phase of the country.

Keywords: Legal history, phases, legal system, constitution, evolution.

### **Introduction**

Our Present Legal system is based on British Laws. Before that, the kings who ruled India followed their own Personal or Religious Laws. India by virtue of its connection with Indus Valley Civilization has one of the most ancient civilized systems in the world. The concept of Nyaya can be traced back to the religious scriptures like Ramayana, Mahabharata, Smriti and Vedas. The picture of modern Law will give a distorted and pervert picture if we begin with the perception that the legal system began today only or few centuries ago. The past traditions and development have led the foundation for present legal system. Without proper historical background it may be difficult to appreciate as to why particular system is as it is.

There are various authors describing the history of Indian legal system in different ways. But no theories had same explanation relating to Indian legal history, all had different stories. So after going through various books and transcripts, I have arrived at a idea to project my views on this topic in a way that is more easy and clear to understand.

Without going through the legal system that prevailed in the each phase in India, one cannot learn the legal system of the present India. This paper attempts to study the systematic evolution of the legal system in India in each phase of the country.

### **Literature Review**

According to (Paranjape), Law in India has evolved from religious prescription to the current legal system and constitution, crossing through the common law and secular legal system<sup>1</sup>. (Priyanath), mentions that India has the oldest judiciary in the world and no other country's judicial system has a more ancient legal system. According to (Jois), Hindus used the concept of Dharma which tells how human beings should lead their life. (Hakeem et al.), mentions that individual sultans had very high ideals of justice and rendered them properly.

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<sup>1</sup> Paranjape, N. V. *Studies in Jurisprudence and Legal Theory*. 2001.

According to (Kulshreshtha and Gandhi), the British ruling came into India by the Charter 1600 which was given by the Queen Elizabeth I to East India Company, permitting the company to enter trade and commerce<sup>2</sup>. (Singhvi and Singhvi), mentions that the East India Company entered to various places with the permission of respective kings ruling that particular region. According to (Roy and Swamy), British administered Bombay, Madras and Calcutta and these towns were called as Presidency towns. According to (Minattur (Hrsg.) and (Hrsg.)), leaders like Jawaharlal Nehru and Mahatma Gandhi are the main energy and scope behind the formation of constitution. (Singh), mentions that the Indian Legal system has evolved as world's largest democracy from the artifice of colonial invasion. (Pandey and Srivastava), the judicial body adjudicates disputes in the areas assigned to them<sup>3</sup>. According to Jain), the structure and process behind the rules and regulations led to the expansion of legal system. (Lingat and Derrett), mentions that the present legal system is formed and evolved as a result of various struggles undergone during various phases<sup>4</sup>.

### 3. Hypothesis

For the purpose of this research I have come up with my hypothesis,

Null Hypothesis (H<sub>0</sub>): The present legal system is not well refined and hasn't developed to its best.

Alternate Hypothesis (H<sub>a</sub>): The present legal system is well refined and has developed to its best.

### 4. Methods and Materials

The present study deals with analytical research and descriptive study. Data for this research is collected from secondary sources. Data collection methods are

- Books and articles
- Magazines
- Journals.

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<sup>2</sup> Kulshreshtha, Visheshwar Dayal, and B. M. Gandhi. V. D. Kulshreshtha's Landmarks in Indian Legal History and Constitutional History. 2005.

<sup>3</sup> Pandey, Jai Narain, and Surendra Sahai Srivastava. Constitutional Law of India. 2014.

<sup>4</sup> Lingat, Robert, and John Duncan Martin Derrett. The Classical Law of India. Oxford University Press, USA, 1998.

## 5. Legal System in Hindu Period

### 5.1. 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)<sup>5</sup>.

Sources of Hindu law was 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.

### 5.2. 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 (Lingat and Derrett)<sup>6</sup>. 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.

### 5.3. Judicial Administration of Ancient India

In those days there was no reference for Judicial Organization in Vedic Literature. Later after the Kings rulings, the Judicial Administration came to existence through the concept of Dharma. Kings were the head of the Justice.

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<sup>5</sup> 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.

<sup>6</sup> Lingat, Robert, and John Duncan Martin Derrett. *The Classical Law of India*. Oxford University Press, USA, 1998.

#### 5.4. Types of Court

1. **Kings Court:** This court was presided by king to render justice. Brahmanas advised the king and they were called Adhyaksha or Sabhabathi. Apart from king, the court consists of Pradivivaka- chief Justice and three juris (Jatar and Paranjape)<sup>7</sup>.
2. **Principal Court:** This Court were existed in large towns to hear the disputes.
3. **Kula:** Mitakshara as consisted of a group of relations, near or distant. When quarrel occurred by the family members, it was solved by the elders of the family. It is a type of a 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 an association of persons drawn from various castes and following different profession. This is also an informal court.

### 6. Legal System in Medieval Period

#### 6.1. Sources of Muslim Law

##### 6.1.1. Primary sources:

The sources that the Prophet Mohammad directed will be the primary sources. These are to be followed in their respective order of priority. They are also called formal sources. The whole of Muslim personal law is based on these.

Primary sources: Quaran, Sunna or Ahadis, Ijma, Qiyas.

##### 6.1.2. Secondary Sources:

These sources explain or modify the primary sources. They deal with the needs of the Islamic society in the modern era. These are also called extraneous sources. Some of the personal rules may find places in the sources, e.g., customs.

Secondary Sources: Urf or Taamul (Customs), Judicial Decisions, Legislations.

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<sup>7</sup> Jatar, Nilakshi, and Laxmi Paranjape. Legal History: Evolution of the Indian Legal System. 2012.

## 6.2. Political Administration of Medieval India

Towards the end of the 11<sup>th</sup> Century and the beginning of the Twelfth Century, began a downfall of the Hindu Period. Arabs were the first Muslims who came to India. They came in the eighth Century and settled down in the Malabar Coast and in Sind. The Two Muslim rulers Ghazni who had visited India for trading purpose and Ghoris who entered into India defeated the Hindu Kingdoms. They both are Turk rulers. The Political theory of Muslims was governed by their religion. It was based on the teaching of Quran, Traditions of the Prophet and the Precedent. The Teaching laid the Fundamental Principles (Srivastava)<sup>8</sup>.

Quran does not defined about the Political Institutions. Political Ideas were given by Greek Philosophers. Sovereignty of Muslims were belongs to God and the Muslim Kings the servants to God. The Political Concepts of Legal Sovereignty was based on Sharia Law and Islamic Law and Shia Law (Bhansali)<sup>9</sup>.

## 6.3. Judicial Administration of Medieval India

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

1. Administration of Court System during the Delhi Sultan (1206-1526)
2. Administration of Court system during the Mughal Period (1526-1755)

### 6.3.1. 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.

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

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<sup>8</sup> Srivastava, Ramesh Chandra. Development of Judicial System in India under the East India Company, 1833-1858. 1971.

<sup>9</sup> Bhansali, Sanwat Raj. Legal System in India. 1992.

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:

- 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..
- 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.

### **6.3.2. Administration of Court System during Mughal Period 1526 to 1755**

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.
- 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.

## 7. Legal System in British Period

The custom-based law system – a system of law in view of recorded legal points of reference came to India with the British East India Company (Srivastava)<sup>10</sup>. The company was allowed sanction by King George I in 1726 to build up "Mayor's Courts" in Madras, Bombay and Calcutta. Legal components of the company expanded extensively after its triumph in Battle of Plassey and by 1772 company's courts stretched out from the three important towns (Roy and Swamy)<sup>11</sup>. At the same time, the company bit by bit supplanted the current Mughal legal system in those parts.

Following the First War of Independence in 1857, the control of company regions in India go to the British Crown. Being a piece of the realm saw the following huge move in the Indian legal system. Incomparable courts were built up supplanting the current numerous oral courts. These courts were changed over to the fundamental High Courts through letters of licenses endorsed by the Indian High Courts Act pass by the British parliament in 1862 (Sharma)<sup>12</sup>. Superintendence of lower courts and enrolment of law specialists were deputed to the individual high courts. Amid the Raj, the Privy Council went about as the most astounding court of offer. Cases before the chamber were mediated by law rulers of the House of Lords. The state sued and was sued for the sake of the British sovereign in her ability as Empress of India.

Amid the move from Mughal legal system, the advocates under that regime, "vakils", too took action accordingly, however they generally proceeded with their before part as customer agents. Resulting principles and statutes finishing in the Legal Practitioners Act of 1846 which opened up the calling paying little mind to nationality or religion (Hamid).

Coding of law additionally started decisively with the shaping of the principal Law Commission. Under the stewardship of its director, Thomas Babington Macaulay, the Indian Penal Code was drafted, established and brought into constrain by 1862 (Keith). The Code of Criminal Procedure

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<sup>10</sup> Srivastava, Ramesh Chandra. Development of Judicial System in India under the East India Company, 1833-1858. 1971.

<sup>11</sup> Roy, Tirthankar, and Anand V. Swamy. Law and the Economy in Colonial India. 2016.

<sup>12</sup> Sharma, S. P. Indian Legal System. Mittal Publications, 1991.



was additionally drafted by a similar commission. Host of different statutes and codes like Evidence Act (1872) and Contracts Act (1872).

### **8. Legal System after Independence (Modern India)**

The independence of India brought about certain inescapable changes in the structure of the judiciary, the hugest of which was the substitution of the Supreme Court in the place of Privy Council as an extreme court of request (Puri). The present Judicial system in India comprises of a various leveled system of courts. Liberal arrangements exist for taking interests from the lower to the higher courts. The Supreme Court, the most noteworthy court of the arrive, implements an elevated requirement of equity and advances a basic way to deal with the law all through the nation.

### **9. Conclusion**

History comprises of the growth evolution and development of the legal system in the country and sets forth the historical process whereby a legal system has come to be what it is overtime. The legal system of a country at given time is not creation of one man or of one day but is the cumulative fruit of the endeavor experience thoughtful planning and patient labor of a large number of people through generation. With the coming of the British to India the legal system of India changed from what it was in the Mughal period where mainly the Islamic law was followed before that the Hindu laws were followed. The legal system currently in India bears a very close resemblance to what the British left with. From this study, it is evident that the null hypothesis fails as the present legal system is well refined and has developed to its best.

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