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The early seeds of justice and development of judicial system in India

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ABSTRACT

The disposal of fair justice and the maintenance of peace is one of the most important features of state in the modern society. Indeed, it is the caliber of the judiciary that adds to the excellence of government. The study of the development of judicial system reveals the brief history of how the Indian state in earlier times surrendered its power to the English trading company and how there was a gradual change in political and social ideas which ultimately led to the establishment of modern judicial system prevalent in India today. Earlier, traces of justice in India could be tracked as back as from the very existence of human life. It could be seen as back as from ancient India where kings were considered as the ultimate head, delivering justice, believed to be an incarnation of God and giving away justice on his behalf. The laws and policies were also based on the basic necessities of people. Changing the above, the advent of East India Company traced the actual picture of the judicial system in India which was based on practical knowledge of law rather than religious and traditional practices. The reforms of various Governors ruling India during East India Company's rule followed by the control of British Crown on India ultimately, followed by the independence of India in 1947. The development of the judicial system was a gradual steady process of discovering and developing various aspects of judicial system and laws to ultimately adjust it according to the changing needs of the modern prevalent society. Developing from the King as the ultimate head we have reached where people have the equal rights in the society and there is the distribution of power among various people to avoid supremacy and to adapt to the changing circumstances of the judicial system important to provide necessary justice in order to maintain peace and discipline throughout.

Keywords— Justice, Judicial System

1. INTRODUCTION

India is one of the oldest judiciaries in the world and now has developed to a greater extent as compared to the earlier times. The judicial system of India has achieved much from the various existent judiciaries in the past acquiring all essentials into the prevalent system of judiciary developing it to the best.

India has the oldest legal system inherited from the British and more than hundred years of their rule which justifies the similarity of Indian legal system with the English judiciary. The Constitution is the supreme law of the country enforced in India from 26 January 1950 and is the world's longest written constitution.

Even though India had adopted the federal system of government the Constitution had formed a united and integrated system of the judiciary for governing Union as well as State laws. The Supreme Court is the highest authority of appeal followed by High courts and district courts each having special and definite duties to be performed.

One of the most important merits of the Indian judicial system is that it serves as a "uniform legal system" coordinated with regulatory and statutory laws, unlike the British legal system.

It reflects the development of the judicial system from the very existence of human life developing from the time of Ancient India, influenced by Muslim rule and followed by the impact of British India's rule developing a strong system of Judiciary in India.

2. JUDICIAL SYSTEM OF ANCIENT INDIA

India has a developmental history regarding the judicial arrangement and maintenance of peace in India. The early seeds of justice could be traced as back as from the mere existence of human beings. According to Plato "justice" word denotes a "natural virtue" among the human beings which help them to ensure equality and confidence among one another in the society. This denotes that co-person should get privilege over others and conversely, no person shall be deprived of his rights which are being enjoyed by others.

In other words, justice means punishing people for their wrongdoings and admiring people for the good done by them. This ensures that the truth would be held up and encouraged rather than the wrongdoings by other people against the innocent ones.

At first, the law of justice was based on the basic principle of equity in British countries rather than in India which delivered justice on the basis of traditions and customs which definitely created a hindrance to fair judgment governing people based on their religions and castes.

In ancient times, the punishing of the wrong and the protection of the rights was the essential duty of the king. The king was considered the highest authority to approach and there was a gradation of courts. Earlier, the king had the ultimate say over any dispute and delivered justice with the help of his ministers along with different lower courts and panchayats in villages. Appeals lay from the lower courts to the higher courts ultimately taken care of by the highest court of appeal that was the king or the ruler. Though, the rulers who administered justice were subject to various traditional obligations and customary limitations. They had to consider all these traditions and practices while delivering justice by creating an obstacle in ascending fair justice.

There was the fair role of caste system in India which infringed the access of fair justice to lower caste as compared to the higher class. Finally, resulting in inequality among people in the eyes of law. The existence of caste system i.e. Varna system divided the Hindu society into four parts – Brahmana, Kshatriya, Vaishya, and Shudra. A Brahmana and a Shudra were not treated alike. The punishments given to people changed according to the social status of the accused. The caste of the accused affected the judgment to a greater extent. The punishment was severe if the person accused belonged to lower caste while it was mild if the accused was a higher caste. These apart, the ancient judicial system was far more synonymous with the modern judicial system.

The success of the judicial system is said to depend upon two basic elements: "A well-regulated system of courts following a simple and orderly procedure, and a definite, easily ascertainable and uniform body of law" [1]. These elements certainly formed the basis of ancient Indian judicial system.

One of the essential systems prevalent during ancient India was that of Mauryan Empire. It worked on the principles of Arthashastra written by Kautilya. The administration of the Mauryan dynasty was controlled by the King. The king was the supreme and sovereign authority of the Mauryan Empire Administration. He had the supreme executive, legislative and judicial power and functions in the government. As the head of the executive, the Mauryan king maintained social order by punishing the guilty. He was responsible for the safety and security of his kingdom. It was his duty to protect the life and property of his subjects. He was to collect a report from the spies. He had to plan different campaigns and movements.

The Mauryan king was the head of the judicial department. It was his duty to ensure justice to the people and redress their grievances. The Mauryan Empire was vast and this vastness debarred the king from personally disposing of all the cases. But he was the final court of appeal and issued a ready judgment. The Mauryan kings remained whole day in the court to hear appeals from the people and in this course, he even never cared for these personal amenities. King Ashoka made many reforms in the judicial system of the Mauryan Empire. [2]

The King was the head of justice – the fountainhead of law and all matters of grave consequences were decided by him. Kautilya refers to the existence of two kinds of courts – dharmasthyas (dealing with civil matters) and kantakasodhanas (dealing criminal cases). There were special courts in the cities and villages presided over by the pradesika, mahamatras, and rajukas.

2.1 Arthashastra

The ancient judicial system worked on the principles of "dharma". The concept of Dharma that ruled Indian civilization, from the Vedic period up to Muslim invasion from King to his last servant everyone was bound by Dharma. Dharma was considered as an inseparable part of the law. Separation of dharma from justice was considered as fatal as justice was to be delivered based on righteousness. Justice is related to truth as it is related to dharma. According to Sankara Bhagavatpada 'satya' means speaking the truth and 'dharma' means translating it into action. [3]

While 'rta' denotes the mental perception and realization of truth and 'satya' denotes the exact true expression in words of the truth as perceived by the mind, dharma is the observance, in the conduct of life, of truth. In fact, dharma is the way of life which translates into action the truth perceived by the man of insight as expressed by him truly. In short, 'rta' is truth in thought, 'satya' is truth in words and 'dharma' is truth in deed". Dharma literally means the principle of righteousness or duty or principle of unity.

Manusmriti written by the ancient sage Manu prescribes ten essential rules for the observance of Dharma: Patience (dhriti), forgiveness (kshama), piety or self-control (dama), honesty (asteya), sanctity (shauch), control of senses (indraiya-nigraha), reason (dhi), knowledge or learning (vidya), truthfulness (satya) and absence of anger (krodha). Manu further writes, "Nonviolence, truth, non-coveting, purity of body and mind, control of senses are the essence of Dharma". [3]

It was said that whatever creates conflict is termed as adharma and the one which resolves conflicts was termed as dharma. Anything which helps to unite all in a circle of love and feeling of brotherhood could be termed as dharma. Dharma was to be served in life as well as in the afterlife. This never meant that dharma was immutable. Manu in its original idea mentioned that dharma needs to be amended according to the changing yuga. Dharma is a unique blend of rigidity and flexibility by protecting the eternal principles and accepting the new formed prevalent traditions.

Dharma, Vyavahara, Charitra, Rajasasana were the four main pillars governing the judicial system in ancient India. Dharma was the eternal truth holding its sway over the world, Vyavahara denotes evidence with the help of witnesses, Charitra was the

behavior and past history of the tradition of people and Rājāsāsana denoted the order of the Kings. Three members well known with the Sacred law (dharmasthas) along with three members appointed by the King known as Amatyas carried on the judicial administration. They were to deliver justice in Sangrahana' center for 10 villages, 'Karyatik' centre for 200 Villages, 'Dronamukha' for 400 villages and 'Sthaniya' for 800 villages. This arrangement of the courts regarded that there were sufficient courts available to deliver justice at different levels, and for the district (Janapadasandhishu) there were Circuit Courts.

The villages had Village council or Kulani to deliver justice which consisted of five members similar to modern day panchayats. They were to deal with all matters regarding irrigation, land, crimes, etc. were the authority for small civil and criminal cases. At the higher level in towns and districts, the courts were headed by the government officers under the authority of King. The head man of the village, whose post was hereditary, was the mediator between the village and official administration. He acted both as the village head and link between the village and the government. Family courts were also established to decide and govern regular family disputes and civil disputes among family members.

It was the duty of the king to deliver justice with the help of above mentioned and follow the Dharma. Dispensing right justice and protecting his subjects was to send the King to heaven and on the converse, the King who was unable to do and was deceitful and wrong was to suffer Danda.

2.2 Manusmriti

Manu felt that the judiciary was not to be handed to feeble kings who could misuse it easily. There was a system of Jury that existed during his time and Manu recommended that the power of judiciary should be transferred to Brahmins. Jurors were called as 'sabhasada' or councilors who advised King accessed the King. The jurors were given the freedom to express their opinion freely and to even oppose the sovereign. In the absence of King, the sovereign was supposed to issue a decree mentioning the suggestions or changes by the jurors. The jurors were to deliver and support the right and were given the freedom to oppose freely without any restriction and the suggestions given by the juror were binding on the judicial committee.

Manusmriti even specified the role of judges in identifying the accused and studying the aspect of human psychology which was a unique feature which took account of the human psychology. It perceived the study of gestures, motions, speech, and changes in voice, face, and eyes.

3. JUDICIAL SYSTEM DURING MUSLIM REIGN

The Muslim invasions of India began around the 11th century AD. The Indian history represents that there were various frequent invasions by Muslims in India. There were certain kings who did not interfere with the existing system of Hindus and they were governed by Hindu law regardless of their advent in India.

Although, the Emperor was the ultimate head and supreme authority he had assigned various works of the judiciary to different people for efficient working. It is considered that the judicial system of Muslims had given a great impact on the present system with some changes. Nothing like modern legislation which had written laws was present.

The population of the state was divided into two parts- believers and non-believers. The judicial system worked on the principle of Quranic Laws and strictly followed the Quran for the maintenance of peace. Even though the non-believers were not given equal status in the society but there were treated as equal while delivering justice. They did not ordinarily disregard customary laws while giving justice but sometimes they were based on equity.

The Qazi-ul-Qazat or Chief Quadri was the principal judicial officer in the real and Quazis in every provincial capital. Muftis according to Muslim Law decided criminal cases of both Hindus and Muslims and Mir Ali drew up and announced judgments.

The Quazis were expected to be fair and not accept gifts as a bribe from people. There were no local courts below Quazis and people having conflicts were sorted out by them locally with the help of caste courts and panchayats in villages. The Quazis were entrusted with both civil and criminal cases along with their role in provinces and districts. The Chief Sadr exercised supervision over the lands granted by the emperors of princes to pious men, scholars, and Mons and tried cases relating to these. Below him, there was a Local Sadr in every province. [4]

Above the provincial and urban courts was the Emperor himself. He was the Khalifa i.e. the ultimate authority of appeal and judgment. Fines, severe punishments, whipping, etc. could be granted to convict but the capital punishment was to be granted only by the Emperor. Civil and canon law cases regarding Hindus were heard by leant Brahmanas appointed for the purpose while the criminal cases were tried according to Islamic law. The changes in the ruling community did not bring any change in the working of panchayats delivering justice in petty criminal and civil cases. [5]

In short, it can be regarded that there was a dominance of Islamic and Quranic laws that governed the entire judicial system during the Muslim rule in India but no mention should be neglected to reflect the influence of this law on the present judicial system. It had become more liberal and changes according to the changing society could be seen.

4. JUDICIAL SYSTEM DURING BRITISH RULE

The East India Company first came to India and started their factory in Surat by the grant obtained from Jahangir. He even permitted the English settlers to be governed by their own laws and that too according to their officers.

a. CHARTER OF 1600: The Charter of 1600 empowered the Company to punish their men according to their laws. The powers granted to the company had various restrictions and they noticed that they were not granted requisite judicial powers.

b. CHARTER OF 1661: The Charter of 1661 advanced the judicial powers of the Governor and the Council. The Company was given the right to punish the people advancing in their settlement. It even made the first attempt to validate English law in India.

c. CHARTER OF 1726: Slowly the Company spread its presidency in the towns of Surat, Bombay, and Calcutta. The next Charter of 1726 granted the establishment of Mayor's Court at each of the presidency towns. The court was empowered to try, hear and take decisions on all civil cases arising within the presidency towns or settlement area of factories. The first appeal to the court was presented before the Governor and court and decision had to be taken within a span of 14 days.

In each presidency, the Governor and five senior councillors were given criminal jurisdiction. Each of them individually acted as Justice of Peace and enjoyed the same powers as their subordinates in England. The trial at Quarter Session was conducted by a grand jury consisting of 24 members and a petty jury of 12 members.

The legislative powers of the Governor and Council were increased and they were given the power to make by-laws, rules, and regulations for the good working of the inhabitants of the presidency towns. They were to become effective only when approved by the Company's Court of Directions in England. The main merit of the Charter lies in its establishment of regular, definite, uniform and authentic judicial system in all presidencies.

For the first time, the courts in India began to draw their authority from the Crown instead of from the Company which implied. The Mayor's court established by the Charter did not prove to be successful as they worked on the English Laws. They created dissatisfaction among natives as their customs and laws were ignored.

d. Court for natives: It was realized that too much power was given to a single individual and accordingly. Certain changes were introduced in the Zamindar's court. A civil court with five servants of the company was established for the trial of cases above twenty rupees with a right to appeal in cases over rupees one hundred to the Governor and Council as the cases of criminal Justice of Peace were appointed.

e. Judicial reforms: The period of 1772-1835 witnessed the serious attempt towards the establishment of effective and sound judicial system to protect the interest of all concerned sections. After the end of the rule of East India Company in India, different Governors were appointed by England to assist India.

f. Beginning of adalat system by Warren Hastings: The dual government introduced by Clive had left the administration of civil and criminal cases in the hand of natives. The trial of a suit by the natives was both slow and unsatisfactory. This led the foundation for the Aadalat system in India and formed an important evolution in the modern judicial system.

Mofussil Diwani Adalat: This type of Adalat was formed in every district under the supervision of European Collector as a judge. He was authorized to decide civil cases regarding property, caste, marriage, debts, etc. They were decided by application of Hindu Law for Hindus and Muslim Law for Muslims. The Collector was assisted by Pundits and Quazis. It had the power to decide cases up to the amount of Rs. 500.

Mofussil Fauzdari Adalat: they were established in each district for the trial of criminal cases. The Mohammedal law was followed in these Adalat and the quazis, muftis, and maulvies assisted in deciding the cases. It was not given the power to grant capital punishment in criminal cases without the consent of Sadar Nizamat Aadalat.

Sadr Aadalats: In Calcutta, two courts of appeal were formed i.e. Sadr Diwani Aadalat and Nizamat Aadalat. The court worked under the supervision of Governor and the Council. This was all that Warren Hastings could achieve.

Supreme Court at Calcutta: In 1773, The Supreme Court was established in Calcutta consisting of Chief Justice under The Regulating Act. Its jurisdiction was extended over all British subjects and public servants of Company. The court enjoyed both original and appellate jurisdiction. [5]

g. Reforms by Lord Cornwallis: Cornwallis came to India in 1786 and brought about the changes in the existing judicial system in 1787. The European Collectors were empowered to deal with revenue disputer and were also made judges of the Diwani Aadalat enjoying magisterial powers. As the only judge of Diwani Aadalat, the Collector dealt with all type of civil disputes.

Appeals over the value of Rs. 1000 lay from the Diwani Aadalat to Sadr Diwani Aadalat and if the value exceeded £5000 it has to be passed to the King-in-Council. In the discharge of judicial functions, the Collector was assisted by Registrar who was given the power to try suits up to Rs. 200.

As a magistrate, the Collector dealt with minor offenses and inflicted punishments. The Collector was also given the power to arrest British subjects and advance them to the Supreme Court.

By the judicial plan of 1790 the District Fauzdari Aadalat were closed and they were replaced by four Circuit courts, three in Bengal and one in Bihar were preceded over by two judges chosen from the civil service exams. They took decisions with the advice of Quazis and Muftis. With this, the criminal jurisdiction of the native Deputy Nawab came to an end.

The judicial plan of 1793 was based on the principle of separation of powers and accordingly, the revenue and judicial functions were distributed to separate hands. The Collectors now only had the power to collect land revenue. The district civil court came into existence with the head as District Judge.

So, finally, different courts were established. At the lowest level were the Munsiff's court presided over by Indian Commissioners who dealt with petty disputes up to the amount of Rs.50. Next, was the court of Registrar presided over by the covenanted servants of the company having a trial of cases up to the value of Rs.200. Appeals from both these courts were presented to district or city courts. Then, there was the Zillah or District under a British judge who decided civil disputes with

advice from Indian assessors. Above them were the four provincial courts of appeal each under three European judges with Indian advisory. These were also the judges of Circuit courts. It heard cases referred by the government and the Sadr Diwani Aadalat and took cases refused by the Mofussil Diwani Aadalat. It had original jurisdiction in cases and appeals up to the sum of Rs.1000. The highest court of appeal was Sadr Diwani Aadalat consisting of Governor-General and members of Council in Calcutta.

h. Reforms of William Bentinck: The period of William Bentinck was another milestone in the progress of the judicial system of India. He was devoted and liberal and made every effort possible to enhance the welfare of his subjects. The duties of the Provincial courts were multiplied. This was followed by the division of presidency into twenty parts.

The functions of the circuit courts were transferred to magistrates and collectors. Many more Sadr Diwani Aadalats and Nizamat Aadalats were formed for speedy justice and no further changes were made except that the system was more liberalized and created the main contours of the present judicial system.

4. JUDICIAL SYSTEM OF PRESENT INDIA

After the independence of India in 1947, a drafting committee was formed by the constituent assembly in order to form the Constitution of India declaring it as sovereign. Dr. B.R. Ambedkar was the head of the committee and a final draft was passed to be applicable over the whole of India. The Constitution granted independent status to the judiciary with no discrimination against anyone being the citizen of India and presenting a specific structure of the judicial system with a definite hierarchy of courts having decided jurisdictions and scope to maintain peace and discipline around India.

a) Supreme court

The Supreme Court of India has been granted the highest status for seeking judgment by the Constitution. Chapter IV of Part V of the Constitution provides about the topic. [6] it is the highest court of appeal and has the final say over any policy or law.

The Supreme Court of India was first established by Regulating Act, 1773 which was finally set up in Calcutta in 1774. Finally, the Supreme Court was evolved as a federal court in 1935 according to the Government of India Act. Finally, the Supreme Court was formed on 28th January 1950 in New Delhi after the independence of India in 1947. With 321 sections and 10 schedules, this was the longest act passed by British Parliament so far and was later split into two parts viz. The government of India Act 1935 and Government of Burma Act 1935.

The Government of India Act, 1935 provided for the establishment of Federal Court to interpret the Act and adjudicate disputes relating to the federal matters. It provided that the Federal Courts should consist of one Chief justice and not more than six judges. The Federal Court was given exclusive original jurisdiction to decide disputes between the Centre and constituent Units. The provision was made for the filing of appeals from High Courts to the Federal Court and from Federal Court to the Privy Council. The Federal Court also had jurisdiction to grant Special Leave to Appeal and for such appeals a certificate of the High Court was essential. [7]

The Supreme Court is the highest court in India. The Part V of the Constitution regards the Supreme Court as the “Custodian of Constitution” under Article 124-147. The government of India is formed of three parts- legislature, executive, judiciary. The legislature makes the law in India and consists of parliament including the Lok Sabha, Rajya Sabha, and President. The executive unit implements the laws and consists of the President and the Council of Ministers. Whereas, the judiciary is the only unit which is independent of all other units in the system. It has the power to change the laws that are made which are against the welfare of people.

The highest court i.e. Supreme Court has been granted five various jurisdictions, highest than any other agency.

- Original jurisdiction: It is the basic power that allows the Supreme Court to handle disputes between different states, different union territories and between state and union territories.
- Writ jurisdiction: The Constitution of India under Article 32 gives the right to the people to file a direct writ in the Supreme Court if their Fundamental rights are violated or infringed by anyone.
- Appellate jurisdiction: This is the power given to the Supreme Court to take any jurisdiction under its control of any of the lower courts to edit the judgment or punishment granted.
- Advisory jurisdiction: the President of India can ask the Supreme Court for advice over any topic for suggestion even though the advice is not binding on the President.
- Judicial review: The Supreme court grants decisions and can even change the already implemented acts or laws. It can even review the judgments given by lower courts.

b) High courts

Chapter V of Part VI of the Constitution contains the provisions regarding the High Court. There is only one Supreme Court in India so twenty-four high courts are formed in India in order to grant justice more efficiently.

The High court is also called the State apex court. They were established in India through the Indian High Court Act, 1861. Ultimately, in 1862 three high courts were established in Bombay, Calcutta, and Madras. By Indian High Courts Act 1861, the Supreme & Sadar Courts were amalgamated. The ‘Indian High Court Act’ of 1861, vested in Queen of England to issue letters patent to erect and establish High Courts of Calcutta, Madras, and Bombay. [8]

The next High court in India was formed in Allahabad in 1866. The last High courts were formed in Manipur, Tripura, and Meghalaya in 2013. By the 7th amendment in 1956 declared those two different states or union territories or more can have a common high court. Delhi is the only state having the supreme as well as the high court.

High Courts have the power to review cases and judgments decided by the lower courts and if the people are not satisfied with the decision of lower courts they can apply in High Court governing their state.

The High Court has a special Writ Jurisdiction granted to it by Article 226 of Constitution wherein if the fundamental rights or any legal right of the people are infringed they can directly approach the High Court. It is the only jurisdiction in which the High court has maximum power over Supreme Court.

The number of judges of a High Court is fixed by the President from time to time. In this way, flexibility is maintained with respect to the number of Judges in a High Court which can be settled by the Central Executive keeping in view the quantum of work before the Court.

c) Subordinate courts

Chapter VI under Part VI of the Constitution provides the provisions regarding subordinate courts. Below the High Court, there is the Court of District Judge which is top court among subordinate courts. The appointment, posting, and promotion of District Judge are made by the Governor of the concerned State in consultation with the concerned High Court. [6]

The Governor may by public notification direct the application of the provisions of Chapter VI of the Constitution and the rules made thereunder on any class or classes of magistrates in the concerned State subject to any exception or modification.

The District courts are present in different districts so as to appeal and are very accessible to the people. These courts are under the administrative control of High courts in which these courts are present. The highest court of any district is that of District and Sessions judge. It has a principle of civil jurisdiction. They have the right to decide and grant punishments other than the capital punishment.

There are many other courts which subordinate to the court of District and Sessions Judge. There is a three-tier system of courts in India. On the civil side, at the lowest level is the court of Civil Judge (Junior Division), on criminal side the lowest court is that of the Judicial Magistrate, Civil Judge (Junior Division) decides civil cases of small pecuniary stake and Judicial Magistrates decide criminal cases which are punishable with imprisonment of up to five years.

d) Panchayats

Part IV of the Constitution embodies the Directive Principles of State Policy. Under this part, Article 40 lays down that the State shall take steps to organize 34 village Panchayats and endow them such powers and authority as may be necessary to enable them to function as units of self-government. [6]

These are the oldest bodies delivering justice since ancient time until British rule and even in today's time. They deliver justice over petty civil and criminal cases by resolving disputes between the parties and providing necessary compensation by the informal and simple procedure. Different State laws had been enacted concerning Nyaya Panchayats having diversities of provisions therein about its composition and power. The Punjab Gram Panchayat Act 1952 was a State Act. This Act was having two-tier systems i.e. at the lowest level the Gram Panchayats and at an upper level, the Block Smiti.

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