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History Of Courts In India

Varuna Chakraborty

LL.B, LL.M, National Law University and Judicial Academy

Abstract: ***The Indian Legal System is one of the oldest legal systems which has altered as well as developed over the past few centuries. This paper will concentrate on the extreme changes and their impact in present day Indian legal framework since India has been the home of four noteworthy legal traditions Hindu, Muslim, British, and that of modern, independent India. Important elements of the earlier traditions remained in each new system, and ail of the earlier traditions are present in contemporary Indian law.***

Keywords: Indian legal framework, legal traditions, contemporary Indian law

I. INTRODUCTION

A legal system is the meeting point of the past and the future of its locale. The past explains it and it foretells the future. Though, in the case of Indian Legal system its past is limited, stretching up to a particular milestone only. Law in India has evolved from religious prescription to the current constitutional and legal system we have today, traversing through secular legal systems and the common law.

II. THE LEGAL SYSTEM IN THE PRE-BRITISH INDIA

Before the coming of the Britishers, the Indian societies were govern by 'moral law ', it did not owe its origin to the command of any sovereign, nor was it sanctioned. It was rather divine, as the Roman called '*jus receptum*'- law by acceptance. The principal source of laws was the 'smritis', which meant 'that which was remembered': the recollections handed down by the rishis (or sages of antiquity), of the precepts of God. But in doing so they did not exercise any temporal power, nor did they owe their position to any sovereign. The smritikars did not arrogate to themselves the position of lawmakers, they claimed only to be exponents of divine percepts of law and compilers of the traditions handed down over generations. The smritis, also known as the *Dharmashastras* (literally, the strings of thread of the rulers of Dharma), were a compendium of principles for the regulations of human conduct. Composite in their character, they were a blend of religious, moral and social duties. There were a large numbers of smritis (which also included commentaries and digests), but the principal smritis were three in numbers. First, and foremost in rank of authority was the code or institutes of Manu – the *Manusmriti*, compiled somewhere between 200 BC and AD 100. Then came the code or institutes of Yajnavalkya (the *Yajnavalkya smritis*, compiled between AD 200 and AD 300), the *Mitakshara* being the leading commentary on this code. Next came the code or institutes of Narada (compiled around AD 200).

Manusmriti – a systematic collection of rules in simple language, of easy comprehension. It is divided into 12 chapters, in the 8th chapter there are rules on 18 subjects, which included civil and criminal law. Yajnavalkya – this code was founded on Manusmriti, but in a more logical and synthesized way, especially regarding women, their right to inheritance, their right to hold property, and like. In this code, the law of procedure and the law of evidence followed in civil disputes made progress. Narada – it begins with an introduction and treatment of subjects in two parts- Deals with judicature; and, clearly discuss the 18 title enumerated in Manusmriti. It states the law in a straightforward manner, a logical sequence, and a style which is clear and attractive. Some of the topics were inheritance, ownership, gift, property, evidence of witness and procedure.

Smritis did not visualize an ordered legal system, but did not conceptualize justice. Justice meant natural equity or reason. Where two smritis disagreed, on equity, the older prevailed. According to Sir Henry Maine, in his classic work

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Ancient Law, first published in 1861, rule of law is not discriminated from rule of religion, in *Dharmashastra*. Though, this was criticized by another Oriental Scholar, John D. Mayne, in 1878. John Mayne propounded the theory that the law of the *Dharmashastra* was based upon immemorial custom and had an existence prior to and independent of Brahminism.

Dharmashastra was a psyche of Hindu nation established with Bramhin Empire of Sunga dynasty. It dealt with some problem with an ethical, religious and moral point of view. On the other hand was *Arthashastra*, written before the British conquest by Kautilya, where he gives a vivid description of "King's court of justice". *Arthashastra* embodies imperial code of law of Maurya King. It dealt with secular law and approached the consideration of relevant question from a purely secular point of view.

There was court of *Sanghra* – group of ten villages, *Dronamukha* – group of four hundred villages and *Stanhiya* – group of 800 villages, and above them all was presided over by King's Judges.

III. FUNCTIONING OF THE LEGAL SYSTEM IN BRITISH INDIA AND ITS TRANSITION INTO INDEPENDENT INDIA

Before the British power in India, administration of justice was in hands of court established by the emperors. Petty chieftains and big *Zamindars* also had courts exercising both civil and criminal jurisdiction within their respective territories. It was in these courts, that the origin of legal profession in India can be traced. There was a class of persons called 'vakils' who represented clients more as a agents for their principals than as lawyers, their services being made available to litigants in these indigenous courts.

For civil justice, provincial civil courts styled 'mofussil dewanay adwlats' were established in each collect orate with a superior civil courts of appeal at Calcutta (now Kolkata) called 'sudder dewanay adwlat'. For criminal justice, provincial criminal courts styled 'foujdary adwlats' were established in each district, with a superior criminal courts called 'sudder nizamat adwlat'. These courts were run by the Company, by authority of the Mughal emperor. The language of these courts was Persian.

In 1622, East India Company was authorized, by James I, to correct all English person residing in East Indies and committing any misdemeanor either with marital laws or otherwise. By a later charter dated 3 April 1661, power was given to Governor and council of several places in India then belonging to the company 'to judge all persons belonging to the said Governor and council and to execute judgment accordingly'. The word 'all persons' used in the charter were wide enough to also include non-Europeans who lived within the factories of the Company, and the expression 'according to the laws of the Kingdom' meant English law.

At the time of the marriage of King Charles II with Infanta Catherine of Braganza in June 1661, the king of Portugal made a present of the island of Bombay to the British Crown, by a charter dated 27 March 1669, who thereupon became 'the absolute lords and proprietors of the port and island'. Ever since then, justice was administered in the island of Bombay under the authority of the Crown of England, and not under the authority or jurisdiction derived from the Mughal court.

By a charter granted by King George I on 24 September 1726, courts of records were established in Madras, Bombay and Calcutta. These Mayor courts were to try, hear and determine all civil suits, actions and pleas, between party and party, that arises within the said three towns or any factories subordinate thereto. The courts gave judgment according to English Common Laws and rules of equity. The procedure was an adaption of the English procedure and the language was English.

Mayor Courts functioned up to 1774 and replaced by Supreme Court of judicature- established for the Presidencies of Calcutta, Bombay and Madras, British power having extended beyond the settlement towns. Each of these courts were set up by 'letters patent' – the earliest being in the then capital city of Calcutta with Sir Elijah Impey as the Chief Justice of the Supreme Court of Judicature at Fort William in Bengal. The Royal Courts established in Madras and Bombay (in 1727 and 1753), were suppressed by Recorders' Courts, which in turn were replaced in Madras (in 1801) and in Bombay (in 1823) by Supreme Courts of Judicature with powers similar to those possessed by the Supreme Court at Calcutta. The subordinate courts in each of these presidencies were varied and went by different names- they were compendiously referred to as the 'Company's Courts'.

Before 1862, there existed two parallel system of courts- Supreme Courts in Presidency towns; and, Adalats outside Presidency towns known as 'mofussil' Many points of difference existed between the two systems. The Presidency towns were founded by the British and were sought to be given a distinctive British character from the very beginning. The judicial system there was developed primarily to cater to the needs of the Englishmen residing there and, therefore, the judicial system was a replica of the English system. On the other hand, in the mofussil towns, the preponderant population was Indian, and the British administrators (Warren Hastings in particular) realized that it would not work if an alien system was foisted upon them. Therefore, attempts were made to develop a simple judicial system designed to meet the needs of the people by administering the indigenous laws of the Hindus and Muslims. The disparate judicial systems in the Presidency towns and the mofussil areas continued till 1862, when they were unified through the establishment of the high courts.

1st Charter of Supreme Court of Calcutta, 1774- Supreme Court shall have full power and authority to administer justice in a summary manner and in accordance to the rule and proceedings of High Court of Chancery in Great Britain. This clause conferred on the judges of Supreme Court of Calcutta the power to administer justice and equity. High Court of Calcutta inherited power from Supreme Court of Calcutta. High Court of Bombay and Madras were conferred the same power, also by Royal Charter.

In India, while solving a dispute, if the Hindu law and Shastras were silent, the judges assumed authority to decide it on the principles of justice, equity and good conscience. Invoking this principle, decision of the court almost became indistinguishable from private legislation.

After 1883, courts were replaced by legislatures as the makers of law. Three great codes- Civil Procedure Code 1859, Indian Penal Code 1860, Criminal Procedure Code 1861 laid the foundation of the governance of the country and administration according to the procedure established by law. Along with the Indian Contract Act 1872, the Indian Evidence Act 1872 and the Transfer of Property Act 1882, they together form the bedrock of the Indian Legal System.

Large part of the Hindu Law was codified only in post independent India. Prior to that, laws regarding family relationships, succession and inheritance, marriage and divorce, guardianships of minors and adoptions, were all determined by the personal laws of the Hindus, and there were different schools of Hindu law in different parts of the country.

Mahomedan law was – and still is – applied by courts in India to Muslims (persons who profess the religion of Islam), not in all but some matters only. Since the enactment of the Shariat Act, 1937 (the first codification of the Muslim law in India), Muslim personal law has been made applicable in all matters relating to intestate succession, special property of females, marriage, dissolution of marriage, maintenance, dower, guardianship, gifts, trust and trust properties and wakfs: the rule of decision in all such cases, where the parties are Muslims, is the Muslim personal law. In all other respects (for example, in matters of civil procedure, criminal law and the law of evidence) Muslims in India (like the Hindus) are governed by the general laws of India.

After the suppression of the Indian Mutiny of 1857, which finally put an end to Mughal rule in India, the Parliament of Great Britain passed the Government of India Act, 1858, which authorized the British Crown to take over the administration of all Indian territories from the East India Company. A unified legal system with a tiered pattern of civil and criminal courts was established, which remain unchanged to this day.

Under the Indian High Court Act 1861, High Court for each Presidency and later for each province was established. Subordinate courts of civil jurisdiction were established in each district- courts of the District Judges, the Additional District Judge, subordinate judges and the munsif. Criminal courts were organized into Courts of Session, Presidency Magistrate Courts, and Courts of First, Second and Third Class Magistrate. High courts were given appellate and supervisory jurisdiction over all civil and criminal courts. Over the High Court was Privy Council sat on England, until 1937. After Government of India Act 1935, an apex court was established in India, the decisions were carried to the Federal Court of India. After 26 January 1950, decisions were no more carried to Privy Council by Supreme Court of India (Federal Court was abolished).

The British-Indian legal system was left untouched by the Constitution of India, 1950. Article 372 of the Constitution provided that- 'all the laws in force in the territory of India immediately before the commencement of this Constitution shall continue in force therein until altered, repealed or amended by a competent authority'. The 'laws in force' included not only statutory law but personal and customary law, and also 'common law'.

IV. LEGAL SYSTEMS AT THE VILLAGE LEVEL

Arbitration in India, as we know it, was a British innovation: an adjunct to the British court system. It did not infiltrate into the villages of India, where panchayats had existed for thousands of years. The Hindi words 'panch' (or arbiter) and 'panchayat (a panel or group of arbiters) are probably as old as Indian folklore. Literally, 'panchayat' means the 'coming together of five persons': hence, a council or meeting consisting of five or more members of a village or a cast assembled to judge or resolve disputes. There was no code of law to apply to all Hindustan. There were royal courts in administrative centers, but not a unified national legal system. They did not displace the local or customary laws. Disputes in villages and even cities would not be settled by Royal courts, but by the village headman, or tribunals of locality or caste within which dispute arose.

V. MISGIVINGS ABOUT THE BRITISH LEGAL SYSTEM

Traditional law- Hindu, Muslim and customary- had been almost entirely displaced by the British-Indian legal system. The classic *Dharmashastras* remained for scholars and students of ancient history, relevant only as the original source of various rules of family law, and even these rules were – and still are- administered in the 'common law style', isolated from shastric techniques of interpretation and procedure and were not employed either as a source of precedent, analogy or inspiration.

On the eve of independence, British in India replaced quick, cheap and efficient panchayat justice with expensive and slow courts which promoted endless dishonesty and degraded public morality.

VI. THE LEGAL SYSTEM UNDER THE CONSTITUTION OF INDIA

From 1950, layer of constitutionalism was superimposed on the existing legal system. The constitution was originally divided into twenty-two parts dealing with various aspects of the country's governance.

Significantly, the word 'federalism' is not mentioned in the document. Decisions of the Supreme Court however, include and state federal and quasi-federal structure of state of India. The reason is historical- the Government of India Act,1935 (passed by the British Parliament) introduced for the first time the federal form of government in India, in place of the unitary form that had been the dominant feature of British rule since the earliest times.

The Constitution of India (1950), like many post-war constitutions, was based on the Westminster model- bicameral legislative bodies (the Lok Sabha and Rajya Sabha) at the Centre (the Union) and unicameral or bicameral legislatures in the state. The Constitution is federal in character (the Union and the states), and recognizes the existence of a legal system founded on the rule of law and on the principle of legality, eschewing arbitrariness and ensuring equality before law and

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the equal protection of laws within the territory of India (Article 14).

The Indian legal system, essentially British in origin, took a new direction after 1950, and unlike Great Britian, we had a Bill of Rights enshrined in Part III of our Constitution- the Fundamental rights. Neither Parliament nor State legislatures nor can the Executive can enact laws which transgress the provisions of the Fundamental Rights (at the Centre or in the states). In order to enforce the fundamental rights and compel the different organs of the government to observe the rule of law, there are the two important provisions in the Constitution of India- Article 32, guaranteeing the right to move the Supreme Court of India for enforcement of fundamental rights, Article 226, under which every state high court in the country is also empowered to issue writs, orders and directions to any authority to compel agencies of the state to observe not only fundamental rights, but also to obey and conform to the ordinary laws of the land.

VII. CONCLUSION

It can be stated that the British Empire has left an imperishable contribution to the enrichment of India's Legal heritage. During Medieval and British periods, we were made to forget our own 'ancient Hindu period' which was our glorious past in various respects. The legal system based on British model (formal /inherited) is full of technicalities and procedures, and limits access to justice for poor and illiterate people. The principles of Indian philosophy, traditions, social and legal orders, which formed the backbone of our glorious past, can be correlated to meet the growing problems and new conditions of India today. Let us not forget India still remains her intellectual treasure despite the influence of English Common Law.

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