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Evolution of Indian Judicial System

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ABSTRACT

The Indian judiciary played a pivotal role in the struggle for independence. Lawyers and judges became leaders of the nationalist movement, advocating for civil rights and challenging oppressive laws. The Montague-Chelmsford Reforms of 1919 and the Government of India Act of 1935 further expanded the jurisdiction and powers of the high courts. Post-independence, the Indian Constitution of 1950 provided the framework for an independent and impartial judiciary. The Supreme Court of India, established as the apex court, became the guardian of fundamental rights and the final interpreter of the Constitution. Judicial activism, public interest litigation, and the concept of judicial review have since become significant aspects of the Indian judicial system. In recent years, efforts have been made to address the challenges of delay and backlog of cases through technology-driven initiatives like e-courts and alternative dispute resolution mechanisms. The establishment of specialized tribunals to handle specific areas of law, such as the National Green Tribunal and the Intellectual Property Appellate Board, has further strengthened the system. In conclusion, the evolution of the Indian judicial system reflects a dynamic process of adaptation and growth, blending indigenous practices with external influences. From its ancient roots to the present day, the Indian judiciary has emerged as a vital institution for upholding justice, protecting rights, and ensuring the rule of law in a diverse and rapidly changing society.

Keywords: Indian Judiciary, Judicial System, Courts Hierarchy.

I. INTRODUCTION

The origin of Indian judicial system can be traced back to the pre-historic Vedic Period. It is certainly more than 3000 years old, if not older still² The *Rig Veda*, considered to be the oldest text of India in Sanskrit, was followed by three more Vedas, viz., the *Sama*, *Atharva* and *Yajur*, each of which gives us a panoramic view of the life and times when they were composed.

(A) Ancient Judicial System

The legal system took its colour from the Hindu religious and social practices. In that period in consideration of tax paid by the people, the King performed the judicial functions as a judge.

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² P. B. Mukherji, "The Hindu Judicial System", (1969) Pg. 434.

Nevertheless the administration of justice did not form a part of State's duties.³ When there was legal wrong or injury caused to a person or determinate class of persons, then the aggrieved party/parties, himself/themselves took necessary steps in order to get the wrongs redressed. During *Vedic* period in the administration of justice the King acted as the highest authority and claimed himself as the upholder of the *Dharma*.⁴

A study of *Dharma sutras* shows that, with the passage of time, slowly the judicial and administrative powers of the King passed to *Sabha* and *Samiti*.⁵ Hence the King used to impart justice with the aid of ministers and legal experts, the most important was the *Pradvivaka*, the chief justice. Apart from this the King not only delegated his judicial authority, but also his power of supervision of punishment to Royal Officer or a *Rajanya* who could act as an *Adhyaksha* (overseer). While administering the justice, King had to act according to the advice of the priests and learned *Brahmins*. He also appointed judges to help him in the administration of justice, but he continued to remain as the administrative head of civil law and penology.⁶

In the later *Vedic Samhitas* the „*Sabha*“ developed into King's court as well as his Councils.⁸ During those days the law applied was on the basis of ancient religious texts and authoritative comment with the advice of ministers and learned *Brahmins*. Law at the village level was administered by a village *panchayat* consisting of five or more members.

During *Mauryan* administration the king was the head of the state. He had legislative, executive and judicial powers. He was the supreme commander of the army and planned military operations with his *senapati*. In Kautilya's *Arthashastra* the king was called *Dharma pravartaka*, the king issued ordinances called '*Sanasad*'. The king appointed *Sachivas* (minister). The king was advised by the *Mantriparishad*. There were two judicial courts, which divulge from the study of *Arthsastra* of Kautilya, viz.

- 1) *Dharmasthiya* or the Civil Courts and;
- 2) *Kantakasodhana* or the Criminal courts.

Kautilya all gave greater local autonomy for admiration of justice and conducting faster investigation. Kautilya established three courts viz., (1) *Sangrahana*, (2) *Dronamukha*, and (3) *Sthaniya*.

Kula, *Sreni* and *Gana* also known as Popular Courts. These courts provided essay access to

³ A. S. Alterkar, "State and the Government in Ancient India", (1958), pg. 245.

⁴ Rigveda.

⁵ Atharvaveda.

⁶ *ibid*

justice at the doorstep of aggrieved person without causing any delay. The view expressed by the P. V. Kane, that the *Kulani*, *Sreni*, and *Puga* courts were the arbitration tribunals like modern *Panchayats* or the Lok Adalats of today.⁷

Narada observed that there was a provision for an appeal to City court against decision the Village Courts. The order passed by the City Court could be challenged in the King's court, which was highest appellate court.

According to *Smriti Chandrika*, the following different descriptions of courts, which were in existence. viz.,

- (1) *Arcmyasabha*, an assembly of foresters;
- (2) *Sarthisabha*, that composed of merchants;
- (3) *Senikasabha*, the members of which were appointed from among military men;
- (4) *Ubhayanumatasabha*, that chosen by parties themselves;
- (5) *Gramavasisabha*, composed partly of the villagers and partly of strangers, or of civil and military persons together;
- (6) *Gramasabha*, a village court in which the *Mahajenams* or heads of the caste are assembled to settle dispute arising in the village;
- (7) *Purasabha*, a town or city court;
- (8) *Ganasabha*, an assembly composed of all four classes indiscriminately;
- (9) *Srenisabha*, an assembly composed of all the inferior classes, or castes such as washer men, barbers, and for deciding causes among their own tribes;
- (10) *Chaturvidyasabha*, that composed of persons learned in all four *sastras*;
- (11) *Vargasabha*, an assembly of irreligious men;
- (12) *Kulosabha*, a meeting composed of persons of the same family;
- (13) *Kulikasabha* in which the relatives of the plaintiff and the defendant meet to discuss the matter;
- (14) *Niyuktasabha*, a court held by a deputy or chief judge, regularly appointed by the King with the *sabhasads* or assessors. This was sometime called *Mudritasabha* as it was presided by *Pradvivak*, or chief the judge in Virtue of the King's *Mudra* or seal with which he was entrusted and sometimes also, *Pradvivakasabha* after the name presiding

⁷ P. V. Kane, "History of Dharmasatra", (1973) Pg. 280.

officer;

(15) *Nripasabha*, or King's court which was also called *sastrita*, because the King was assisted by the persons skilled in *sastras*, and all decisions passed here were final.

Popular courts were aided by a jury to facilitate the speedy and earlier disposal of pending cases. The members of the jury appeared to have acted as mediators

between the parties. Under Hindu judicial system, the administration of justice becomes so complicated. There were two sets of courts, which were prevailing during those periods viz.

- 1) There were courts directly under the authority of the State; and
- 2) There were the courts of popular character constituted by the people themselves either through local *Sabhas* or *Panchayat* or village councils or even family or tribal councils.⁸

The courts also accepted and followed numerous *Nibandhas*, (i.e., commentaries and digests), whenever a question relating to rules and regulations arose, which was to be followed by the Popular Courts in their day today business.⁹ The judicial administration of small towns and villages was vested with King's representatives, until an appeal was duly preferred. The decision of King's Court was final and thereafter no appeal lies elsewhere. The People Courts were empowered to decide all civil and criminal cases except those trails that fall under an offence committed with violence. Thus People's courts were not empowered to administer sentences of fines and corporal punishments. These cases must be referred to the King and he alone had the power to execute such sentences.

II. JUDICIAL PROCEDURE OF THE POPULAR COURTS

(A) Stages

There were four stages of judicial procedure and the modes in which law courts enforced their decisions. *Narada*¹⁰ on these points divided the course of the lawsuit into four parts, viz.

- (1) Statement of his case by the plaintiff or the complainant. This was called the *puma paksh* (the *Plaint* or *Bhasa Pada* or *Pratijna*);
- (2) The reply of the defendant or the accused person. This was called the *uttra paksh* (of the written statement/ *Uttara pada*);

⁸ Harsha D Devahuti, "A Political Study", Oxford University Press, (1970) pg. 253.

⁹ M. Rama Jois, "Legal and Constitutional History of India", (1990) pg. 24.

¹⁰ M. K. Sharan, "Court Procedure in Ancient India", (1978) pg.28.

The actual trial consisting of taking evidence to establish or rebut the case and the arguments on both sides. This was named *kriya*, and;

(3) The decision or judgment of the court, which was called *nirneya*.

There were also in existence three kinds of evidence, viz.,

- (1) Documents Witness (*Sakshi*);
- (2) Possession (*Bhukti*) and *Likhita*;
- (3) Other means of Proof consisted of reasoning (*Yukti*), and;
- (4) Ordeals (*Divyas*).¹¹

The first stage consisted of the Plaintiff submitting the Plaintiff. A plaintiff could be rejected if it contained irrelevant matter or was meaningless or did not set out the claim in clear and precise terms. However, the clerical errors did not vitiate the plaintiff. The courts after verification of plaintiff, issued a summons to the defendant for his appearance. In criminal cases the court issued warrants. In civil suit, if the defendant tried to escape, then he was liable to be arrested.¹² After the appearance of the defendant, he had to give a reply to the plaintiff's claim either by admitting or denying the claim of the plaintiff. The petty cases were tried summarily. The evidence might be oral or documentary whereas the documentary evidence had greater value.

The courts did not allow certain individuals to lead their evidence viz.,

- (a) close friends or
- (b) enemies of the parties,
- (c) persons convicted of perjury,
- (d) infants,
- (e) persons tormented by desire (whatever that may mean),
- (f) thieves, and
- (g) wrathful men.

The judgment of the court could be enforced in number of ways. The decree of the civil court could be satisfied by restitution of the property in dispute or by recovering a fine by way of compensation from the defendant, or a court could declare a certain contract void and unenforceable. In criminal cases the punishment awarded might take any of the following

¹¹ Birendra Nath, "*Judicial administration in Ancient India*", (1979). pg. 47 & 127.

¹² Justice G. D. Khosla "*Our Judicial System with the Constitution of India*", (1992) pg. 29.
death

forms: Fine, imprisonment, whipping, physical torture, banishment, and work in the mines or When there was no evidence forthcoming, in that event the judge was taking the religious aid for which the special mode of trails existed.¹³ They are:

- a. Trail by oaths; and
- b. Trail by Ordeals.

a. Trail by oath

If two disputants quarrel about matters for which no witnesses are and real truth cannot be ascertained, the judge may discover it by oath. *“Let the Judge cause a Brahmin into swear by his truth or sat, a Kshatriya by weapons, a Vaishya by his cattle, grain and gold, and a Shudra by imprecating on his head the guilt of all grievous offences”*.¹⁴

b. Trail by ordeal

Frequently adopted in criminal cases, especially for the lesser offences. There were four types of ordeal- by water, by fire, by weighing and by poison.¹⁵

According to Hiuen Tsiang "When the ordeal is by water, then the accused is placed in a sack connected with a stone vessel and thrown into deep water. They then judge of his innocence or guilt in this way- if the man sinks, and the stone floats, he is guilty; but if the man floats and the stone sinks, then he is pronounced innocent. Secondly, by fire: They heat a plate of iron, and make the accused sit on it, and again place his feet on it, and apply it to palms of his hands; moreover, he is made to pass his tongue over it; if no scars result, he is innocent; if there are scars, guilt is proved. In case of weak or timid persons who cannot endure such ordeal, they take a flower bud and cast it towards the fire; if it opens, he is innocent; if flower is burnt, he is guilty. Ordeal by weight is this: A man and a stone are placed in a balance evenly; then they judge according to lightness or weight. If the accused is innocent then rises in the balance; if he is guilty, the man rises and the stone falls. While in ordeal by poison: They take a ram, and make an incision in the thigh of the animal; if the man is guilty, then the poison takes effect and the creature dies; if he is innocent, then the poison has no effect, and he survives."

c. Trial by jury

In India trial by Jury too was in existence for more than 2200 years. Jury was composed of odd number comprising either seven or five or three persons known as the „examiners of the cause“.

¹³ Supra note 14

¹⁴ *Ibid.*

¹⁵ *Ibid.*

Thus in the Popular Courts the jurors were chosen from three higher classes i.e., the most respectable persons in the society and well versed with both question of fact and question of law. A study of *Arthashastra* reveals that the disputes relating to land should be settled by jury neighbour, i.e., the village elders of the neighbourhood and if there was differing opinion among them, the decision of the honest majority to be prevailed. It was also ensured that justice was being delivered to the litigants by the Popular Courts. Thus, the jury system was resorted to for setting complicated questions of the fact. Thus we can conclude that Trial by Jury during ancient India in the Vedic period was the basic unit of the judicial administration. From number of scriptures and historical accounts it is also quite manifest that there was in existence of a jury system in ancient India.

III. THE MUGHAL EMPIRE PERIOD

The Muslim invasions in India began around the 11th century AD and gradually a vast portions of India came under the Muslim rule. In 712 AD, *Mohammed-Bin- Quasim* made the beginning. Muslims period Mohammedan rulers did not upset the Hindu laws or its machinery of administration. In India during Muslim rule the judicial administration was classified into two different periods, viz., (1) the Sultanate Period and; (2) the Muslim Period.

The judicial administration that existed in Egypt or Turkey recognized by the Caliph of Egypt, is very similar to the structure of courts which established during the Sultanate period. In the Sultanate period the Sultan was the supreme authority to administer justice in his Kingdom. In the name of Sultan, justice was administered in three capacities:¹⁶

- A. **Diwan-e-Qaza:** He dispensed justice as arbitrator in the settlement of disputes of his subjects.
- B. **Diwaan-e-Mazalim:** He dispensed justice as head of the bureaucracy.
- C. **Diwan-e-Siyasat:** Being the Commander-in-Chief of Forces constituted *Diwan-e-Siyasat* through his military commanders to try the rebels and those charged with high treason.

During Sultanate period, there was a systematic classification or gradation of the courts, which are in following chain of command:

- a) Central Courts;
- b) Provincial Courts;

¹⁶ M. B. Ahmad, "*The Administration of Justice in Medieval India*" (1941), pg. 98.

- c) District Courts;
- d) Parganah Courts, and;
- e) Village Courts.

There were six Central Courts viz., (1) the King's Court, (2) *Diwan-e-Muzalim*, (3) *Diwan-e-Risalat*, (4) *Sadr-e- Jahan's* court, (5) Chief Justice Court and, (6) *Diwan-e-Siyasat*.¹⁷

In the provincial headquarters in each province, five courts were established viz.,

(1) *Adalat Nazim Sabha*, (2) *Adalat Qazi-e-Sabah*, (3) Governor's Bench (*Nizim-e- Subha's* Bench), (4) *Diwani-e-Subah* and (5) *Sadre Subah*.

In the District headquarters in each district five courts were functioning viz., (1) *Qazi*, (2) *Dadbacks* or *Mir Adils*, (3) *Faujadaris*, (4) *Sadre Amirs* and (5) *Kotwals*.

In the Paraganah headquarter two courts were established, viz.,

- (1) *Qazi-e-Paraganah*
- (2) *Kotwal*.

Further classification made in Paraganah as village assemblies or Panchayats conferring wide powers to decide civil and criminal cases of a purely local character.

In the hierarchy of courts Emperor's court was regarded as Apex Court presided over by the Emperor. The Chief Court of Empire was subordinate to the Emperor Court had the powers to hear, the appeals from the Provincial courts. Below this Court the Chief Revenue Court was established at Delhi to hear appeals in revenue cases from the Provincial Chief Revenue Courts and it was highest court of appeal. In each Province *Adalat-e-Nazim-e-Subah* (Governor's Court) was established, which was apex court in the Province, presided over by the Governor. The Provincial courts were empowered to hear appeals from District Courts. The District courts had the jurisdiction to hear appeals from the Parganah courts. The Parganah court was the lowest court, having no appellate jurisdiction. It is empowered to decide all civil and criminal cases within its territorial jurisdiction of the villages arising within its original jurisdiction.

From this it is very crystal clear that during the Muslim rule there was well-established hierarchy of courts, the highest being the court of the Emperor himself and lowest on the ladder was the village-council.

¹⁷ B. M. Gandhi, V.D. Kulshreshtha's, "*Landmarks in India Legal and Constitutional History*" (1992) pg.19

IV. BRITISH PERIOD

The Britishers came to India as traders in the 17th Century AD and gradually conquered the entire sub-continent. British rule in India introduced a more or less unified legal system, which may be considered a major step in the globalization of laws. As a consequence of over a century of British rule, a substantial portion of Indian law and Indian legal institutions are based on British laws, British legal system and the English language. Ruling India by East India Company in 1858 was the major period of codification of law and consolidation of the court system in India. During this period a series of Codes based on English law were enacted which were applicable throughout British India. By 1882, there was virtually complete codification of all fields of commercial, criminal and procedural law, except some aspects of personal law.

The East India Company reorganized the courts in 1861. The induction of British judges into the Indian soil gradually shaped the entire Indian judicial system similar to the judicial system of England. The Popular Courts began to lose their importance day by day in consequence of British policy of feudalistic control of the countryside, until it went into complete eclipse.

Slowly the adjudicatory method became more and more formal and the adjudicatory method was molded in such a way that the poor man found it very difficult to enter into the doorway of the court and the rich man used this as a weapon to harass his poor adversary. Besides, it became time-consuming too. This ultimately gave rise to two-fold difficulty¹⁸ viz.

- (1) The system could not be approached without the services of trained personnel; and
- (2) It became highly expensive.

This resulted into a gap between the people and the justice delivery system, which could be bridged at considerable cost by engaging a person, qualified to practice law. In due course the British legal system became highly profession oriented. On account of lawyer's fees and cost of litigation the access to justice becomes even more difficult.

V. CONCLUSION

From this it is very crystal clear that there are lot of evidences regarding the existence of people's court in India for the settlement of local disputes since time immemorial. Number of scriptures and historical accounts, which bestow strength to the People's court in which, friendly settlement of dispute and simple procedures was followed. The existences of these courts were first time mentioned in *Yajnavalkya Smriti*. Besides, *Narada Smriti* divulges the existence of three kind traditional courts viz., *Puga*, *Sreni* and *Kula*. Generally the King was the

¹⁸ Legal Aid Newsletter, Vol. X, May-August, 1990, pg. 14.

complete guardian of administration these courts, but he intervened in the working of these courts in exceptional situations. The adjudicators were worshipped as divine *Panch Parameshwar* and their decisions were given high respect.

These Popular Courts existed for a long time till the commencement of British rule in India. In fact the Muslim rulers made substantial hostile attack on the existing judicial system by way of creating the courts of judicature completely different with traditional system but in spite of that the effect of these changes did not reduce its importance in the village level. During the Muslim era the speedy decisions, absence of long and very complicated procedure in filing and disposal of cases etc., further strengthened the existence of these courts. Nevertheless the arrival of British in India gave serious deathblow to the functioning of Popular Courts as there was a total centralization of the judiciary and local courts were dissuaded and succeeded by the Royal Courts. Gradually these courts withered away and there came a dawn of new judicial system wholly controlled by the British Rulers.

The administration of villages by the agencies of Central Government, extension of jurisdiction of modern civil and criminal courts with their adversary system of adjudication which was unknown and new to the village population, migration of people from village to towns and consequent lessening of community's influence over the members may be said to be some of the main factors which gradually attributed towards the decay of the people's courts in India.
