VOLUME 3 | ISSUE 2

INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH

LEGAL SYSTEMS IN MEDIEVAL INDIA

- Kashish Khanna[1]

I. ABSTRACT

Law is what is found, made, exists as a custom or agreed to as the general will of the society. Law is flexible in definition. Law now and then, has gone through many changes and amendments but has never lost its existence, and can never lose. Societies cannot continue to exist without law. Law deals with crime, business, social interactions, property, finances, and other things in accordance with certain norms and conventions. The regulating authority is in charge of enforcing the Law. Law for majority hindus was derived from manusmriti, whereas the muslim law has been derived from the quran and the law for the sikh community is derived from the guru granth sahib and the Christian law is derived from the bible. India being a secular country, has formulated different religion related laws for people belonging to different religions so that there is no interference in someone's right to practice their religious practices and rituals. Although uniform civil code is much in demand in India these days. According to the Constitution's direction, when India adopts a civil code, it is likely to be eclectic in nature. It may contain a harmonic amalgamation of different laws based on religion and customary rules, as well as provisions borrowed from western codes and the common law in England. Due to its diverse nature and in particular because it would try to harmonise the regionally common personal rules inherited from religion. The civil code in South and Southeast Asia may be judged to be admirable.

II. INTRODUCTION

What is legal system?

The body of laws in a nation, as well as how they are applied and interpreted. It is the governance according to the rules. Although, it would take decades to finish the 3.5 crore

[1]Student IILM University,Gurugram..

cases that are currently outstanding in all of the country's courts. With just 13 judges per million inhabitants, India has the poorest judge-to-citizen ratio of any country in the world, thus it is not surprising that we have such a backlog of cases. The ratio is typically 50 in the majority of developed nations, but it can reach 100 or higher in some of them. According to the National Court Management System's prediction, the rise in population and literate levels will cause a 15-fold increase in the number of newly filed cases over the next three decades. But still people believe that whenever they approach the court they will get justice, and that is what makes the legal system special.[2] Law serves a variety of purposes and has several different definitions. Since the beginning of time, philosophers have thought about concerns of justice and the law. As a result, various diverse perspectives or styles of legal philosophy have developed. We will examine these numerous interpretations and methods in this chapter as well as the interactions between social and political forces and the concepts that drive the multiple schools of legal thinking.The judicial system is essentially how society maintains order for everyone. We have a criminal system to prosecute crimes that are so horrible they are against the entire society. To help individuals handle their commercial or interpersonal issues, our country has a civil legal system. Although these mechanisms are not ideal, violence is a non accepted alternative. Violence frequently offers long-lasting fixes to issues that are typically only fleeting.[3]

Importance of legal system

Every contemporary nation has a different legal system, but they all generally consist of laws that are passed by a legislative, carried out by an executive, and established by a judicial system. These rules guard people's rights and specify how activities like completing transactions, managing a business, owning land, producing works of art, and starting a family should be permitted. Civil law is used in nations where the legal system is based only on written laws, while common law is used in nations where written laws are supplemented or changed by court precedents and judicial judgments. Some people believe that the body of rules that are really followed is all that constitutes law. whose application is left to the discretion of the courts. This is how our western institutions, where our national laws are

[2] https://www.akdlawyers.com/what-is-the-legal-system/ Last Visited On 7-10-2022
[3] https://www.researchgate.net Last Visited On: 7-10-2022

taught, look now. However, law can also be viewed as a paradigm of ideal behaviour, distinct from the actual guidelines by which people behave.

Emergence of Legal system in India

In the ancient times when civilizations began to set feet in our country, they had set law for themselves. These laws included treating women respectfully, no war, respecting the nature and environment and taking care of nature and taxes also. One of the oldest legal systems in the history of the planet is that of India. In order to incorporate conclusions from legal systems around the world, it has changed and developed during the previous few centuries. The foundation of Indian law is found in the country's Constitution. It exemplifies the Anglo-Saxon nature of the judicial system, which is mostly derived from the British Law System. India is a country with a diverse range of cultural practices, regional customs, and norms that are not at odds with law or morality. In order to connect to family matters, people of many religions and traditions are subject to a variety of personal laws. With rules and jurisprudence stretching back centuries and evolving like a live way of life as Indians adapted to the changing times, India has one of the oldest legal systems in the entire globe.[4] It is a misapprehension that the Indian legal system only took on a systematic form and development under British rule; in reality, we have a traditional mindset that emphasises abiding by the law and performing our civic duties. This traditional mindset can be inferred from verses in the Manusmriti, which state that Dharma, or the Rule of Law, is the ultimate power in the state and that the King must obey the law in order to achieve Dharma.

Vedic era

The dharma-shastra, the arth-shastra, and custom, sometimes known as sadachara or charitra, were three systems of substantive law acknowledged by the court. The first was composed of legislation that eventually received approval from the smritis, and the second was composed of norms..[5]

From the time of the Vedic culture until the arrival of the Muslims, everyone in India was bound by the principle of Dharma. The verb "dhr" is the root of the term "dharma," which

[4] Blog.ipleaders.in Last Visited On : 8-10-2022
[5] http://www.legalservicesindia.com/article/1391/The-Legal-system-in-ancient-India.html Last Visited On 8-10-2022

means to uphold, sustain, or nourish. It is frequently used intimately with the words "rta" and "satya" by the Seers. Rta is described by Sri Vidyaranya as the mental awareness of God. Additionally, it is used alongside "satya" and "dharma" in the Taittiriya Upanishad.[6] It admonishes students to tell the truth and follow the path of dharma (Satyam vadha: Dharmamchara). SankaraBhagavatpada defined "satya" as stating the truth and "dharma" as putting it (Satya) into practise.

Colonial Era

The common law system was introduced to India by the British East India Company. King George I granted the firm a licence in 1726 so they could construct "Mayor's Courts" at Madras, Bombay, and Calcutta (now Chennai, Mumbai and Kolkata respectively). A massive expansion in judicial functions accompanied the company's victory at the Battle of Plassey, and by 1772, company courts had spread well beyond three major cities. The local Mughal legal system was gradually replaced by the firm throughout this process.

III. DHARMA AS THE SOURCE OF LAW

Dharma often refers to the "principle of justice" or "obligation," the "principle of holiness," and the "principle of unity." Dharma is everything that promotes interdependence, the growth of unadulterated divine love, and interspiritual brotherhood. As per Dharma, if the Paramatman is to pull us to him, we must always meet our obligations to both him and the rest of the world. These obligations comprise what is termed to as dharma.[7]

Every person had an obligation to other individuals in society under the duty-based Dharma legal system.The King was not above Dharma; he was subject to it. If he weren't, then the Dharmashastra gave the people the right to protest towards such an unjust, capricious, and wicked monarch or government. The treaties of Manu, Kautilya, and others contain numerous rights and obligations of the king and the public at large. They even recognised individual rights, such as the right to private property, wealth accumulation, and other rights that were constrained by the law for the benefit of society as a whole.[8]

[6] https://www.bhu.ac.in/mmak/resent_article/JusticeKatjusLec.pdf Last Visited On 8-10-2022
[7] https://www.imf.org/external/pubs/ft/seminar/1999/reforms/trebil.pdf Last Visited On 8-10-2022
[8] https://academic.oup.com

Dharma began to lose its lustre and origins as Muslim control and British rule came into being. Dharma was largely unaffected by the influence of koranic teachings during the Muslim era, despite the fact that numerous practises persisted. British rule, however, had a disastrous impact on the idea of dharma because they were ignorant of Indian laws and discovered that there were no laws in place to govern the populace. To remedy the situation, they either imported western law, or natural law, using the principles of equality, justice, and morality, or they imposed western laws by codifying them in areas where neither Hindu nor Muslim natural law, teachings, or customs provided a legal framework.[9]

IV. MUGHAL COURTS

The imperial court of the highest rank, which the emperor presided over, was known as the Emperor's court. The stated court has authority over both civil and criminal issues. When hearing the cases as a court of law, the Daroga-e-Adalat, Mir Adil, and Mufti stood in favour of the Emperor.[10] The Top Justice (Qazi-ul-Quzat) and other chief justice court Qazis heard the appeal on the Emperor's direction. The vakil, mukhtasib , chief quazi and the kotwal were the few important officials at the judicial level. The Kotwal's responsibilities included counting the inmates and recording their responses to the allegations brought against them.[11] Since imprisonment as a form of punishment was not specifically permitted under Islamic criminal law, prisons were not typically required as tools of punishment. However, because of the diya provision in that statute, many inmates were bound to spend their days in prison after being found guilty due to their inability to make restitution. Furthermore, the Qazi was given the ability to impose tazir, which means that for acts not included by hadd, qisa, or diya, he may, if he choses to sentence someone to jail. When Akbar was still a child and Bairam Khan acted as his deputy, the Vakil's office appears to have gained prominence. After that, the office became less prominent. Despite the title's continued existence, nobody was given a job serving the monarch. During Shah Jahan's tenure, it gradually lost significance before disappearing entirely. Mughal Administration criticisms. Muslim criminal law made no distinction between public and private law. It was thought of be a private area of law, criminal law. In circumstances when the slain person had no surviving family members to hold the murderer accountable or collect blood money, there were no explicit provisions in Muslim law. A juvenile heir postponed punishing the murderer or demanding blood money till he was of legal age. While Muslim law attempted to identify between

[9] www.worldwidejournals.com Last Visited On : 9-10-2022
[10] https://cbseacademic.nic.in Last Visited On : 9-10-2022
[11] https://www.probono-india.in/blog-detail.php?id=119 Last Visited On: 9-10-2022

murder and homicide with intent, the guilty party's purpose or lack thereof was not relevant. The sort of weaponry used to perpetrate the crime had an impact. That was strange and terribly unfair.

V. COLONIALIZATION

The process of subjecting or bringing under submission is called colonialization. The practise of assuming semi-state functions and codification started when the British East India Company bought the Diwani of Bengal in 1765. The main goal of codification in the outset was to ensure revenue collection.[12] The British attempted to develop a legal code that would have specific, clear, and standard regulations to control the brown subjects throughout the vast lands they had taken control of. They attempted to construct a Code based on homogenous structures after realizing that there were genuine legal systems in place during the pre-colonial period. For this, they looked up to the ancient scriptures and folklore of that time. However, as British territory grew, it became increasingly challenging to enforce the rule that was enacted in Bengal, and British officers and governors themselves opposed it.

THE PRIVY COUNCIL

The highest governing body in the british era was the privy council. Every political system creates for itself a specific type of legislative, executive, and judicial machinery to ensure efficient operation and administration. The Privy Council was established with the same goal in mind. The Privy Council served as a court that reviewed appeals from courts throughout the British colonies, including India. In the past, the Privy Council operated through a system of committees and subcommittees. However, the committees were not always present, and the majority of its members lacked much judicial expertise. Naturally, it had an impact on how justice was administered. Considering the scope and significance of the Privy Council's appellate power, Lord Bourgham condemned such a constitution in 1828. Later, in 1830, he was appointed Lord Chancellor, and it was under his leadership that the British Parliament passed the Judicial Committee Act, 1833, which revised the Privy Council's structure.[13]

Indian courts' appeals to the Privy Council:

The subsequent subheadings are where this can be explored.

[12]https://vidhilegalpolicy.in/impact/towards-an-effective-and-efficient-supreme-court-of-india/ Last Visited On : 09-10-2022

[13]https://privycouncilpapers.exeter.ac.uk/contexts/jurisdictions/territorial/india/ Last Visited On: 09-10-2022

a. The 1726 and 1753 charters

In the legal history of India, the Charter of 1726 gave the Privy Council the ability to hear appeals from Indian courts. Three Mayor's Courts were formed by the aforementioned Charter in Calcutta, Madras, and Bombay. The Mayor's Court rulings may first be appealed to the Governor-in-Council of the relevant province, and may then be appealed again to the Privy Council of England. The Charter of 1757, which reinstated the Mayor's Courts, confirmed the laws regarding appeals from Mayor's Courts to the Privy Council.

b. The Regulating Act of 1773, which gave the Crown the authority to create the Supreme Court in Calcutta, was enacted by this Act. In order to establish a Supreme Court in Calcutta and remove the corresponding Mayor's Court, the Crown enacted the Charter of 1774. In civil cases, Section 30 of this Charter granted the right to appeal Supreme Court rulings to the Privy Council.

Privy Council's shortcomings:

Everythging and every decision comes with its own advantages and disadvantages. Privy Council has the following shortcomings:

1. For a long time, it solely employed Englishmen who were ignorant of Indian law.

2. The Privy Council's location in England, far from the average Indian, made it unfavourable.

3. The Privy Council's jurisdictional submission to a foreign judicial institution was seen as a representation of slavery.

4. All of this made it challenging for the Indian poor man to seek justice.

VI. LEGAL SYSTEM POST BRITISH ERA AND A COMPARATIVE STUDY

The Indian legal system is referred to as the law of India. Within the framework left over from the colonial era, India retains a hybrid legal system that combines civil, common law, and customary, Islamic ethics, or religious law. Various laws first enacted by the British are still in force in somewhat modified forms today. Since the creation of the Indian Constitution, Indian legislation have also complied with UN standards for environmental and human rights

law. Many other countries also agree to the charter laid down by the UN for the universal declaration of human rights.[14]

In India, there are many different types of personal laws, and each religion has its own set of regulations. The majorities of states do not require mandatory marriage and divorce registration. Hindus, Sikhs, Jains, Buddhists, Muslims, Christians, and adherents to other religions are all governed by separate legal systems. The state of Goa is an exception to this norm because it has a common law system for adoption, divorce, and marriage that is recognised by all major world religions. [15]The Islamic practice of "Triple Talaq" was prohibited by the Supreme Court of India in Tripletalaq meant divorce by uttering of the "Talaq" word thrice by the husband. Women's rights advocates from all throughout India praised the Supreme Court of India's historic and unforgettable ruling. [16]

VII. CONCLUSION

Analyzingthe legal system, its importance, mughal period, the british era and the legal system today one can figure out that law is essential but interpreted and implemented in different ways by different people at different times. Law aids in delivering justice to those in need in all societies in the ancient times or in the modern times. Justice and the law are intertwined concepts. If there is no law in a society, chaos will result. It will spook the local calm and serenity, resulting in arguments or clashes. The law controls how people behave. Every society needs rules to safeguard both its citizens and itself. Laws were a part of all ancient civilizations' religious practises and tribal traditions. By hearsay and by example, these were transmitted.Common law is a precedent-based legal system that dates back to the monarchy in England. This implies that how new cases are decided depends on earlier cases and judicial rulings. One can better comprehend how and why contemporary legal systems operate by studying earlier ones.Legal history provides insight into fundamental social structure issues and serves as an excellent resource for all manner of morality and duty-related queries. It assists us in comprehending and forming our government. The frequency with which historical issues, particularly those pertaining to legal history, are brought up in public

[14] https://www.iilsindia.com/blogs/judiciary-in-ancient-india/ Last Visited On : 10-10-2022
[15] https://lawctopus.com/clatalogue/administration-of-justice-in-ancient-india-for-clat/ Last Visited On : 10-10-2022
[16]https://www.barcouncilofindia.org/about/about-the-legal-profession/legal-education-in-the-united-kingdom/ Last Visited On : 10-10-2022

discourse never ceases to amaze me. And we need individuals to acquire this information and to watch out for data exploitation.Legal history is concerned with how "law" and legal institutions function and how they alter over time in response to shifting social, political, and economic circumstances. It examines individuals who are "ruled" by the law and how they attempt to affect the law and those who act in it.The area draws on (and interacts with) studies of economics, religion, society, and culture. It also has a wide range of emphasis points.