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LEGAL SYSTEM IN ANCIENT INDIA- Priyanka Bose¹**ABSTRACT**

The world's oldest judicial system is found in India. No other legal system has a more illustrious or distinguished past. A civil law system may have existed in India during the Bronze Age, which began around 3000 BCE, and the Indus Valley civilization, which lasted from 2600 BCE to 1900 BCE. It has a documented legal history dating back to the Vedic eras (around 1750–500 BCE). The illustrious past of the Indian legal system includes the creation of the Dharmashastra by Manu and Brihaspati, the Smritis by Narada, and the Arthshastra by Kautilya. It has a rich field that has been supplemented by practitioners from various Hindu philosophical schools and later by Jains and Buddhists. It originated from the Vedas, the Upanishads, and other holy scriptures.

The Common Law System, a typical hybrid legal framework where customs, precedents, and legislation are all parts of the law, served as the foundation for the British Raj legal system, which the British established in the middle of the 19th century and is in part continued by the modern Indian judiciary. This paper makes an effort to describe the historical development of India's ancient legal system. Finally, it draws comparisons between a few features of the ancient Indian legal systems and the current legal framework.

INTRODUCTION

History describes the country's legal system's growth, progress, and development and outlines the historical process by which a legal system came to be what it is now. In terms of legal issues, India has been receptive to a very diverse spectrum of cultures and has encountered their unique legal sensibilities. The Hindu laws were inevitably the first set of rules to have an impact on India. Originally, the term "Hindu" was used to describe ethnicity rather than religion. This Hindu literature can roughly be split into *Shruti* and *Smriti*. The Puranas, Dharmasutras, and

¹ Student at IILM University, Gurugram

Dharmashastras were other additional sources of law.

Vedic India had a well-developed and clearly defined judicial system. A historically autonomous school of legal theory and practise existed in ancient India, which constituted a distinctive tradition of law. In Ancient India, there existed a hierarchy of courts that went from the family Courts to the King, according to Brihaspati Smiriti. The family arbitrator was the least effective. The judge's court was the next higher court, followed by the Chief Justice, also known as Praadivivaka or adhyaksha, and finally, the King's court, which is quite similar to the court system in modern-day India. As a result, in order to study, understand, and appreciate the current legal system to its full potential, one must gain a background understanding of how India's legal history has evolved over time.

RULE OF LAW

Origin of rule of law

A democracy like the one seen in India is built on the rule of law. Lord Edward Coke is responsible for the development of the rule of law. He created the term, which was borrowed from the French expression "la principe de legalite," or "the principle of legality." He felt that God should have the ultimate say in matters of kingship, making him the supreme lawmaker. He viewed the rule of law as the absence of the government exercising arbitrary power. Later, A.V. Dicey advanced the theory of the rule of law, which is a universally acknowledged definition of law. According to his theory, "No man is punishable except for a specific infringement of law established in the ordinary legal manner before the ordinary court."

Sources of law in ancient India

- **Dharma:** The word "dharma" originates from the root "dhri," which means to hold. Dharma is said to uphold, support, preserve, conserve, sustain, observe, and promote human good, human happiness, and human dignity as well as build relationships between law and morality and law and nature. Dharma is therefore viewed as being of a universal nature since it strives for the human good, human happiness, human dignity, and the development of mankind. In every area of human endeavor, dharma is viewed as moral conduct. Dharma is sacred because it connects people, as opposed to religion, which separates people. It served as the nation's foundation and supreme law as a consequence.

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- **Shruti:** Its literal meaning is "something which has been heard." The word comes from the root "shru," which means "to hear." It is considered to be the fundamental and most important source of Hindu law and is thought to be the language of the divine revelation given through the sages. This source is said to be the most crucial and important one of all. The Vedas and Upanishads both revere shruti as a sacred, pure utterance. They share a religious bond with a person and assist him in some way in learning about salvation and incarnation. Veda is a word used to describe shruti. It derives from the verb "vid," which means "to know." Based on the belief that they are the repository of all knowledge. There are four Vedas namely, Rig Veda, Yajurva Veda, Sama Veda and Atharva Veda.
- **Dharmasutras:** These were written between 800 and 200 BC. They comprised local rituals and customs as well as Vedic preaching on various tasks that a person must carry out in various relationships. Sutras have a short and straightforward meaning that is easy to memorise. The Srauta Sutra (ritual related), the Grihya Sutra (domestic-related), and the Dharma Sutra (discipline related) are the three types of sutras (law-related). The four major Dharma Sutra philosophers were the Gautama (on legal and religious issues), the Baudhayan (on marriage and inheritance issues), the Apastamba, and the Vashistha (remarriage of virgin widows).²

EVOLUTIONARY CONCEPT OF LAW IN ANCIENT INDIA

Initially, different religious groups in India were ruled by their individual religious rules, particularly when it came to religious concerns (subject to the freedom given by the then rulers). However, other aspects of the law were the same for everyone, regardless of their gender, religion, caste, status, or age. These were connected to the legal issues, both civil and criminal. India's secular laws differed greatly from one region and one monarch to another. Many of the ancient Indian dynasties' defining characteristics included court systems for both civil and criminal cases. Both the Mauryas (321–185 BCE) and the Mughals (16th–19th centuries) had excellent secular court systems, with the latter giving rise to the modern common

² Rai, D. (2021, August 19). *Indian history and rule of law : a legal principle that was born long ago*. iPleaders. Retrieved October 16, 2022, from <https://blog.iplayers.in/indian-history-rule-law-legal-principle-born-long-ago/>. Sources of Hindu Law. (n.d.). Legal Services India. Retrieved October 16, 2022, from <http://www.legalservicesindia.com/article/329/Sources-of-Hindu-Law.html>. Choudhary, D. T. (n.d.). *HINDU LAW- I*. <https://old.amu.ac.in/emp/studym/100016429.pdf>. Raj, A. (n.d.). *Sources Of Hindu Law*. Legal Service India. Retrieved October 16, 2022, from <https://www.legalserviceindia.com/legal/article-8549-sources-of-hindu-law.html>.

law system.

Hindustan was divided into various sections during the Vedic era, and each section was administered by a King. Surprisingly, despite the separation, these kingdoms' legal systems largely followed the same course. There were few differences between the rules of the dispersed kingdoms because law came from the Vedas, Upanishads, religious scriptures, and other conventions that were followed, and because their religious ideals were untarnished by any outside influence at that time. The Classical Hindu law period covered the time from the Vedic Era until 1772. However, by 400 BC, society had come to understand the value of the statecraft and economic principles that Kautilya had expertly developed in the Arthashastra. Manusmriti listed the laws, and Yajnavalkya focused on the socially acceptable behaviour and the consequences of violating them.

Brihaspati and Narada also considered situations in which rules from the same Smriti (like the Dharmashastra) or from two different Smritis were incoherent; it was established that in such a situation, the decision that is in accordance with justice and equity must be made, or one based on the current customs must be made, even if it deviates from the written law. Since courts and laws were continuously changing, it stands to reason that established conventions would likewise be legally disestablished. It was the King's responsibility to regularly update the laws in the realm and make sure that customs still applied.³

INTERPRETATION OF LEGAL DOCUMENTS

Along with the enormous advancements in mathematics, astronomy, medicine, grammar, philosophy, literature, etc., ancient India also saw enormous advancements in law. This is demonstrated by the numerous legal treatises that were authored in ancient India (all in Sanskrit). Only a very small portion of the entire body of legal literature has withstood the test of time, yet even that portion is quite substantial.

For the mere fact that there was no parliament or legislative in ancient India, all law was initially considered to be customary law. The issue with custom was that it frequently lacked specificity and was imprecise and uncertain. Textbooks were therefore necessary to cover this material, and in ancient India, much as in ancient Rome, the Smritis and commentaries met this

kumar, A. (2020, July 19). *Evolution of law in India*. Lawcian. Retrieved October 16, 2022, from <https://www.lawcian.com/post/evolution-of-law-in-india>
(2020, December 28). Evolution of Law - A mark we missed! | Blogs | KnowLaw. Retrieved October 16, 2022, from <https://knowlaw.in/index.php/2020/12/28/evolution-of-law-a-mark-we-missed/>.

need. There is no doubt that custom prevailed over these recorded documents, but the individual claiming it existed had to provide convincing evidence, which was difficult.

It is stated that the Vedas are the source of all Hindu law (also called Shruti). The Smritis, which include Manusmriti, Yajnavalkya Smiriti, and the Smritis of Vishnu, Narad, Parashar, Apastamba, Vashisht, and Gautam, among others, are the real sources of Hindu law. These Smirits were not created by the government or any other legislative body. They were texts produced in antiquity by particular Sanskrit scholars who had focused on the study of law. Later, commentaries (known as Nibandhas or Tikas) were published on various Smritis, such as those by Jimutvahan and Vijnaneshwar. Jimutvahan wrote a work titled the Dayabhaga, which is a summary rather than a commentary on any single Smriti.⁴

JUDICIAL ADMINISTRATION IN ANCIENT INDIA

Although the ancient people had conventions and rules, they lacked lawyers and judges. Later, people began carving artwork into walls and writing laws on earthenware and palm leaves. In the Vedic period, the king served as the source of all powers. But "Sabha" and "Samiti," the two councils, gradually lost their significance. There are references to a well-managed police system in a few verses of the Rig Vedic Jivagribh and the Upanishad Ugras.

The Brahmanic or the Epic Ages, in contrast to the Vedic Age, had the Justice formally administered. In India, there were numerous cities, each with its own judges, executive officials, and police. The caste system contributed to the legal inequality that was so pervasive. In the ancient times, there were numerous other types of judicial bodies, with the king's court serving as the highest court.

The concept of imperialism emerged in the later Vedic era. During the Maurya era, there were two different kinds of courts: the "Dharmasthiya" or the court of civil law and the "Kantakasodhana" or the court of criminal law. The ruler of the court in the capital city of Pataliputra was the Mauryan King. In addition to this court, there was the Chief Justice's Court, which was supported by four or five other judges in delivering justice. Village assemblies served as courts of law at the local level.

The Gupta penal law was comparatively more lenient than that of the Mauryas. The record-keeper was known as the "Mahakshapatalika." They were required to be knowledgeable about

⁴ *ANCIENT INDIAN JURISPRUDENCE* In ancient India not only was there tremendous development of mathematics, astronomy, medicine, gra. (n.d.). Banaras Hindu University. Retrieved October 16, 2022, from https://www.bhu.ac.in/mmak/resent_article/JusticeKatjusLec.pdf.

the "Dharma" texts and to uphold the law and order in the communities. Any case's verdict was determined by reference to the legal precedents of the day, the prevalent social values and norms, and, ultimately, the King's decision. However, there is no evidence of cases involving family affairs that the king's court handled. The justice system's court was known as "Dharmasthana." Following the process, the "Vyavahara" or judicial proof reached its conclusion. Some cases were summarily decided without going through the entire legal process.⁵

HIERARCHY OF COURTS IN ANCIENT INDIA

In India a section of law dates back to the first century CE, and by the sixth century, it had evolved into the "Vyavahara" system of legal procedure. We discovered the evidence in the Ashoka Empire's inscription, where he commanded all of his judicial officials to exercise impartiality and adhere to the Dharmashastras. Manu Smriti claims that the ancient Hindu law included 18 titles that are analogous to the laws currently in effect. Non-payment of debt, deposits, partnerships, the continuation of gifts, unpaid salaries, obligations of a husband and wife, adultery, conflicts between the master and the servant, contract violations, gambling, theft, etc. are a few of them.

The source of justice was the King. The highest court, with original and appellate jurisdictions, was his court. There was also the Court of Chief Justice, whose court was made up of a board of judges, to support him.

In villages, there were Village Councils, which were comparable to Panchayats in modern times. They were made up of five villagers who were there to administer justice. These councils once handled minor civil and criminal issues. An important rule governing the administration of justice in the past was that no case could be decided by a single judge. This long-standing legal principle serves as the foundation for the Supreme Court's current bench design.

In addition to this, there were six separate types of courts with distinct jurisdictions in ancient India. The Kula (Family Council), Shreni (Council of Trade or Profession), Gana (Assembly of a Village), Adhikrita (Court Appointed by the King), Sasita (King Court), and Nripa (King Court) were among them (The King). Kaula worked with the elderly family members to resolve the conflicts. Shreni contributed to the resolution of the trade dispute. We continue to follow the

⁵ Part A: *Judicial System in Ancient India*. (n.d.). Allahabad High Court. from https://www.allahabadhighcourt.in/event/TheIndianJudicialSystem_SSDhavan.html.

gana trend in the twenty-first century. It is comparable to a gram panchayat which settles local disputes. The sovereign granted approval for the Adhikrita.⁶

THE JURISDICTION OF COURTS IN ANCIENT INDIA

Kula, Shreni, and Gana had the authority to decide all civil and criminal cases, with the exception of violent criminal cases (Sahasa). The King established a court called Adhikrita to try cases involving violence. When it came to physical punishment, the Sasita (King's Court) would make the final decision, although the King had the absolute authority. The Shreni could review a Kula decision, and the Gana could review a Shreni decision. Similar to how the Gana courts followed a hierarchy of courts, the Adhikrita courts could also review a judgement.

According to the Law Commission's Fourteenth Report, "though ancient writers have outlined a hierarchical system of courts as having existed in the distant past, the accurate framework that achieved cannot be conclusively proven with any concreteness; but afterward writings of writers like Narada, Brihaspati, and others appear to suggest that usual courts must have existed on a substantial level." Throughout the ancient Indian period, the hierarchy of courts was said to exist, with certain aspects of authoritarian hierarchy of appellate power over the courts beneath.⁷

QUALITY OF THE JUDICIARY IN ANCIENT INDIA

High moral and ethical standards were expected of the judges. They had to be stern and subdued, unbiased in temperament, unwavering, God-fearing, diligent in their tasks, without wrath, living a righteous life, and coming from a good family. Sadly, the patriarchy and vice of the Varna system that prevailed at the period precluded women and members of the lowest varna, the Shudras, from being selected as judges. Even if their view went against the King's speculation, they had a duty to express it "without fear or favour."

The Dharmashastras commanded the rulers to treat the populace with love and reverence and to see them as God (Prajā Vishnu). Nobody, not even the King, was above the law in ancient India; the rule of law was strictly upheld to the point where, if the King disregarded his obligation to uphold justice, he would lose his throne. The son of Vivasvan's oath had to be

⁶ *The Official Halie - Represent J.A ft. Chris Money.* (2016, February 19). YouTube from <https://blog.ipleaders.in/development-jurisprudence-ancient-india/?amp=1>.

⁷ *Part A: Judicial System in Ancient India.* (n.d.). Allahabad High Court from https://www.allahabadhighcourt.in/event/TheIndianJudicialSystem_SSDhavan.html.

taken by the Kings. (The oath of Vivasvan is the oath of impartiality; Yama, the God of Death, who is impartial toward all living things, is the son of Vivasvan.)

Ancient Indian law was unique in that it was secular in nature and based on the Dharma Principle (Natural Justice). The Indian population at the time was accustomed to the idea of following the law and had access to legal channels for resolving both civil and criminal disputes. In ancient India, the Smritis emphasized the need for a capable judicial system to carry out Dharma-based justice and that the King's primary responsibility was the administration of justice. The King was in responsibility of upholding the law, protecting the populace, and punishing lawbreakers. When it comes to intelligence, learning, honesty, objectivity, and judicial independence, ancient India set standards that have not been surpassed since. The Indian legal system was based on a hierarchy of judges, with the Court of the Chief Justice at the top and each higher court having the authority to review the rulings of the lower courts.⁸

GROUNDS OF LITIGATION IN ANCIENT INDIA

Manu lists the following reasons why legal action could be taken: (1) failure to pay debts; (2) failure to return deposits; (3) failure to complete a sale of property; (4) failure to form a partnership; (5) failure to give presents; and (6) failure to pay wages. (7) Breach of Contract; (8) cancellation of a sale or purchase; (9) disagreements between owners and herdsman; (10) the law on boundary disputes; (11) verbal and physical assault; (12) theft; (13) violence; (14) sexual crimes against women; (15) the law governing husbands and wives; (16) division of inheritance; and (18) gambling and betting.⁹

MODE OF PROOF: LAW OF EVIDENCE IN ANCIENT INDIA

India's evidence laws have their origins in the Vedic era. Dharma Shastra acknowledged it in order to determine the reality. In order to determine the veracity of facts relevant to court procedures, it was also a crucial and essential component of Muslim law. In the contemporary era, the Indian Evidence Act, 1872—the modern English evidence law—replaced it all. But it took several centuries and was a drawn-out process.

The Indian judicial system was not required to provide victims with justice during the ancient

⁸ *TheOfficialHalie - Represent J.A ft. Chris Money.* (2016, February 19). YouTube from <https://blog.ipleaders.in/development-jurisprudence-ancient-india/?amp=1> (2020, December 28). Evolution of Law - A mark we missed! | Blogs | KnowLaw from <https://knowlaw.in/index.php/2020/12/28/evolution-of-law-a-mark-we-missed/>.

⁹ *Part A: Judicial System in Ancient India.* (n.d.). Allahabad High Court from https://www.allahabadhighcourt.in/event/TheIndianJudicialSystem_SSDhavan.html.

period by any particular institution. Dharma was of paramount importance, and upholding and validating it was the main goal. After filing the plaint, the opposing party was asked to answer to the accusations made against them. Rules relating to confession, processes, rules, and admission were established.

In the preliminary phase, court trials were conducted with the aid of witnesses and evidence given by both sides of the case. The party making the appeal was in charge of providing the witnesses. Thus, it was the king's duty to promptly analyse and investigate the witnesses who had been called, as well as to look into and investigate the witnesses who had been called and take into account any revelations and disclosures that they had made in court. Before presenting the evidence, the witnesses would take an oath. Only on the grounds of the court and nowhere else was it permitted for the witnesses to give their testimony. The witnesses were only allowed to provide their evidence in good faith while the appealing or answering parties were present.¹⁰

PUNISHMENT IN ANCIENT INDIA

When enforcing punishments throughout the ancient Indian period, a distinct differentiation was made between members of upper and lower castes. Higher caste offenders were given less harsh punishment by Kautilya's Arthashastra, whereas lower caste offenders were given more severe penalty. Even though he may have committed an offence, a brahmin, in his opinion, should not be tortured like other people in addition to not being subject to the death penalty. The powers of the judge were severely constrained and controlled at the time. A judge or magistrate who levies an unfair fine is to be fined either twice as much or eight times the sum set down in the law, according to Kautilya. He will experience the same consequences for his improper use of corporal punishment.

However, according to the history of the penal system, earlier penalties were excruciating, inhumane, and barbaric in nature. Deterrence and retribution were the goals of these penalties. Such sanctions were grouped under the following categories:

- **Capital Punishment:** This refers to a government procedure whereby a person is executed by the state as retribution for a crime. Capital punishment was a widely used method of punishment in ancient India. It was the harshest type of punishment, and different approaches were sometimes used to administer it.

¹⁰ Sharma, Priyanka. "Historical Perspective Of Evidence Law In India." *International Journal of Advanced Legal Research*, 21 October 2020, <https://www.ijalr.in/2020/10/historical-perspective-of-evidence-law.html>.

- **Social Punishment:** A punishment in which a person is sent to a remote location, severing all of his social ties, or is forbidden from contacting anybody else in any way. No one is allowed to offer assistance of any kind, and anyone caught doing so will be punished. Social punishment was intended to cause psychological agony rather than any physical harm.
- **Corporal Punishment:** Corporal punishment is any type of punishment that involves inflicting bodily harm on a victim. It is sometimes referred to as physical discipline. This type of punishment is used when a law is broken that requires the victim to endure pain or bodily harm.
- **Financial Punishment:** It also referred to as the imposition of a fine. It was a typical punishment that wasn't particularly severe and was given especially for breaking traffic laws, revenue laws, and other minor offences. It also involved covering the costs of the prosecution as well as providing compensation to the victims of the crime.¹¹

CONCLUSION

The British maintained that the lack of a civilised system of self-government among Indians justified their colonial authority and that India benefited from their presence by developing a sense of justice and the rule of law. These opinions are still deeply held by many Indians today. However, the ancient wisdom of the Indians provided a face that modern legislators and the general public could consider.

This essay explored the long history of law in India as a matter of religious tenets and intellectual debate. It is a rich field that has been supplemented by practitioners from various Hindu philosophical schools and later by Jains and Buddhists. It sprang from the Vedas, the Upanishads, and other holy scriptures. Justice and righteousness have been the enduring values of Indian culture since the Vedic era. In the Indian context, justice is viewed as a human manifestation of a larger universal principle of nature, and if man were completely true to nature, his deeds would be just out of the blue. Additionally, the Varna system was used as the foundation for the administration of legal justice and the imposition of punishment. Manusmriti believed that considering Varna when administering judicial justice was entirely natural.

Islam originally appeared in India in the seventh century AD, when Arab settlers arrived on the shores of the Malabar Coast. The Delhi Sultanate was established in the 12th century AD, and

¹¹ <https://theindianlaw.in/punishment-in-ancient-hindu-and-mohammedan-law/>.

