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# THE INDIAN JUDICIAL SYSTEM: HISTORICAL ASPECT

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## INTRODUCTION

The Indian legal system is the oldest in the world. The common law is the only legal system with a history as long and illustrious as its own. However, I feel the need to issue a warning before I go into detail about the ancient Indian legal system. The reader is obligated to reject the grave misrepresentation of Indian jurisprudence and the ancient Indian legal system made by some British authors. I'll demonstrate a few different examples for you. In his writings, Henry Mayne referred to the previous Indian judicial system as "an apparatus of horrible absurdities." Regarding what he referred to as "the oriental habits of life" of the Indians prior to the arrival of the British in India, an Anglo-Indian jurist once made the following observation: British rule in India is a record of foreign rulers trying to rule different races in a strange land, adapt European institutions to the way people lived in the East, and establish certain laws over people who had always thought of government as arbitrary and uncontrolled.

## INDIAN JUDICIAL SYSTEM IN ANCIENT INDIA

(The words in italics are mine) Alan Gledhill, a retired member of the Indian Civil Service, wrote that "there was a shortage of legal concepts" when the British took control of India. These assertions are completely false. I have no authority to speculate regarding their origins. During the height of imperialism, British jurists, historians, and thinkers held an imperialist perspective that included simple ignorance, imperialist self-interest, or contempt for Indian culture and civilization. However, a distorted perception of the judicial system in India and elsewhere, both

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inside and outside of India, was produced as a result of this deception, which has few historical parallels. We must examine the original documents in order to acquire an accurate and comprehensive understanding of the legal system that existed in ancient India. They will teach the reader that the rule of law was the foundation of Indian law; that the law applied to the King himself; that Indian political theory and law did not recognize arbitrary power, and that the kind's right to govern was contingent on fulfilling duties, which were punishable by losing the kingship; that the judges were autonomous and only accountable to the law; that India's ancient standard was the highest of any ancient nation; likewise, that ancient India possessed the highest.[2]

**Rule of law in ancient India**

Did ancient India have a government and law system? Allow the text to speak for itself.

"A King should be put to death if he does not defend his people, rather robs them of their wealth and property, and listens to no one for advice or direction," the Mahabharata states. "A King who after having promised that he should safeguard his subjects from harm and fails to do so should be executed like a mad dog." That kind of king is not a king at all; rather, he is the cause of a lot of bad luck." These rules said that an unwritten social contract was the foundation of sovereignty, and if the King broke the old agreement, he couldn't be king anymore. In the Arthshastra, Kautilya describes the responsibilities of a king during the Mauryan Empire's history as follows: The King is content when his subjects are content; in regard to his welfare; He will not consider anything that pleases him to be good; however, he will consider anything that pleases his people to be good."

By the time the Ramayana was written, a very old tradition that had already been developed served as the foundation for Kautilya's Principle. The epics of ancient times can be traced to this custom. Rama, the King of Ayodhya, was forced to exile his queen, whom he loved and had complete faith in her chastity, because his subjects disapproved of him taking back a wife who

[2] Fossati, T. E., & Meeker, J. W. (1997). Evaluations of Institutional Legitimacy and Court System Fairness: A Study of Gender Difference. Journal of Criminal Justice, 25, 141- 154.

had lived with her kidnapper for a year. Rama was forced to flee his queen, whom he loved and had complete faith in her chastity. The king gave in to the people's decision, despite the fact that it broke his heart. According to the Mahabharata, a common fisherman refused to wed the King of Hastinapur with his daughter until the King agreed that his daughter's sons, not an heir apparent from a previous queen, would inherit the throne. The daughter of the previous queen was the heir apparent. The Mahabharata's Prince Deva Vrata's decision to give up his throne and swear to be a virgin for the rest of his life—also known as the Bhishma Pratgyan—is one of the epic's most moving scenes. However, its significance for jurists lies in the fact that it demonstrated that the law could apply to anyone, even the sovereign. The greatest King of Hastinapur was unable to persuade his most humble subjects to marry him without accepting his conditions. The evidence presented here disproves the idea that the rulers of ancient India were "Oriental despots" who could do whatever they wanted without regard to the law or the rights of their citizens.[3]

**Judiciary in ancient India**

According to the Artha-shastra of Kautilya, who is generally regarded as the Prime Minister of the first Maurya Emperor (322-298 B.C.), the realm was divided into administrative units called Sthaniya, Dronamukha, Khrvatika, and Sangrahana. These ancient equivalents of modern districts, tehsils, and Parganas are called Sthaniya, Dronamukha, and Sangrahana. The Artha-shastra is said to have been written by Kautilya. Sthaniya was a fortress built in the middle of 800 villages, dronamukha was built in the middle of 400 villages, kharvatika was built in the middle of 200 villages, and sangrahana was built in the middle of ten villages. Law courts were set up in each sangrahana and at the districts' meeting places (Janapadasandhishu). Three ministers and three dhramastha, or legal experts (amatya), made up the Court. This indicates the existence of circuit courts because it is highly unlikely that three ministers would have been permanently assigned to each region of the realm. The great jurists Manu, Yajnvalkya,

[3]GBA Strategies. (2018, December 3). 2018 State of State Courts - Survey Analysis. Retrieved from National Center for State Courts: https://www.ncsc.org/~/media/Files/PDF/Topics/Public%20Trust%20and%20Confidence/SoSC_2018_Survey_Analysis.ashx

Katyayana, and Brihaspati, as well as commentators from later times like Vachaspati Misra and others, described the Indian judicial system and legal procedure in detail from ancient times until the end of the Middle Ages. In India, this was the case.

**Hierarchy of courts in ancient India**

Brihaspati Smiriti asserts that in ancient India, there was a system of courts that began with the family Courts and ended with the King. The Supreme Court was at the top of the hierarchy. The position of the family arbitrator was the lowest. The next higher court was the judge's court; The next higher court was the Chief Justice's court, which was called Praadivivaka, or adhyaksha; The King's court was the highest court, and the disagreement's significance was used to determine which of the three courts had jurisdiction over it; The king made decisions on more important matters, while the lower court was in charge of settling matters of lesser importance. In the hierarchy, the decisions of the higher courts took precedence over those of the lower courts. Vachaspati Misra's teachings state that "each subsequent judgement shall prevail against the preceding one because of the higher degree of study and knowledge" and that "the binding force of the decisions of these tribunals, ending with that of the monarch, is in the ascending sequence."[4]

It is interesting to note that the contemporary Indian judicial system also has a hierarchy of courts that are organized in a similar way. The Munsif, the Civil Judge, the District Judge, the High Court, and finally the Supreme Court, which is the equivalent of the King's Court, are among these courts. We are unconsciously adhering to a long-standing custom that dates back hundreds of years. Having judges who are experts in family law is crucial. The fundamental social institution was the extended family, which could span up to four generations. Because of this, the number of people living in a joint family may be quite high at any given time, making it essential to use a combination of firmness, empathy, and tact to resolve disagreements. Additionally, it was ideal for disagreements to have their initial cases decided by a family

[4] Gibson, J. L. (1989). Understandings of Justice: Institutional Legitimacy, Procedural Justice, and Tolerance. Law and Society Review, 469-496.

member. Modern Japan's family courts operate in a manner that is not entirely dissimilar. Family courts are regarded as significant for the reason that the judicial system is rooted in the social system, which explains its success. The source of all justice was the sovereign. According to the Indian legal system, the capacity to administer justice and impose punishment is one of the most important characteristics of sovereignty. As the king was regarded as the ultimate source of justice, it was initially anticipated that he would personally administer justice, but only in accordance with the law and under the direction of knowledgeable judges. The king was obligated to uphold a stringent code of judicial ethics. His attire and demeanor had to be such that they did not frighten the parties involved, and it was expected of him to make decisions both during open trials and in the courtroom.

He was expected to resolve cases impartially and without bias or attachment, and he was required to take the impartiality oath. Katyayana states, “The King ought to appear humble as he enters the courtroom, sit down with his back to the east, and pay close attention to the claims made by his plaintiffs. He should consult with his Chief Justice (Praadvivaka), other judges, ministers, and the Brahmana council members before making decisions. A monarch who conducts justice in this manner and in accordance with the law belongs in heaven. Each of these provisions is significant on its own. The king was expected to wear clothing that was considered to be vineeta-vesha in order to avoid intimidating the parties. The monarch was required to be completely free of any "attachment or bias" when he served as a judge, and the code of conduct that was established for him was quite stringent. "If a king disposes of law disputes (vyavaharan) in accordance with the law and is self-restrained (in court), then in him the seven qualities meet like seven flames in the fire," is one of Narada's teachings. When the son of Vivasvan takes the oath, Narada tells the monarch to act impartially toward all beings whenever he sits on the judgment seat (dharmasanam). Vivasvan swears to be impartial in his oath; Vivasvan is the father of Yama, the god of death; He treats all living things equally.[5]

[5] Gibson, J. L., Caldeira, G. A., & Baird, V. A. (1998). On the Legitimacy of National High Courts. The American Political Science Review, 343-358.

**Quality of the judiciary: integrity**

The most important duty of a judge was integrity, which required complete impartiality and the absence of any attachments or biases. The concept of integrity was given a very broad definition, but the judiciary followed a very strict code of integrity. "A judge should decide cases without considering personal gain or any kind of personal bias," says Brihaspati. "Brishaspati asserts that his decision ought to be made in accordance with the procedure outlined in the texts." Cases should be decided by a judge in accordance with the written rules. A judge must carry out their judicial duties in this manner in order to attain the same level of spiritual merit as a Yajna participant.[6]

By taking every possible step, the judges' independence was guarded with the utmost care. Trials were required to take place in public, and judges were prohibited from having private conversations with litigants while the case was still ongoing (pakshapat), as it was understood that a private hearing could lead to a judge showing favoritism. Shukra-nitisara says that judges become biased and take sides in legal disputes because of five factors. Attachment, lust, hostility, fear, and the capacity to observe private parties are all present. As a further measure to maintain the integrity of the legal system, suits could not be considered by any judge, not even the monarch himself. Our ancestors were aware that there is a lower chance of error or corruption when two people deliberate together. Consequently, they mandated that judges sit in benches with an uneven number of people and that the King must sit with his advisors when making decisions about cases. "Persons charged with judicial tasks should be knowledgeable in the Vedas, skilled in worldly experience, and should operate in groups of three, five, or seven," Shukra-nitisara order states. In addition, Kautilya gave the order (dharmasthstrayah) to have three different judges look over each case. This extremely useful precaution is not adhered to by the country's current legal system, which was developed by the British. Every case is now heard by a single Munsif, civil Judge, or District Judge due to the need to save resources. However, in

[6] Gilligan, C. (1982). In A Different Voice: Psychological Theory and Women's Development. Harvard University Press, 24-39.

ancient India, the state was less concerned with the economy than it was with the quality of the legal system.[7]

**Jurors**

The most notable aspect of the legal system was the sabhasada, or councilor, institution that served as the King's advisors or assessors. They performed their duties in a manner that was comparable to that of a modern jury, with one important difference. In modern times, the jury that decides cases is made up of "twelve shopkeepers," or members of the general public. In the past, councilors who sat with the sovereign were expected to be experts in the law. This is Yajanvalkya's instruction: "The Sovereign ought to appoint assessors of his court who are truthful, well-versed in the law's literature, and by nature capable of complete impartiality between friends and foe." "The Sovereign ought to appoint individuals who are knowledgeable about legal literature to serve as assessors in his court." These assessors or jurors were required to freely express their opinions, even if it meant expressing disagreement with the Sovereign and telling him that his own opinion was contrary to law and equity. To put it another way, they were forced to voice their opinions. "The assessors should not look on when they see the Sovereign disposed to decide a dispute in violation of the law," according to Katyayana. They will accompany the King to hell if they remain silent.

There is a verse in Shukra-nitisara that is identical to itself but repeats the same instruction more than three times. It was not anticipated that the jury's verdict would be overturned by the Sovereign or the presiding judge in his absence. In contrast, the Sovereign was supposed to issue a decree (Jaya-patra) that was in line with what the jurors had said. After noting that the judges have made their decision, Shukra-nitisara says that the King will issue a decree (Jayapatra) to the side that won. Its status is comparable to that of the Privy Council's Judicial Committee, which is tasked with "humbly advising" their sovereign but ultimately has legal weight due to the advice it provides. It could also be compared to the people's assessors who worked alongside the professional judge in the Soviet People's Court. The assessors of these people had the same

[7] Halim, S., & Stiles, B. L. (2001). Differential Support for Police Use of Force, the Death Penalty, and Percieved Harshness of the Courts. Criminal Justice and Behaviour, 3-23.

authority as the professional judge and could overturn him. However, there was a unique circumstance. The Sovereign had the authority to make their own decision in the event that the jurors were unable to reach a conclusion in a particularly difficult case. "In such a circumstance the Sovereign may decide in the exercise of his Sovereign privilege" states Shukra-nitisara, "If they (the assessors) are unable to determine a disagreement because it involves complex or uncertain problems (sandigdha-roopinah)."[8]

**Interpretation of the text of the law**

Work was done on the fundamentals of interpretation until they were almost done in an ideal way. Samyak, yath-shastram, shastro ditena vidhina enjoined judges to make decisions in accordance with the law in both civil and criminal cases. This necessitated the interpretation of the law's written text, which presented a number of challenges, such as clarifying ambiguous words and phrases, resolving provisions that conflict with one another within the same law, resolving conflicts between the law's letter and the principles of equity, justice, and good conscience, adjusting custom and smritis, and other similar issues. There are a number of guiding principles that have been formulated for the use of the judicial system, and this field of law is thought to be well developed. This was the most significant disagreement that existed between the artha-shastra and the dharma-shastra.[9]

The court recognized three distinct substantive law bodies: the arth-shastra, the dharma-shastra, and a custom that was known at the time as sadachara or charitra. The first was made up of a variety of laws that all relied on the smritis as their sole source of authority, and the second was made up of a number of government principles. The lines that separated the two frequently merged. The real difference between the smritis and the arth-shastra, on the other hand, is that the arth-shastra is always secular, whereas the dharma-shastra is not always secular. In point of fact, the artha-shastra's approach to government issues is so remarkably secular that some

[8] Hangstler, G. A. (1993). Vox Populi - The Public Perception of Lawyers. American Bar Association Journal, 60-65

[9] Henderson, M. L., Cullen, F. T., Cao, L., Browing, S. L., & Kopache, R. (1997). Impact of Race on Perceptions of Criminal Justice. Journal of Criminal Justice, 446-462.

authors have proposed the theory that the artha-shastra (literally: The dharma-shastra was not the source of the science of "artha," or the pursuit of material welfare; rather, it had its own independent beginning and developed in tandem with it. This is because the artha-shastra approaches government issues in a secular manner.[10]

The arthashastra and the dharma-shastra disagree on a number of issues pertaining to various subjects, regardless of where each text originated. How did the courts decide how to resolve this disagreement when it came up in some legal proceedings? The first rule, avirodha, stated

that the court must attempt to resolve any apparent disagreements between the parties. (In contemporary times, this concept is known as the idea of harmonic construction.) In contrast, in the event that the issue could not be resolved, the authority of the dharma-shastra was to be chosen. "When smriti and artha-shastra are in conflict, the provision in the artha-shastra is superseded (by smriti)," according to the Bhavishya Purana. However, in the event of conflict between two smritis or provisions in the same smriti, the more equitable of the two shall prevail." The Narada smriti provides a rule of interpretation that interprets according to reason in the event that two distinct texts of the smritis disagree.[11]

On the other hand, the court had to keep in mind that upholding justice was more important to it than strictly adhering to the legal requirements when interpreting the written text of the law. The following instruction was given to the court by Brihaspati: If the conclusion is completely illogical, the outcome is injustice (dharma-hani), and the court should not make its decision solely based on the text of the shastra. Brihastpati goes on to say that the court should decide based on the country's customs and usages, even if those customs and usages are against the letter of the law. He also gives several remarkable examples that coincidentally shed a lot of light on the social conditions of today.

Brahmanas eat cow's flesh and work as hired laborers and craftsmen in Madhya desha, Central India. Fish is eaten by Eastern brahmanas, and their women are dependent on alcohol and can be

[10] Hurwitz, J., & Smithey, S. (1998). Gender Differences on Crime and Punishment. Political Research Quartely, 89-115.

[11] Increasing Access to Justice for Marginalised People: GOI-UNDP Project. (n.d.). Retrieved from Department of Justice: https://doj.gov.in/sites/default/files/Increasing-A2J_0.pdf

touched by men even during their monthly classes. He makes the point that in the south, brahmanas will marry the daughter of their maternal uncle. In the central Indian state of Madhya desha, brahmanas work as hired laborers and artisans. These communities should not be subject to atonement or judicial punishment in the nations in which they are located because of the actions in question.[12]

**Changing customs**

The state was obligated to keep an authenticated record of the various types of customs that are practiced in the various regions of the country because of the significant role that custom (also known as achara, sadachara, and charitra) plays in society. "Whatever custom is demonstrated to be observed in any given location, it should be officially recorded as established" (dharya) in a record stamped with the Sovereign's seal is the instruction in Katyayana. On the other hand, even a long-standing custom can be officially "disestablished" if it has become unfair over time. In point of fact, the Sovereign was in charge of regularly removing the stale or decaying branches of tradition. The following directive was issued by Katyanana: A formal ruling by the Soverign should be made when the Soverign is certain that a particular custom is harmful to equity (nyayatah) in the same way it was established.

This one-of-a-kind provision demonstrates the advanced level of development of the ancient Indian legal and judicial systems. All lawful practices that were prevalent in the various regions of the realm that made up the realm had to be documented by the state. Whether or not there was evidence to support a custom would frequently determine a case's outcome. "The basis of a judicial decision (vyavahara) may be," Narada's teachings state. I Dharma-shastra, (ii) earlier custom (charitra) or judicial decisions (vyavahara). In this order, the authority of the next one takes over from the authority of the one before it, making these four the most authoritative. The artha-shastra contains a provision that is identical.[13]

[12]Krewson, C. N. (2019). Save this Honourable Court: Shaping Public Perceptions of the Supreme Court Off the Bench. Political Research Quarterly, 72(3), 686-699. doi:10.1177/1065912918801563

[13] Kritzer, H. M., & Voelker, J. (1998). Familiarity breeds respect - How Wisconsin citizens view their courts. Judicature, 82, 59.

**Administrative code**

The ancient Indian state had a huge public sector that was heavily involved in the economy's industrial and commercial sectors. Our prehistoric ancestors would have found it absurd to propose that in today's capitalist society, there should not be any industries run by the state. Under the Mauryan Empire (navadhyaksha), there was a state trading department, a state textile industry, a state mining industry, and a state mercantile marine under the direction of a superintendent-general of shipping. Mining (Akaradyaksha), textile production (Sootradyaksha), and business activity. A document known as the artha-shastra—also known as an Administrative Code—collected and organized all of the state's regulations, which were governed by each industry's own set of rules.[14]

An extensive Administrative Code that lays out the rules for maritime and riparian navigation is the Arthashastra, a collection of ancient texts. It required the state to appoint a Superintendent-General of Navigation, whose duties are outlined as follows: The accounts pertaining to navigation will be examined by the Superintendent of Ships in the vicinity of Sthaniya and other fortified cities, in addition to the oceans and rivers' mouths. To ensure the ships' safety, strict regulations were in place, including: With a captain (shasaka), a pilot (niyamaka), and a crew to hold the sickle and the ropes and empty the boat of water, there will be a service of large boats (mahanavo). This is used to navigate large rivers (atarya) that cannot be forded even in the winter and summer. In addition, there are provisions in the Artha-Shastra that indicate that the state mercantile marine carried out its operations in the high seas. Additionally, "passengers arriving in port on the royal ships shall pay their passage money (yatra-vetanam)," as stated in the Artha-Shastra,

The Superintendent-General was given the responsibility of setting the fees that would be charged. It is important to note that the existence of this code demonstrates beyond a reasonable doubt that the Indian people were seafaring and had numerous commercial ties to other nations. Similar to this, the production of cotton yarn and textiles was a huge industry that dealt primarily

[14] Law Commission of India. (2009). Reforms in the Judiciary - Some Suggestions.

with exporting textiles to other countries. It had both public and private parts. The public sector's operations were overseen by a Superintendent General of Textiles (Sootradhyaksha). He was in charge of a significant group that reported to him. The Sootradhyaksha and the other officials who reported to him were expected to perform specific duties, which were outlined in the artha-shastra. It requires: The hiring of competent individuals to produce ropes, treads (sutra), coats (varma), and clothing (vastra) is the responsibility of the Superintendent-General of Weaving. One of his responsibilities was to locate employment opportunities for women in their own homes. After being distributed to each of them and spun into tread, cotton was either brought in by the ladies themselves or collected by the department. However, the artha-shastra does contain strict rules against having sexual relations with these women and withholding their income. It specified that: "A similar penalty will be imposed for any delay in the payment of salaries," states the Superintendent's official, "if the official of the Superintendent stares at the face of such a woman or tries to engage her in conversation about matters other than her work, he will be punished as if he were guilty of a first assault." In accordance with yet another regulation, it was made a crime to give a female worker any kind of favor that was not appropriate. It helped make it possible; He will face disciplinary action for his actions if he gives a woman money for doing nothing.

### 1.3JUDICIAL SYSTEM IN MEDIEVAL INDIA

There is a period in India's history that is shrouded in mystery and does not emerge until the time of the Muslim invasion because of the fall of the Harsha dynasty. After that, the nation was broken up into a number of smaller kingdoms. However, the legal system that had developed over the preceding thousands of years did not significantly change as a result of this.

Even though there were political divides, each kingdom upheld the standards and ideals of justice. Additionally, the fundamental legal and procedural concepts were consistently implemented across the nation, safeguarding civilization's unity. This can be inferred from the fact that some of the most influential statements regarding Indian law, such as Mitakshara and Shukarneeti Sar, were written during this time period and influenced all of India. However, the

beginning of a new era in the evolution of our legal system was marked by the establishment of Muslim authority in India. The new social order, religion, civilization, and way of life that the Muslim invaders brought to the lands they conquered were all new.[15]

The legal system would undoubtedly be significantly affected by this. Throughout the middle Ages, the Islamic concept of justice was widely regarded as one of the most advanced. The criteria were initially established by the Prophet. "Justice is the balance of God upon earth in which things that are weighed are not by a particle more or less," he said, according to the Quran. Additionally, He set the scales so that he would not disturb them; therefore, maintain an appropriate weight and do not lower the scales." Additionally, it is alleged that he asserted that the dedication of a person who fasts every day and prays every night for sixty years is superior to a second spent in the administration of justice. He has been said to have made this statement. As a result, the Muslim kings realized that it was their religious responsibility to carry out the law.

Under the rule of the first four Caliphs, this illustrious custom reached its zenith. The first Qadi was appointed by Caliph Umar, who proclaimed that the law was supreme and that the judge should never be subservient to the ruler. Additionally, Umar stated that the judge must never submit to the king. It is said that he once had a personal dispute with a Jewish subject and that they both appeared before the Qadi. When the Qadi saw the Caliph, he stood up from his seat out of respect.[16]

The Muslim kings of the time brought these lofty ideals to India. "Umar believed that this was such an unforgivable lack of character on his part that he removed him from office," Badaoni claims that the Qadi ignored a libel suit brought against Shaikhzada Jami by the Kind himself during Sultan Muhammad Tughlaq's reign; However, Jami did not suffer any repercussions as a result of the Qadi's actions. Despite this, the Sultan carried out the accused's execution without giving him a fair trial.) Each Sultan was renowned for his or her extremely high standards of

[15] Leo J. Shapiro & Associates. (2002, April). Legal Profession Statistics. Retrieved from American Bar Association: https://www.americanbar.org/content/dam/aba/migrated/marketresearch/PublicDocuments/public_perception_of_lawyers_2002.pdf

[16] Martinez, J. P. (2018, August 9). How lawyers and judges can help rebuild public trust and confidence in our justice system. Retrieved from American Bar Association Journal: http://www.abajournal.com/news/article/how_lawyers_and_judges_can_help_rebuild_ public_trust_and_confidence

justice. According to Barani's account, Balban thought that justice was the core of sovereignty because "therein" the sovereign found the strength to end injustice. Sadly, however, the Sultans' administration of justice was inconsistent. This was due to the fact that chaos and confusion were the Sultanate's defining characteristics throughout. Not a single Sultan felt safe for very long. One dynasty was replaced by another in a relatively short amount of time, and the bloody conflict that accompanied the transition was brutal. The sovereign's character had a significant impact on the quality of the justice delivered as a direct result of this.

"The medieval state in India as everywhere else throughout its history had all the disadvantages of an autocracy," wrote a contemporary author. Everything was personal, fleeting, and devoid of any underlying power." Given how prominent the personal aspect had become in the administration, even a minor deviation from the course of duty caused corresponding deviations throughout the entire "trunk." When the King was drunk, "his Magistrates were seen drunk in public," it is said. The administration of justice is impossible without security, and the Sultans of India never felt safe. The democratic political ideal that Islam advocates has a low profile in India as a direct consequence of this. Islamic principles of justice did not become ingrained in India as an established tradition during the Sultanate. This was in contrast to the judicial practices of ancient India, which had been in place for several thousand years and were resistant to political conflict.[17]

The country's effective government structure, which led to the establishment of a functioning justice system, was developed by the Moghal Empire. The Qazi office, which was adapted from the Caliphate, served as the judicial system's fundamental organizational structure. Each provincial capital had its own Qazi, and the Supreme Qazi of the empire (Qazi-ul-quzat) was in charge of the empire-wide administration of justice. In addition, there was a Qazi for each and every village and city that was large enough to be considered a Qasba. A Qazi was envisioned as "a Muslim scholar of blameless conduct who is well familiar with the requirements of the sacred law" in principle. "The main flaw of the Department of Law and Justice was that there was no system, no organization of the law courts in a regular gradation from the highest to the lowest,

[17] Murlidhar, S. (2004). Law, Poverty, and Legal Aid. New Delhi: Butterworths, Lexis Nexis.

nor any proper distribution of courts in proportion to the area to be served by them," states the most eminent historian of the Mughal Empire. This was thought to be the department's most significant issue.

With the exception of cases resolved by caste, elders, or village panchayats, the majority of which included Hindus, the majority of the country's legal disputes were, of course, brought before the Qazi or Sadar courts.[18]

Other authors disagree with this point of view. The Imperial Diwan gave these instructions to the Qazi when he was appointed, and entrusted him with carrying them out: Be fair. Be sincere. Be objective." All parties should be present for trials, and they should take place at the courthouse and the Presidential Palace (muhakuma). You should not take gifts from the people who live in the area where you are serving, nor should you take part in events hosted by anyone. Make sure your decrees, sale deeds, mortgage bonds, and other legal documents are written with care so that educated people won't be able to find mistakes and make you look bad. Be aware that your poverty (faqr) hides your splendor (fakhr). However, because there was neither adequate monitoring nor a well-established precedent, these noble goals were not met. Sircar claims that "with a few honorable exceptions, all of the Qazis of the Mughal period were known for collecting bribes." In this realm, the Emperor was the very definition of justice. He would convene his court of justice every Wednesday to decide a few cases he had personally chosen. However, he served as the highest appeals court rather than the original court.

There is a lot of evidence to suggest that every Emperor, from Akbar to Aurangzeb, took their judicial responsibilities seriously and carried them out. The history of the Golden Chain is wellknown due to Jahangir's spectacular performance. Jadunath Sircar claims that the fact that all three of Indo-Mohammedan Law's sources were outside of India was one of its flaws. He stated, "No Indian Emperor's or Qazi's decisions were ever considered authoritative enough to

[18] Olson, S. M., & Huth, D. A. (1998). Explaining Public Attitudes Toward Local Courts. The Justice System Journal, 41-61.

lay down a legal principle to elucidate any obscurity in the Quran, or to supplant the Quranic law by following the line of its obvious intention in respect to cases not explicitly provided for." In order to clarify any ambiguity in the Quran, no Indian Emperor's or Qazi's decisions were ever deemed authoritative enough to establish a legal principle. As a direct result of this, it became absolutely necessary for Qazis living in India to have access to an authoritative Arabic summary of Islamic law and precedent. After Aurangzeb's death, the Mughal Empire collapsed within two generations, resulting in its demise. For offenses committed in their own names, provincial governors and Faujdars exercised sovereign authority and imposed punishments. Even now, criminal proceedings are referred to as "Faujdari," a name that dates back to the time when Emperors' authority was usurped.[19]

The Mughal legal system was gradually replaced by the British legal system after the British invaded Bengal. When the British took control of Bengal, this process began. Nevertheless, it took a long time. In point of fact, the Sadre Diwani Adalat continued to function up until the time that the High Court took its place.

## 2.3THE JUDICIAL SYSTEM TODAY

Except for the Supreme Court, India does not have a federal judiciary system like the United States does. The enforcement of both federal and state law is the responsibility of each state's independent judicial system. Every district in the state has its own judicial officer hierarchy, similar to how it was during the Maurya Empire. Each district has a Munsif, a Civil Judge, a Civil and Sessions Judge, and the District Judge is in charge of the entire system.

### High courts

The highest level of the state's judicial system is the High Court. It is a court of record that is independent of any other court or body, but the United States Supreme Court can hear appeals of its decisions. It consists of a Chief Justice and any additional justices authorized by the Indian

[19]Pal, J. R. (2019, April 2). Ensuring access to justice. Retrieved from The Hindu: https://www.thehindu.com/opinion/lead/ensuring-access-tojustice/article26705126.ece

President. The number varies from just three in the Assam High Court to 36 in the Allahabad High Court. The Chief Justice is in charge of the Court's administrative work, and the other justices on his bench share the judicial work. In addition, he participates in the selection process for his very own court's judges. However, while he is in the courtroom, he has no higher judicial status than any other judge, and in a Special Appeal, any two judges can overturn his decisions. Additionally, he may be overruled by his colleagues if he is on a bench with two other judges. His status can be referred to as primus inter pares, which literally translates to "first among equals," since he does not exert any administrative control over any of the judges.

All civil and criminal subordinate court decisions can be appealed or revised before the High Courts, which take appeals and revisions into consideration. Additionally, it has original jurisdiction over corporate, marital, and wills and estates-related issues. In order to protect citizens' fundamental rights and other rights, Article 226 of the Constitution grants all High Courts the authority to issue writs of habeas corpus, quowarranto, prohibition, certiorari, mandamus, or any other orders of directions. High Courts now have the authority to prevent violations of citizens' fundamental rights and other rights. The High Court has the power to revoke any order or action that has already been carried out or approved and to prevent the state from stifling any individual's rights in violation of this authority. In addition, it can overturn any legislation that violates an individual's fundamental rights that has been approved by either Parliament or a state legislature. Article 266's remedy has proven to be very popular, and citizens from all over India submit thousands of petitions each year for the protection of their rights. In the state of Uttar Pradesh alone, more than 3,000 petitions are submitted annually. All appointments to the High Court are made by the President. The elevation of district judges who have held their positions for at least five years is one source of part of the recruiting for the High Court bench. The other source is the ranks of practicing attorneys. The foundation of independent judicial administration is the guarantee of lifetime employment for a High Court Judge regardless of their election. Although it is theoretically possible to transfer a judge between High Courts, this has never been done in practice unless the judge in question requested it.

**The Supreme Court and national integration**

For the first time in Indian history, a Supreme Court with jurisdiction over the entire nation was established by the 1950 Constitution. The establishment of this Court with all-Indian jurisdiction is anticipated to accelerate the development of a common law that will cover every corner of the country. According to Article 141 of India's Constitution, "the law declared by the Supreme Court shall be binding on all Courts in India." It gives the decisions our Supreme Court has made more constitutional weight. The legal system has the potential to be an effective instrument for fostering national integration. England's legal system proved to be the most efficient tool for establishing a common legal framework for the English people. With the authority of Article 141 behind its decisions and opinions, the Supreme Court of India will without a doubt accelerate the process of establishing a common law for the entirety of India. This assertion cannot be disputed in any way.[20] **The weakness of our judicial process:** The most significant flaw of our legal system is that it lacks any theoretical foundation. The theories of jurists can have a significant and long-lasting effect on the judicial process, even if it is not obvious. The following is credited to Oliver Wendell Homes, a prominent judge in the United States: In determining the rules by which men are governed, the felt needs of the time, the prevalent moral and political theories, institutions of public policy, whether avowed or unconscious, and even the prejudices that judges share with their fellow citizens play a much bigger role than the syllogism." "The development of legal precedent can be influenced singly or jointly by a number of different causes, including logic, history, custom, utility, and the generally acknowledged definition of appropriate behavior," stated Benjamin Cordozo, another prominent judge in the United States. According to Roscoe Pound's perspective, "current moral beliefs and ethical conventions are impacted frequently albeit rarely consciously." The Supreme Court of India made the observation that there is no universally accepted definition of what it means to be reasonable. However, it was inevitable that the conditions that were in place at the time, as well as the social philosophy and scale of values of the judges who made the decision, should all play a significant role in determining whether or not a restriction on a fundamental right is reasonable. In ancient India,

[20] R. Muthukrishnan v. The Registrar General of the High Court of Madras, W.P. (C) 612 of 2016 (Supreme Court January 29, 2019).

judges were expected to be knowledgeable in all areas of knowledge, or vidya (dharma-shastrartha kushalai rartha shastra visharadai), in addition to law and the science of administration. But what about right this moment? What kind of social and legal philosophy are Indian judges currently relying on, and from where did they acquire it?[21]

Judges and lawyers have always had a constant source of inspiration and instruction from the developing jurisprudence of England, Western Europe, and the United States of America over the past two centuries. The United States of America is no exception to this. Similar to this, the Marxian jurisprudence that supports the U.S.SR's judicial system is a living body of knowledge that contributes to its ongoing development. In response to your inquiry, where does the Indian judge or lawyer get their ideas? Not in accordance with the legal system of his own civilization and culture. He is somewhat conversant with Western jurists' theories and Roman law, but he has very little knowledge of how his own civilization's legal system and jurisprudence developed. The history of Indian law, the theory of the state in ancient India, or Indian jurisprudence are not included in the law degree curriculum offered by Indian universities. The curriculum does not include these subjects. As a result, our legal system is a structure that was built on foundations that support other buildings in other countries rather than on theoretical foundations. I will use a recent Supreme Court decision as an example, in which a distinction was attempted to be made between legitimate government activities and commercial government activities, which, as it was noted, "have nothing to do with the conventional idea of what activities the government engages in."

A concept that is founded on tradition is referred to as a "traditional concept" in this context. However, whose culture ought we to follow: the British, Indian, or American one? In contrast, as previously stated, India's government has always maintained a public sector since recorded history began. Therefore, it is not accurate to assert that state-owned businesses in India do not relate to the standard definition of what constitutes government actions. The Supreme Court's statement is based on a concept that came from either the United Kingdom or the United States,

[21] Rottman, D. B., Hansen, R., Mott, N., & Grimes, L. (2003). Perceptions of the Courts in Your Community: The Influence of Experience, Race and Ethnicity. National Center for State Courts.

not an Indian traditional idea. Our legal system's theoretical and ethical foundations were once more brought in from outside. For instance, Manu gives criminals the option of being shamed in public as one of their punishments. The Soviet Criminal Code has accepted this clause; however, despite the fact that it can be an effective form of punishment in a variety of circumstances, Macaulay's Indian Penal Code completely ignores it. It would appear that Indian legal theory was more appreciated by Soviet jurists than by Indian legal practitioners themselves.

The inadequate legal and jurisprudential education system in contemporary India has resulted in an urgent situation. On the one hand, the Supreme Court and our High Courts have been given the authority to interpret the constitution and declare any state law or action invalid if it violates the constitution, is illegal, or violates a citizen's fundamental rights. The United States Constitution, our founding document, granted this authority. The Supreme Court's appellate powers are more expansive than those of any other federal court in the world, and the legislation declared to be supreme by the Supreme Court is required by law across the entirety of India. In order for our judges to correctly interpret the Constitution and ensure that the rule of law continues to be relevant to the advancement of the economy, they need to have an in-depth understanding of jurisprudence and the social sciences. They also need to be able to apply the law of social evolution to the judicial process. On the other hand, our law schools and universities provide very low levels of legal education. Poor jurists and judges are the result of inadequate legal education. The state faces a challenge that it cannot ignore at its own peril because of the current disparity in intellect and power between those who will serve as our next judges.[22]

I don't have a problem with the idea that our universities ought to teach our students the most insightful aspects of both Western ideas and Soviet science. However, every Indian lawyer and judge lacks in some significant way in education due to the almost total disregard for Indian jurisprudence and political philosophy. As a result of my research, I have come to the conclusion that the study of Indian jurisprudence ought to be the foundation of legal education and that it

[22] Sanders, J., & Hamilton, V. L. (1987). Is There a "Common Law" of Responsibility? The Effect of Demographic Variables of Judgements and Wrongdoing. Law and Human Behaviour, 277-97.

ought to be a prerequisite for earning a Bachelor of Law degree from any Indian university. However, this is something that applies to all legal frameworks in the same way. Both the Greek and Roman societies were founded on slavery. The idea that monarchs had a divine right to rule was held by many people in Europe right up until the very end of the 17th century. At the time, it was common practice to compare a Christian God's law to the law of reason. In Europe, there was no such thing as freedom of religion or belief; In fact, many heretics were executed by fire for their sin. Jeanne d'Arc, who is now regarded as a saint, was one of these people. Men were executed for having communion with the devil, while women were tried and burned at the stake for practicing witchcraft. Some of the bizarre absurdities that plagued Western Europe's legal system are absent from Indian jurisprudence. The legal system came under fire as a result of these issues. Up until the very end of the seventeenth century, animal trials were used to punish criminal offenses in Europe. In Germany, a cock was placed solemnly in the prisoner's box and accused of disobeying by crowing. The judge ordered the unfortunate bird to be put down because the defense attorney was unable to demonstrate that his client, a bird with feathers, was innocent. In 1545, the beetles of St. Jean deMaurienne were indicted for the same offense. In 1508, the caterpillars of Contes, which are located in Provence, were tried for their role in destroying the fields. As late as 1688, Gaspari Bailey of Chamberg of Savoy was able to publish a volume that included various forms of incitement and pleading utilized in animal trials. One British author asserted that because the ancient Indian judicial system was "in advance of our own today," such absurdities had no place in it.

**Future role of Indian judiciary**

What role will our judicial system play in the upcoming social and economic change? There is no sterile environment for the legal process. Although the actual judicial system is just one part of a much larger social process, the practice of administering justice serves a social purpose. As a result, the legal system must stop acting in defiance of or ignorance of societal goals, which Mr. Justice Homes referred to as "the felt demands of times." The proverb "Justice must be done though the beams may fall" (Fiat iusticia et peret mundes) emphasizes the ability of judges to remain objective, but it does not permit the judiciary to ignore society's needs. In principle, laws

are not made by the judicial branch; rather, it is only responsible for interpreting existing laws. Goethe was correct when he said, "The facts of life are more potent than abstract conceptions." When compared to the complexity of the legal system as it is actually implemented, the straightforward idea of separation of powers is vastly simplified.

While interpreting existing laws, the judges are compelled to create new ones. Suppositions that were given over by the US High Court under the misrepresentation of making sense of the law wound up altogether affecting the existences of the American public. The following is a statement made about the United States Supreme Court by a former Attorney General: This Court has repeatedly overruled Congress and the Executive and defied them." It has been in a heated dispute with some of our nation's most charismatic and beloved presidents. Jefferson took retaliation by impeaching; Jackson denied that it was in charge; Lincoln disobeyed a Chief Justice's order; Theodore Roosevelt advocated for judicial decisions to be recalled; Wilson tried to make its members more liberal; and the "reorganization" idea put forth by Franklin D. Roosevelt. All of these actions were taken in response to the Dred Scott v. Sandford decision made by the Supreme Court. It is remarkable that it should not only endure but also achieve actual supremacy as a source of constitutional orthodoxy, despite having no power other than the moral force of its judgment. Our surprise turns into wonder when we consider that time has demonstrated that their judgment was incorrect on the most significant issue they have chosen to confront popular opinion on. Due to the conflict, the court reversed its decision in the Dred Scott case. The verdict of the Fifteenth Amendment, which held that the currency that held the Union together could not be changed into legal tender, was overturned by the Sixteenth Amendment. It has been overturned the previous decisions that suppressed labor and social legislation. A lot of the previous rulings that were against the New Deal legislation have been overturned thanks to confessions of error. The passage of time has shown that the Supreme Court has never had a major argument with the representative bodies about any social or economic policy issue.[23]

[23] Silbey, S. S., Ewick, P., & Schuster, E. (1993). Supreme Court Task Force on Minority Concerns: Differential use of courts by minority and non-minority populations in New Jersey.

**Indian constitution, a synthesis**

The social objectives of India as a whole cannot be separated from the function of the Indian judicial system. The Indian people have been presented with the lofty goal of achieving a synthesis of the Western and Communist ways of life, individual liberty and social control, the end of anarchy in production and the preservation of democracy in government—or, to put it another way, political and economic freedom—under our Constitution. You should not take what I'm saying to mean that the West's democracies are experiencing economic expansion or political freedom in the Soviet Union. These two interpretations are incorrect. During the "cold war," it may have been effective propaganda, but reducing the world to its extremes in black and white and ignoring its many shades of gray is not an accurate representation of reality. The way the meaning is emphasized is the main difference. Because the Soviet government had trouble building a modern industrial nation out of a community that was multi-national, multiracial, multilingual, and multi-religious and lived in a large state with a dispersed population, the Soviet system gave economic development precedence over political liberty. On both sides of the iron barrier, the terms "economic planning" and "political democracy" are now recognized and respected. The Constitution of the United States tries to find a solution that works for both of these ideas. It exemplifies the current spirit of non-alignment in the field of constitutional law. Indian culture's traditions are reflected in the social regulation of businesses. I already mentioned that ancient India had a significant public sector, and the Arthashastra forbids exploitative business practices such as monopolizing a market to inflate prices.

The Indian people are facing a very lofty and difficult goal thanks to the Constitution of India. The Constitution does not exist in a vacuum or as a collection of theoretical concepts. It is a representation of a way of life that enables a particular group to realize their ambitions and achieve their objectives. Depending on the circumstances, it will either be modified or discarded if it fails to do so. The compulsive impulses that are inherent to social life can never be overcome.

**Condition of national survival**

India's people have decided to take on the enormous challenge of transforming their nation's economy within a single generation. Our nation is determined to accomplish in a few short years what other nations, such as Britain and others, have done over several centuries. India does not have any other options in this particular circumstance. We are no longer protected by the Himalayas. Our company's survival hinges on our capacity to maintain our industrial strength.[24]

Only the former Soviet Union was able to transform into a modern industrial and extremely powerful state in a single generation from a backward rural and agricultural society. The Soviet Union was the setting for this transformation. On the other hand, the Soviet state's political structure is very different from India's. We are blessed to live in a nation whose constitution is based on the principle of parliamentary democracy. The advantage of this form of government is that it prevents the arbitrary use of power. But a brake is still a brake; it provides safety rather than affecting speed. In addition, India needs to move quickly through the social and economic revolution because our very existence as a nation depends on how quickly we can improve our economic situation. Given the current rules, is it possible to effectuate a significant economic shift in a short amount of time? This is the most pressing concern not only for India but also for the rest of the non-communist world. This issue was discussed in a special India-focused article published about ten years ago in a publication from the United States. The following words were used to begin the article: As the 1950s give way to the 1960s, India is faced with the dilemma of whether or not it is possible to keep these impoverished people alive under a system of free parliamentary administration. Nikita Khruschev has challenged the West to compete against communism in the task of developing the underdeveloped lands. Their population is expanding by 9 million people annually.

Or, as the majority of Asia has already done, India may be forced to abandon its democratic institutions and replace them with the barbaric practices of China's communist regime in an effort to save its people from starvation. It is not an exaggeration to assert that the competence,

[24] Stoutenborough, J. W., & Haider-Markel, D. P. (2008). Public confidence in the U.S. Supreme Court: A new look at the impact of Court decisions. The Social Science Journal, 28-47.

sagacity, and patriotism of our upcoming judges will, at least in part, determine the rule of law and parliamentary democracy in India in the future. In point of fact, this assertion is not even remotely exaggerated. However, unlike Ganga, enlightened judges do not appear out of thin air; rather, the social climate in which they live cultivates them from the social soil. Just like Manu, Kautilya, Katyyana, Brihasparti, Narada, Parashara, and other ancient Indian legal giants like Yajnavalkya, great judges are not born. This is due to the fact that strong judges are not born; rather, they are produced through good education and great legal traditions. The nation's best interests are being undermined by the persistent disregard for the significance of legal education.[25]

[25] Sun, I. Y., & Wu, Y. (2006). Citizens' perceptions of the courts: The impact of race, gender, and recent experience. Journal of Criminal Justice, 457-467.