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Impact of Ancient Political System on Modern Legal System in India

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ABSTRACT

“As the follower of English common Law we always think that ore root didn't have any base of legal system. Behind British rulers India had the oldest Legal System in the entire history of the world. Many political thinkers like Sukra, Manu, Koutilya and Brihaspati were Jurist of Indian olden Legal system. It has altered as well as developed over the past few centuries to absorb inferences from the legal systems across the world. The Constitution of India is the fountainhead of the Indian Legal System. People of different religions as well as traditions are regulated by all the different sets of personal laws in order to relate to family affairs.”

Keywords: Dhrama, Vyavahára, Charitra, Rájasásana, puranas, smiritis, surtis, prang-nayya, paraadivivaka or adhyaksha, danda, sabhasada, Sabhyas, samstha, Arthai-vivada, Himsa samudbhava vivada, divyas, sabhyas, etc.

In ancient India not only was there remarkable development of Mathematics, Astronomy, Medicine, Literature, Grammar, and Philosophy, but there was also tremendous expansion of Legal System. This is evident from the large number of legal treatises written in ancient India. Our Nation has the oldest Legal System on earth. No other Political or Legal System has an exalted pedigree. India has an unbreakable backbone of well established Political System to begin Legal System. As we know that Political Science is the sister subject of Jurisprudence, one cannot assume without help of another¹.

When we starts study of Jurisprudence, we always include Aristotle, Socrates, Ulpine, Saint Agustine and many more Jurist, they are actually Political Thinkers². But the biggest question mark over the modern law is that we are the followers of English Common Law so there is a long debate behind, why we are not using Shukra, Manu, Koutilya, and other Indian origin Political Thinkers!

Ancient Political System is the Real source of Modern Judicial system. In this present scenario we adopt ancient concepts of GramNyayalaya, Madhyasth System of Judgment and Rule of law.

ANCIENT CONCEPT OF DHARMA AND ITS RELATION WITH LAW

Ancient Political System was depending on Dharma. The concept of Dharma that ruled Indian civilization, from Vedic period up to Muslim invasion from King to his last servant everyone was bound by Dharma, The word Dharma is derived from “dhr” to mean to uphold, sustain or nourish. The Taittiriya Upanishad also uses it with ‘Dharma’ with ‘satya’. It exhorts students to speak the truth and practice dharma (*Satyam vadha: Dharmam chara*).

Manusmriti written by the ancient sage Manu prescribes ten essential rules for the observance of Dharma: Patience (dhriti), forgiveness (kshama), piety or self control (dama), honesty (asteya), sanctity (shauch), control of senses (indraiya-nigrah), reason (dhi), knowledge or learning (vidya),

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truthfulness (satya) and absence of anger (krodha). Manu further writes, "Nonviolence, truth, non-coveting, purity of body and mind, control of senses are the essence of Dharma". Therefore dharmic laws govern not only the individual but all in society

Dharma is generally mean 'principle of righteousness' or 'duty', principle of holiness and also the principle of unity. Yudhishtira says in his instructions to Bhishma that whatever creates conflict is Adharma, and whatever puts an end to conflict and brings about unity and harmony is Dharma. Anything that helps to unite all and develop pure divine love and universal brother hoodness is Dharma. Dharma advocates if the Paramatman is to draw us unto himself we must, without fail; perform our duties to him as well as to the world. It is these duties that constitute what is called dharma. Again, it is dharma that serves us when we dwell in our body and when we cease to dwell in it. It serves us in life and afterlife. There need be no doubt or confusion about the dharma we ought to follow.

We are all steeped in the dharma that our, great men have pursued from generation to generation. They have inwardly realized eternal beatitude and we know for certain that they lived without any care, unlike people in our own generation who are always discontented and are embroiled in agitations and demonstrations of all kinds. All we need to do is to follow the dharma that they practiced. If we tried to create a new dharma for ourselves it might mean trouble and all the time we would be torn by doubts as to whether it would bring us good or whether it would give rise to evil. It is best for us to follow the dharma practiced by the great men of the past, the dharma of our forefathers. It does not mean that 'Dharma' is immutable; 'Dharma' has to two aspects one 'Sanatana Dharma' another is 'Yuga Dharma' later is valid one for an age. The Smritis themselves recognize this principle of social change, Manu says, "There is one set of dharma for men in the kritayuga; a different set for each of tretayuga, dvapara and kaliyugas; the dharma change according to the change of yuga. "The Hindu (i.e. Sanatana Dharma) view makes room for essential changes. There must be no violent break with social heredity, and yet the new stresses, conflicts and confusions will have to be faced and overcome; while the truths of spirit are permanent the rules change from age to age".

WE CAN FOUND RULE OF LAW IN ANCIENT INDIAN POLITICAL SYSTEM BY MAHABHARATA, RAMAYANA AND ARTHSHASHTRA OF KAUTILYA

In Mahabharata, it was laid down " A King who after having sworn that he shall protect his subjects fails to protect them should be executed like a mad dog. This provision is fine example of supremacy of people but shows existence of Rule of Law. Further it indicates that sovereignty was based on an implied social compact and if the King violated the traditional pact, he forfeited his kingship.

Next when we go through times of Mauryan Empire, Kautilya describes the duties of a king in the Arthshastra : "In the happiness of his subjects lies the King's happiness; in their welfare his welfare; whatever pleases him he shall not consider as good, but whether pleases his people he shall consider to good."

The Principle enunciated by Kautilya was based on a very ancient tradition which was already established in the age of the Ramayana. Rama, the King of Ayodhya, was compelled to banish his queen, whom he loved and in whose chastity he had complete faith, simply because his subjects disapproved of his having taken back a wife who had spent a year in the house of her abductor. The king submitted to the will of people though it broke his heart.

In the Mahabharata it is related that a common fisherman refused to give his daughter in marriage to the King of Hastinapur unless he accepted the condition that his daughter's sons and not the heir apparent from a former queen would succeed to the throne. The renunciation of the throne and the vow of life-long celibacy known as *Bhishma Pratgyan* by Prince Deva Vrata is one of the most moving

episodes in the Mahabharata. But its significance for jurists is that even the sovereign was not above the law. The great King of Hastinapur could not compel the humblest of his subjects to give his daughter in marriage to him without accepting his terms. It refutes the view that the kings in ancient India were "Oriental despots" who could do what they liked regardless of the law or the rights of their subjects.

JUDICIAL SYSTEM IN ANCIENT INDIA

With this introductory warning, the endeavour to describe the judicial system of ancient India According to the **Artha-shastra**³ of Kautilya, who is generally recognised as the Prime Minister of the first Maurya Emperor the realm was divided into administrative units called Sthaniya, Dronamukha, Kharvatika and Sangrahana (the ancient equivalents of the modern districts, tehsils and Parganas). Sthaniya was a fortress established in the centre of eight hundred villages, a dronamukha in the midst of 400 villages, a kharvatika in the midst of 200 villages and a sangrahana in the centre of ten villages, Law courts were established in each sangrahana, and also at the meeting places of districts (*Janapadas* and *hishu*). The Court consisted of three jurists (*Dhramastha*) and three ministers (*Amatyas*).

This suggests the existence of circuit courts, for it is hardly likely that three ministers were permanently posted in each district of the realm. The great jurists, Manu, Yajñ-Valkyā, Katyāyana, Brihaspati and others, and in later times commentators like Vachaspati Misra and others, described it in the judicial system and legal procedure, which prevailed in India from ancient times till the close of the Middle Ages.

According to Brihaspati Smiriti⁴, there was a hierarchy of courts in Ancient India beginning with the family Courts and ending with the King. The lowest was the family arbitrator. The next higher court was that of the judge; the next of the Chief Justice who was called Praadivivaka, or adhyaksha; and at the top was the King's court. The jurisdiction of each was determined by the importance of the dispute, the minor disputes being decided by the lowest court and the most important by the king. The decision of each higher Court superseded that of the court below.

According to **Vachaspati Misra**⁵, "The binding effect of the decisions of these tribunals, ending with that of the king, is in the ascending order, and each following decision shall prevail against the preceding one because of the higher degree of learning and knowledge"[12]

It is noteworthy that the Indian judiciary today also consists of a hierarchy of courts organized on a similar principle—the village courts, the Munsif, the Civil Judge, the District Judge, the High Court, and finally the Supreme Court which takes the place of the King's Court. The institution of family judges is noteworthy. The unit of society was the joint family which might consist of four generations. Consequently, the number of the members of a joint family at any given time could be very large and it was necessary to settle their disputes with firmness combined with sympathy and tact.

MEDIATION

The Concept of Mediation is ancient and deep rooted in our country. In olden days disputes used to be resolved in a Panchayat at the community level. Panches used to be called Panch Parmeshwar. Now we have grown into a country of 125 crore people and with liberalization and globalization, there is tremendous economic growth. All this has led to explosion of litigation in our country. Though our judicial system is one of the best in the world and is highly respected, but there is lot of criticism on account of long delays in the resolution of disputes in a court of law. Now an honest litigant is wary of approaching the court for a decision of his dispute. Hence, we have turned to Alternative Dispute Resolution mechanisms.

The Supreme Court of India has started the process of reforms in the Indian Judicial System. Hon'ble Mr. Justice A.H. Ahmedi, the then Chief Justice of India in the year 1966 invited the Institute

for the Study and Development of Legal Systems (ISDLS), USA to participate in a national assessment of the backlog in the civil courts. Studies were made in respect of the causes of delay in the civil jurisdiction in our country.

The amendment in Section 89⁶ was made on the recommendation of the Law Commission of India and the Justice Malimath Committee. It was recommended by the Law Commission that the court may require attendance of parties to the suit or proceeding to appear in person with a view to arrive at an amicable settlement of the dispute between them and make an attempt to settle the dispute amicably. Justice Malimath Committee recommended making it obligatory for the Court to refer the dispute, after issues are framed, for settlement either by way of Arbitration, Conciliation, Mediation or Judicial Settlement through Lok Adalat. It is only when the parties fail to get their disputes settled through any of the Alternative Dispute Resolution methods that the Suit could proceed further. Thus Section 89 has been introduced to promote alternative methods of dispute resolution.

CONCLUSION

'Law' defines the political organization and structure of society, provides a scheme of individual relationship within it and contributes to the stability of society by offering an objective mechanism for the resolution of disputes and conflicts within the community. All extensive human societies possess law in some form or other. 'Legal System' is the totality of laws of a state or community.

The Legal System of a country is part of its social system and reflects the social, political, economic, and cultural characteristics of that society. It is therefore difficult to understand that legal system outside the socio-cultural milieu in which it operates. The legal system based on British model (formal /inherited) is full of technicalities and procedures, and this makes the system still foreign to the majority of Indians (whose legal culture is more indigenous) and limits access to justice for poor and illiterate people. Nevertheless, the rights and benefits conferred by the laws and the constitution offer the opportunity for those very people to enjoy the fruits of a welfare democracy. Thus, every Indian should be familiar with law and its procedures.

The British while justifying their colonial rule in Indian claimed Indians lacked civilized system of self rule and their presence in this country gave India a sense of justice and rule of law. Many Indians today hold these views in their heart. These views are not only incorrect but they are blatant lies. The British supplanted ancient Indian law and introduced in its place their own system of law. One has to understand that this was not a simple change of laws but was the imposition of a totally alien philosophy, understanding of human nature, belief system, and way of life and concept of polity. This was and is a mismatch. Both Civil as well as Criminal Law administration during British regime is worse and blind observance of which even after independence is more than worse.

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