

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary
Peer Reviewed

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HISTORICAL DEVELOPMENT OF JUDICIAL SYSTEM IN INDIA

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ABSTRACT

Historical Development of Judicial System in India, addresses the historical development of the Indian legal system from ancient times to the current digital era. In this chapter an examination of the ancient Indian judicial system is presented first, with particular attention paid to the king's judicial function, the hierarchy of courts, and the function of jurors. After analysing the judicial administration of the Mughal era, the influence of the British era on the Indian legal system is discussed. There is discussion about the creation of an organized and structured judiciary and post-independence reforms. Lastly, the chapter discusses the Supreme Court's e-Committee's contributions and the modernization of courts through digital projects like e-Courts.

1.1 JUDICIAL SYSTEM IN ANCIENT INDIA

India is the most ancient judiciary in the world, no other judicial system in the world having a more ancient or exalted pedigree. However, certain British writers have misrepresented the ancient India's legal system, such as Henry Mayne described "an apparatus of cruel absurdities" and Alan Gledhill, state during British time, "there was a dearth of legal principles."¹ These are not true and may have been due.²

The original texts of ancient India revealed that jurisprudence of Indian legal system was based on principles of law, also the crown is under the law, and there is no arbitrary power. The judges were independent. They are under the law, and among all the nation of antiquity India maintained the highest standards regarding ability, integrity, and independence of the judiciary.

The judicial system operated through a structured hierarchy of judges, with the Chief Justice's

¹ Alan Gledhill: The Republic of India, p.147.

² "History of the Constitution of Courts and Legislative Authorities in India" by Cowell (1872), p. 3.

Court serving as the highest authority. Each higher court possessed the authority to review and revise the decisions rendered by subordinate courts. In criminal trials, punishment could not be imposed unless the guilt of the accused was proven according to the law. In civil cases, the trial involved four stages: filing of the complaint, response, hearing, and issuance of a decree. Decisions of all courts were open to appeal or review based on established principles. The primary duty of the court was to administer justice "impartially and fearlessly."

1.1.1 JUDICIARY IN ANCIENT INDIA

The origins of the Indian judicial system can be traced back to the early Vedic period. It was primarily guided by legal principles outlined in texts like the *Arthashastra* around 400 BC and later in the *Manusmriti* around 100 A.D. Sacred texts such as the Vedas, Upanishads, and the religious scriptures of Hindus, Jains, and Buddhists played a significant role in shaping the concept of a law-governed society among the people of ancient India.

Kautilya, a Hindu philosopher, referred to the Chatuspadah as four sources of law: Dharma (Sacred law), Vyavahara (evidence), Charitra (Customs), and Rajshasana (edicts of the king). Kautilyan law was based on logic and deduction and included thirteen sub-chapters indicating the types of crimes and punishments against them.³

In ancient India, the judicial system was organized into various administrative divisions that resembled the modern-day districts, tehsils, and parganas. Courts during that era typically consisted of a panel including three jurists and three ministers, indicating the presence of structured judicial bodies. Renowned legal scholars such as Manu, Yajnavalkya, Brihaspati, and Katyayana played a pivotal role in formulating and recording the legal framework and procedures prevalent up to the end of the medieval period. Later commentators, like Vachaspati Misra, further elaborated on these legal traditions, preserving the understanding of the justice system from ancient times through the Middle Ages.⁴

1.1.2 HIERARCHY OF COURTS IN ANCIENT INDIA

The court hierarchy in ancient India started at the family level and culminated with the king's court. At the base was the family arbitrator, who resolved domestic issues. Above this level was the local judge, followed by the Chief Justice, known as the *Praadvivaka* or *Adhyaksha*.

³ Sanskrit slogan- (Kautilya's Arthashastra)

⁴ Wilkin, W.J., Hindu Mythology, pp. 2, 90-91.

At the apex stood the king's court, which dealt with the most serious matters. Each court's authority was determined by the nature and gravity of the dispute—minor issues were handled by lower courts, while significant and complex cases were reserved for the king's judgment.

Hierarchy of courts, including Village Courts, Munsif at lower level. Civil Judge and District Judge at district level. High Court at state level. Finally Supreme Court at Central level. Family judges were essential in settling disputes within the joint family. It consists of four generations. A king was prescribed with very strict code of judicial conduct, including case decisions in open trial and courtrooms, modest attire, and oaths of impartiality. The king also decides the cases without any bias or attachment. This ancient tradition judicial system continues to influence the Indian judiciary today.

1.1.3 THE KING'S JUDGES AND DELEGATION OF JUDICIAL POWER BY THE KING

The king was assisted by judges and advisors who guided him in legal matters. These officials were expected to remain impartial, courageous, and ensure that the king avoided mistakes or acts of injustice during trials. A structured judicial hierarchy was established, which eased the king's burden by delegating most judicial responsibilities, while still retaining his authority as the highest appellate body. During the Mauryan period, a formal and organized judicial system was in place.

As civilization advanced, the king had minimal time to hear suits in person, leading to the delegation of judicial power to professional judges.⁵ According to Katyayana, the qualifications were very high, including austerity, restraint, impartial/unbiased temperament, firm, God-fearing, diligent in his duty, free from anger, leading a righteous and moral life, and belong to good family.

1.1.4 QUALITY OF THE JUDICIARY: INTEGRITY

The first and foremost duty of the judges was integrity which included impartiality and absence of bias and attachment. The concept of integrity was given a wide meaning and the judicial code of integrity was very strict. Brihaspati says that "A judge should decide cases without any consideration of personal gain or any kind of personal bias and his decision should be in

⁵ C.K.Takwani, Lectures on Administrative Law, (Lucknow: Eastern Book Company), 4th Edition

accordance with the procedure prescribed by the text, A judge who performs his judicial duties in this manner achieves the same spiritual merit as a person performing a Yajna”.⁶

Shukra-nitisara says,⁷ “Five causes that could destroy impartiality and lead to judges taking sides in disputes were attachment, greed, fear, enmity, and hearing a party in private.”

The current judicial system does not fully incorporate the robust safeguards that were part of the ancient Indian legal framework. Today, cases are typically handled by a single Munsif, Civil Judge, or District Judge, primarily to maintain administrative efficiency and reduce costs. In contrast, ancient India prioritized the integrity and quality of justice over economic considerations, placing greater emphasis on upholding the rule of law.

1.2 JUDICIAL SYSTEM IN MUGHAL PERIOD

After Muhammad bin Qasim captured Sindh in 712 A.D, Muslims had migrated to the Indian subcontinent. Qutbuddin Aibak formed the first Sultanate of Delhi, and between 1206 to 1526, the subcontinent was ruled by five successive dynasties. Until 1706, India was secured by the Mughals, later it was gradually taken over by the British. The Great Mughals reigned, bringing about a golden era of people-centred reforms in government. India's society was high diverse, and a fair administration of justice was necessary for successful political dispensation. Akbar, an administrative genius, were imported parts of the Mughal justice system from Central Asia and Persia, and were skilfully combined it with indigenous administration methods. The Mughals absorbed administrative principles practised by the Sultans and also followed Hindu legal principles.

The Mughal judicial system, which extended from the 16th century to the 18th century, was a well sophisticated and organized system that maintained and upheld law and order across the Indian subcontinent. The system was based on Islamic law (Sharia), also included regional norms and practises, ensuring equal and fair treatment for Muslims and non-Muslims. The emperor held the highest authority in the judicial system, while local Qazis settled legal disputes based on Islamic ideas and Sharia law. Historical chronicles, court documents, and primary sources were analysed to understand how the Mughal’s legal system influenced the population's perception of justice and governance.

⁶ Sanskrit slogan- (Bṛhaspati Smṛti)

⁷ Sanskrit slogan- (Shukra-nitisara)

During the Mughal era, the concept of judicial independence was different from contemporary democracies, as it signifies that the judicial department of government was immune to any inappropriate undue government influence or intervention. This allowed judges to make objective decisions based on the law and court evidence.

1.2.1 THE MUGHAL'S JUDICIAL ADMINISTRATION

The administration of justice, a concept dates back to the time of the cavemen, and it is the state's primary responsibility to protect the masses' primary rights. The positivists define Mughals judicial administration as “the state's use of physical force to maintain civil and political rights”.

The Mughals' approach to justice administration were mostly influenced by foreign also partly by Indian, primarily Persio-Arabic features incorporating with indigenous trends. Most of the administrative framework was replicated by the Mughals as a compromise between indigenous and foreign systems, including governance principles, taxation rules, religious regulations, departmental structures, and official titles. The imported system was gradually adjusted and modified over time.

Government was primarily military in nature, with every state officer required to join the army list. The Mughal Emperors recognized that managing people's lives according to popular inspirations and addressing the concerns of the public were unavoidable necessities.

1.2.2 MUGHALS JUDICIAL SYSTEM

The Mughal era saw the rise of structured court hierarchy and the judicial independence. Courts under Aurangzeb's reign were remarkably independent, with no parallel in the entire Empire. Cases were categorized as civil, criminal, political, and administrative matters since the beginning of the Muslim Empire on the subcontinent. Emperors Akbar and Aurangzeb dedicated one day each week specifically for addressing legal matters, especially those related to governance and political issues. These hearings took place in the Diwan-i-Mazalim, also referred to as Diwan-i-Khas, where the emperor personally considered public grievances and petitions. During these sessions, the ruler was typically supported by a panel that included a Qadi (judge), a Pundit (Hindu legal expert), a Mufti (Islamic legal scholar), a Darogha-i-Adalat (judicial officer), a Kotwal (chief of police), and a Mohtasib (morality officer), ensuring a diverse and balanced legal perspective.

The provincial court had a Chief Qadi, who is responsible for handling all civil and criminal matters and functioned as the highest appellate court in the province. The military had its own judge in the capital, Qadi-e-Askar, who travelled around with the army and held an office equivalent to the current Court Martial.⁸

The ecclesiastical department was overseen by Sad'sr-us-Sudur. Unlike modern judicial systems, in which court is functioned as an independent body with judges enjoying immunity, judicial officers in the Mughal era remain under the king. The emperor had authority over all matters and had taken minimal measures to protect judicial officers or to limit arbitrariness in their decisions.

1.3 JUDICIAL SYSTEM IN BRITISH ERA

Phase: 1

India's formal judicial system began to take shape during the Anglo-Indian period, marking the early stages of its legal development. The British initially established a settlement in Surat, which was a major commercial hub at the time. This was followed by the establishment of their presence in Bombay and Madras. To resolve disputes within their communities, they devised a rudimentary legal framework, intended to be guided by English law. However, in practice, judgments were often based on the settlers' individual notions of fairness and justice. In the Presidency Towns, the judiciary lacked independence and operated under the control of the executive branch—the highest administrative authority in British-ruled territories. This intertwining of judicial and executive powers continued for nearly 150 years.

Phase: 2

The second phase of India's judicial evolution began with the establishment of the Supreme Court of Judicature at Fort William in Calcutta, created under the Regulating Act of 1773. This legislation, passed by the British Parliament, marked a significant milestone in the development of India's legal system. Modeled on the Court of Westminster in England, the Supreme Court was composed of English judges who were well-trained in legal principles and committed to delivering justice. Members of the English Bar supported the court in carrying out its judicial functions.

⁸ Alvi, S. (1989). Religion and State under Jahāngīr (1605-27). *Studia Islamica*, No. 69.
Aziz, A. (2002). *The Mughal Court and its Institutions*, Vol. II. Lahore: Al-Faisal Publishers.

Importantly, the Supreme Court functioned independently of both the legislature and the executive. It also introduced the idea of judicial oversight over executive actions, thereby limiting the unchecked authority of the colonial administration. However, tensions arose between the Supreme Court and the Council due to overlapping jurisdictions. These were eventually addressed through the Settlement Act of 1781, which clarified roles and granted the Council independence from the jurisdiction of the Supreme Court.

Phase: 3

The third stage in the development of India's judicial system, or the Anglo-Indian legal history, commenced when the British East India Company assumed responsibility for administering justice in Bengal through the introduction of the *Adalat System*. In its early phase, these courts were overseen by British civil servants who generally treated judicial responsibilities as a secondary duty. Over time, there was a move toward separating judicial functions from executive authority, particularly in civil cases. However, the administration of criminal justice remained under the control of executive officers, primarily the Collector-Magistrates. Eventually, the *Adalat System* was extended to other regions that came under the Company's rule in India.

Phase: 4

The fourth phase in the evolution of India's legal history was marked by the unification of the dual court system in the Presidency towns and the mofussil areas through the creation of High Courts. These courts were established under the High Courts Act of 1861. Prior to this, the judiciary in the Presidency towns largely followed English law. The establishment of the High Courts aimed to streamline and simplify the judicial process. Initially, courts were set up in Calcutta, Madras, and Bombay. Over time, High Courts were also established in the northern and western provinces, laying the foundation for the modern judicial system in India.

Phase: 5

The establishment of the *Privy Council* as India's highest court of appeal represented a significant milestone in the development of the country's judicial system. It played a crucial role in standardizing laws across India and encouraged courts to maintain high judicial standards in their role as dispensers of justice. In 1833, the First Law Commission was formed, marking the beginning of efforts to codify Indian laws to promote uniformity and clarity. This was followed by the creation of the Second and Third Law Commissions, which continued the

process of legal reform.

Phase: 6

The Government of India Act of 1935 established the Federal Court of India to serve as an intermediate appellate court between the High Courts and the *Privy Council*, specifically for cases involving the interpretation of the Constitution of India. The Federal Court's role was limited to issuing "declaratory judgments," meaning it could clarify what the law was but did not have the power to enforce its rulings. The court's judicial review authority was primarily theoretical and restricted in scope.

1.4 POST-INDEPENDENCE ERA

The Federal Court of India continued to operate until January 26, 1950, when the Constitution of independent India came into effect. The Constituent Assembly played a key role in shaping the legal framework and judiciary of the country, aiming to ensure the independence of the judiciary and shield it from undue influence by other branches of government. Key reports, such as those from the Sapru Committee and the Ad Hoc Committee, provided the foundation for judicial guidelines. Prominent figures such as A.K. Ayyar, K. Santhanam, M.A. Ayyangar, and Dr. B.R. Ambedkar significantly contributed to the development of India's judicial system. India adopted a Unitary System, with the Supreme Court entrusted with safeguarding individual rights. Following India's independence in 1947, the judicial system had to be adjusted to meet the evolving needs of the country. The jurisdiction of the *Privy Council* over Indian appeals ceased on January 26, 1950, with the establishment of the Supreme Court. Today, India's judicial system is advanced, with a clear hierarchy of courts, with the Supreme Court at the top, supported by various subordinate courts. The primary objective of this judicial system remains to provide impartial justice and uphold the Rule of Law.

1.4.1 JUDICIAL SYSTEM IN MODERN ERA AND HIERARCHY OF COURTS

India's modern judicial system is a unified framework that oversees both Union and State laws. British reforms played a significant role in shaping the legislative structure that exists today. The Indian Parliament, Judiciary, Executive, as well as other institutions like the bureaucracy, police, and electoral system, all function collectively to uphold the ideals enshrined in the Indian Constitution. The legal system derives its authority from the Constitution and is deeply embedded within the country's political framework.

In a Constitutional Democracy, the principle of 'Division of Power' ensures that both the

legislature and executive actively participate in law-making. However, the judiciary holds the exclusive power to interpret the Constitution and its provisions. The decisions made by the judiciary are binding and must be adhered to by all branches of government.

1.5 MODERNIZATION OF INDIAN JUDICIARY: THE DIGITAL COURTS

The Government of India, in association with the judiciary, has transformed the legal sector by adopting Information and Communication Technology (ICT) tools and initiatives. Several schemes running by using the technology currently operational.

The e-Courts Project, launched in 2007 for the Indian judiciary, is an Integrated Mission Mode Project. It has been operating in alignment with the "National Policy and Action Plan for the proper Implementation of Information and Communication Technology in Indian Judiciary" (NPAPICT).

These e-Initiatives were introduced prior to the COVID-19 pandemic and demonstrated their effectiveness both during and after the crisis. Moreover, the development of ICT infrastructure for additional courts was carried out in accordance with the Supreme Court's directions, as outlined in the *All-India Judges Association v. Union of India case*.⁹

1.5.1 THE E-COMMITTEE

The E-Committee was established in 2004 by the Ministry of Law and Justice to oversee the implementation of the E-Courts Project. This initiative was conceived under the "National Policy and Action Plan for Implementation of Information and Communication Technology (ICT) in the Indian Judiciary - 2005." The project is funded and monitored by the Department of Justice, Ministry of Law and Justice, Government of India.¹⁰

Over the past 15 years, the e-Committee of the Supreme Court has significantly expanded its roles and responsibilities. The main objectives of the committee include interlinking all courts across India, enabling adoption of ICT within the Indian judiciary, enhancing the quality of the judiciary. Also, ensuring that the justice becomes easily accessible. Even it is cost-effective, transparent, and accountable.

⁹ (2002) 4 SCC 247, paragraph 25.

¹⁰ E-Committee, Supreme Court of India, "API Specifications for e-Courts Version 1.0," March 2019.

In June 2020, the e-Committee of the Supreme Court constituted a subcommittee of experts. They are from organizations such as Agami, DAKSH, even Vidhi Centre for Legal Policy. It is for enhancing Phase III of the e-Courts Project. This demonstrates the committee's commitment to transforming India's judicial system through technology and innovation.

1.5.2 ECOURTS: DIGITALIZATION OF THE INDIAN JUDICIAL SECTOR

PHASE-I

The e-court projects to digitalise judicial sector started in 2006-2007. This initiative involved computerization of 14,249 district as well as subordinate courts and installation of LAN connectivity in 13,686 courts. During this phase, given laptops to 14309 Judicial officers. Installed the Information software in 13672 courts. Importantly video conferencing was enabled in 347 jails and 493 courts. Opened the Judicial Service Centres, operated E-Courts Portal, Filing Counters. NJDG provided access to pending and decided cases.

PHASE-II

The e-Court Project's Phase II (2015-2023) has significantly expanded the output of Justice Delivery System. E-courts Phase II include improved service outputs. Introducing features which accessible to the disabled person.

Almost 347 jails and 493 courts were provided with videoconferencing. But additionally in Phase II, 1272 jails and 3240 courts provided with videoconferencing. This project launched virtual courts, with full day working hours. Traffic offence proceedings were carried with this online courts. In this courts with videoconferencing the judges are not required to physically preside over the court, it preserving human health, manpower, and also court time.

As of July 31, 2023, High Court of Madras dealt the number of cases on video conferencing. Followed by Karnataka High Court and Allahabad High Court in District Courts. This Video conferencing services have been made available for those inmates awaiting trial, and some courts have even utilized this technology to recorded witness testimony from overseas residents.

PHASE-III

The e-Courts Project Phase III in India focuses on enhancing accessibility and inclusivity by digitizing all court records, including legacy records, to create a paperless system. It also seeks

to implement e-Filing and e-Payments universally through e-Sewa Kendras. The primary goal of Phase III is to streamline and facilitate the delivery of justice, while addressing the issue of the digital divide.

In conclusion, the ancient Indian judicial system was a complex and advanced framework, rooted in principles of justice, integrity, and the rule of law. It featured a hierarchy of courts, clear rules of evidence, and administrative oversight, showcasing legal sophistication. The Mughal judicial system, a hierarchical framework combining Islamic principles, indigenous customs, and Persian influences, aimed to balance governance, justice, and administration by addressing civil, criminal, and political cases. The Mughals' judicial administration influenced governance in the Indian subcontinent for centuries, blending foreign and local practices.

The British rule significantly shaped India's judicial system, transitioning from a rudimentary setup in presidency towns. This laid the foundation for India's modern judiciary, ensuring independence, rule of law, and judicial review. Post-independence, the Constitution established a unified judicial structure by protecting individual rights and interpreting constitutional mandates.

The modernization of the Indian judiciary through digital courts has revolutionized the justice delivery system, enhancing accessibility, efficiency, and transparency. Phases I and II digitize records, enabling video conferencing, providing online services. Phase III aims to achieve full digitization and a user-centric approach, ensuring cost-effective, accessible, and efficient justice.