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THE HISTORICAL AND THE PRESENT **ARCHITECTURE OF THE INDIAN JUDICIARY**

AUTHORED BY - MAANYA JAIN

ABSTRACT

India is a democratic nation governed by its constitution framed by the leaders who were a part of the constituent assembly and worked on establishing an independent judicial system in India. However, it must be noted that the judiciary is not a new concept or an idea established by the Constitution. It has been practiced since the pre-independence era and evolved for a long time. The evolution of the judiciary can be traced to the pre-independence era, post-British era through 6 phases and the modern-day judiciary. It is to be noted that in the pre-independence era law was seen through the Vedas, Dharmshastra, or the Manusmriti. The kings and the Brahman community started to dispense justice to all and there was not any codified system of governance and no uniformity that was present. Religion and law were often assumed to be the same and there existed similarities between dhamma and dharma. In its first phase, during the colonial period, Britishers brought a system of governance slowly in India. At Surat, a factory was established which began the era of British colonialism and a new beginning of the judicial system in India. In the second phase, with gradual development, the establishment of a Supreme Court of judicature in Calcutta under the regulating act was also seen its removal by the settlement act. Later, in the third phase, the British government established the Adalat system in its presidencies. However, in its later stages, the Privy Council, and the High Courts developed. Also, under the Government of India, in 1935 the Federal Court of India was established in Delhi. But the evolution of the judiciary does not end here, with the advent of modernity and with the touch of technology judiciary has started to evolve with the new technology that can be experienced through E-courts or E- challans.

Keywords- Evolution, Judiciary, Pre-British, British Era, Modern Judiciary, Technology.

INTRODUCTION

India has a democratic system of governance and follows an independent judicial enactment system. The judicial system that we see today has not developed just within a span of 70 to 75 years but has developed for a long. In early ages, religion was quite associated with law and justice. The idea of dhamma or dharma being the same began. Since religion and law were associated

together, religion determined what was morally right or wrong. Religion started to decide what was correct through the application of religious texts and principles like that of Manusmriti, Dharmashastras, Dharmashutras, etc. It was seen in that religion guided the legal and social life of all and it was held to be superior to anything else. Thus, the dispensation of justice was done through what was written in religious texts. One of the major examples that can be seen is that of the Manusmriti and Kautilya's Arthashastra. Along similar lines, in the medieval period, the emergence of Islamic law that is Sharia law emerged. Hindus and Muslims were guided by their religious texts. With the advent of British rule in India and after they started to colonialize Indians, the British East India Company started to establish its base and thereby slowly began to establish a system of justice here, since there was no earlier judicial system the Britishers began to work on it. The development or the evolution of the judicial system began with six phases to what we see today. Additionally, modernity has also begun to play an important role in the same where courts have come into touch with technology leading to the emergence of E- Courts, availability of judgments online or even analysis of cases through journals are available today evidencing the judicial system to be at par with technology.

RESEARCH PROBLEM

India is a vast country that has followed age-old judicial systems like justice through the religious text or even through the king or the raja. With change and gradual development, the judicial system fell into the hands of Britishers, and they slowly developed a new form of judiciary that dispensed justice with morality principles. Soon, with the advent of the modern world and with new technologies emerging the courts too started to work on technology that led to modernization of the Indian judiciary. The National eGovernance Plan has also played an important role in the same.

The paper deals with two-fold research problems that are as follows-

1. To evaluate whether the historical development of the Indian judicial system is fruitful or not considering both advantages and disadvantages of the same.
2. To examine the feasibility of the new modernized judiciary in India and to examine the important aspects of whether it has been beneficial to the public and the justice system.

The research aims to provide a deep and analytical understanding of the research proposition and answer the same through various constitutional provisions and judicial precedents. Additionally, the study hopes to contribute to the existing knowledge of facts at present.

HYPOTHESIS

Despite, the judicial advancements and the historical evolution of the judicial system, the system still lacks openness and transparency and all these developments may not be beneficial to all. Critics claim that the modernization of the judicial system has benefitted the only technologically advanced masses whereas the others are left behind. In spite, of supporters arguing that technological advancement is necessary, it is indeed a new way of development for all. Thus, it is conjectured that:

1. Despite, the intention to advance in technology the Indian judicial system, still lacks inclusivity for those masses who are left untouched by the technological advancements.
2. Additionally, the evolution of the judiciary is necessary but too much evolution of the system may lead to a lack of transparency and may cause a hurdle in the judicial system and its advancements.

To evaluate the feasibility and provide insights into the historical evolution of the Indian judicial system, the research study examines various constitutional arenas and the latest evidence that includes court judgments and academic insights. The research seeks to add to the developing idea of the development of the judiciary in India.

ANALYSIS OF THE HISTORICAL DEVELOPMENT

Law is a dynamic concept. Therefore, it needs to be changed and updated from time to time. The history of the Indian judicial system can be studied in the chronological order of pre- British era and then the British era followed by six phases that are a part of the development of what we see today. Besides this, the development can also be seen from the lens of modernity and the technological revolution. Technology has joined hands with judiciary and that is evident from the system of E-courts or judgments available online through SCC Online.

PRE- BRITISH ERA-

The Indian legal system can be dated back to 5000 years and has laid the foundation for today¹. But, does that mean that before this period there was no judicial system? The answer lies in NO. During the pre-British era, there was no fixed system of courts. However, the law was maintained through religion and law. Dharma or dhamma were considered to be the same, but they are different. Law was disposed by the king or the raja based on morality and what is considered to be associated with righteousness according to the religious texts and the other law books like the

¹ Indian Judicial System, NIOS

Manusmritis, Yajnavalkya, and many more. Even, the Vedas were considered to be auspicious texts for guidance. The Rig Veda for instance, was the oldest among all the Vedas and contains hymns. The Dharmashastras and the Dharmashushtras have also laid the foundation stone for the existing judicial system. Slowly, this system began to be governed by the Kazis and the Brahmins in the case of Muslim and Hindu law respectively. Thus, before the coming of the Britishers in India, the system of law and order was not uniform because laws were inconsistent and every king or ruler used to change according to themselves.

BRITISH ERA- The chronological development of the British can be understood in the following six phases.

1. THE FIRST PHASE-

This was considered to be one of the first establishment of law in Anglo-Indian judicial empire. The Britishers began with the establishment of the Surat factory. With this establishment, an elementary system of justice began in India. In the beginning, law was entrusted to non-legal officials and non-professionals. Disputes were settled according to what was seen to be morally correct by those Englishmen. Thus, the law was still uncodified and this system was elementary. Since there was not any fixed system of law and order, morality was the basis of justice. Justice lay in the hands of unprofessional individuals who were not learned in law. These individuals were those who were part of the East India Company and had little knowledge of law. This position of entrusting of law to the hands of individuals not learned in law continued for more than seventy years. A similar system of law was also found in other presidencies such as Madras, Bombay will changes introduced in their later stages. Consider the case of Madras where earlier it was a small town but in the year 1661 it turned out to be a turning point in the history of Madras. It now became a presidential town and through the passing of various charters, a proper system of justice developed. Thus, the judicial system was discharged through unprofessionalism and this required a new change because since this system was elementary, it sooner began to discharge cases on biases towards the White that can be evident from the cases of Raja Nandkumar, The Patna case, and many other cases that did not become infamous.

2. THE SECOND PHASE-

This phase began with the landmark enactment of the Regulating Act of 1773 which eventually led to the establishment of the Supreme Court at Calcutta. This phase began with the separation of powers from the judiciary and the executive, The Supreme Court established in Calcutta was an important source of evidence at the beginning of the establishment of legal institutions in India.

For the first time, an English court was established in India, with professional English judges who were learned in civil law. No Indian law was practiced here rather English law began to have its effect in India through the Supreme Court of Judicature at Fort Williams. It was independent of the executive and gave judgments as per the English law that was practiced in England. However, there are still many cases of hostility between the Supreme Court and the executive that can be traced from the cases of Raja Nandkumar.

-THE CASE OF RAJA NAND KUMAR²

In the infamous case of Raja Nandkumar, there occurred hostility between the Supreme Court and then governor-general of India- Warren Hastings. Raja Nandkumar was an influential man who worked on the aspect of revealing Hastings's intention to take bribery from him. Thus, to save his position Hastings forged the documents, and the trial was done in favor of the governor-general. This case is considered to be the judicial murder of an innocent man who became the victim of the hostility between the judiciary and the executive. Thus, to cover this issue of differences of power between the judiciary and the executive. The British government removed the Supreme Court under the Settlement Act of 1781.³

3. THE THIRD PHASE-

This phase began with the establishment of the Adalat system in India in various provinces and presidencies. The Adalats were governed by executives called collectors. They played a significant role in the functioning of the adalats as they were revenue collectors as well. They helped in discharging justice as per the English law that was prevalent. Thus, the collectors played a significant role in dispensing matters of civil and criminal justice in their territorial jurisdiction.

4. THE FOURTH PHASE-

Since there were some issues still existing with the Adalat system that prevailed in the third phase, the British parliament thereby passed the Indian High Courts Act in the year 1861 with the establishment of High Courts in presidencies such as Madras, Bombay, etc. These are the foundation stones of what that we see today as the established High Courts. Through, the High Courts, the Supreme Court again lost its importance and was abolished subsequently. In the initial stage, the High Courts were established only in the provinces of Bombay, Madras, and even

² Surbhi. (n.d.). *Conflicts of dual judicature: Trial of Raja Nand Kumar*. Legal Service India - Law, Lawyers and Legal Resources. https://www.legalserviceindia.com/legal/article-1457-conflicts-of-dual-judicature-trial-of-raj-nand-kumar.html#google_vignette

³ Jain, M. P. *Outlines of Indian Legal History*

Calcutta but later on they were developed in various northern provinces as well.

5. THE FIFTH PHASE

This phase is another landmark phase of the emergence and evolution of the Indian judiciary with the establishment of the Privy Council. The Privy Council also known as the King in Council was set as the highest court of appeal⁴. If in case of dissatisfaction with the High Court's decision, the party can appeal to the King in council, commonly referred to as the Privy Council. The king headed the privy council and acted as the judge in deciding the matters that were appealed. However, it must be noted that the Privy Council faced a certain backlash since it was a proper court of appeal for cases. The dissatisfaction or the drawbacks that the council faced are as follows-

- **Firstly, many Indians did not knew about the procedure of how to appeal in the Privy Council.**⁵

Law and case appeal in the higher courts is a complex task. Indians did not have much knowledge about the same because the British legal system was quite complex. Natives did not had much knowledge of the same and thus, several appeals were left behind thereby one of the drawbacks.

- **Secondly, high expenses in appeal.**

The privy council used to sit in England. The travel expenses and court fees were kept high at the rate of 5 percent, which many Indians could not afford. Thus, the idea of the Privy Council again faced a backlash that the appeal there was not affordable for all.

- **Thirdly, only appeals above 50 pagodas were accepted.**

Another restriction on appeal in the Privy Council was set to be at 50 pagodas. Only cases above this range were accepted as appeals in the King in Council. In many cases, people whose case fell in this ambit could approach it because of the above-stated reasons. This began with the setting of standards for the judicial system in India. Also, with the establishment of the first law commission under the fifth phase, new changes were seen. With the setting of the first law commission in 1833, the codification of laws began in India. Subsequently, with the establishment of the second and third law commissions, various major laws were codified such as the Indian Penal Code and the Criminal Procedure Code.

⁴ Singh, M. P High Courts and the Privy Council.

⁵ Singh, M. P High Courts and the Privy Council.

6. THE SIXTH PHASE-

The sixth phase began with the passing and implementation of the Government of India Act, of 1935 that led to the establishment of the Federal Court of India. The Privy Council now could not pronounce any declaratory judgment. The Federal Court now known as the Supreme Court of India was given vast powers on paper; however, they were not practiced to that extent in reality.

ADVANTAGES OF THE HISTORICAL SYSTEM

The following are the advantages of the historical development of the judicial system in India-

- **The Judicial system is made up to date.**

This is beneficial because since the law is dynamic, it needs to be on par with the law. Since, indeed, the old judicial systems may not be applicable today. Society is changing and thus, the judicial system also needs to change.

- **Establishment of Judicial precedents**

Through the historical judiciary system, we have established well-known judicial precedents that have laid the foundation for various cases in the future.

- **Inclusion of customary law**

There once existed the use of customary law over the codified law in India. Thus, there existed inclusion of customary laws that the cultural identity of various communities.

DISADVANTAGES OF THE HISTORICAL SYSTEM

The mentioned below are the disadvantages of the historical system of judiciary-

- **No codified laws in the earlier phases.**

As there were no laws codified in the earlier stages, it was quite difficult to maintain uniformity across the nation. Since justice was discharged as per the morality what was Englishmen thought was right or wrong.

- **Non- professional judges**

The Governor-General and the council were usually assigned to dispense justice. Thus, justice was merely done based on what they assumed to be right, and even made biased judgments. These judgments were partial to Indians.

ANALYSIS OF THE MODERN JUDICIAL SYSTEM (PRESENT DAY)

The modern judicial system is on the 3-tier system of an independent judiciary divided into the district courts, the High Courts, and the Supreme Court. This does not end here; the judiciary has even evolved through the technological revolution where the judiciary has joined hands with

technology. This is evident through the emergence of E-court, SCC Online, and even databases available through various websites.

- **The Supreme Court⁶**

The Supreme Court is the apex court of the country that has overall jurisdiction over matters like advisory jurisdiction under Article 143, original jurisdiction under Article 131, appellate jurisdiction under Article 132, issue writs (writ jurisdiction) like the Habeus Corpus, Mandamus etc under Article 32, review jurisdiction as per Article 137 and even in matters of granting Special Leave under Article 136.

- **The High Courts⁷**

These courts are established in various states and union territories all over the country. They exercise original jurisdiction, appellate jurisdiction, and writ jurisdiction (Article 226) but they do not deal with issuing writs for Fundamental Rights, however, only legal rights can be exercised.

- **The District Courts**

The District Courts deal with matters in their district jurisdiction only. They deal with small matters. They do not exercise any original, writ, or appellate jurisdictions unlike the apex court and the High Courts.

LACUNAS IN THE INDIAN JUDICIARY- PRESENT DAY

The Indian judiciary even after several years of evolution and change still has some lacunas that form a hurdle towards justice system in India, which denies justice and equity to all and that also causes hinderance to the idea of independence of judiciary. The following are the lacunas faced –

- **Case backlogs on the pillars of Justice**

Indian courts face chronic backlog of cases. With more than lakhs of cases pending before the 3-tier system of justice, justice and equity is denied. Delay defeats justice and equity. Another point to note is that the ratio of cases to judges of courts is quite high, due to which even the judges are unable to deliver justice to all Thereby, this is one of the biggest loopholes faced by the India justice system.

- **Delays defeating Justice**

Since, the justice system faces high rate of case backlogs there is delays in delivering justice to all those who are in need. There even exists cases that are pending since decades and still there is no judgment for them. Delays defeats the idea of justice and equity.

⁶ The Indian Constitution

⁷ The Indian Constitution

Imagine delay in cases of poor people who do not have sufficient fees to pay advocate's fees and even handle this delay.

- **Judiciary: escapism for classes**

In many a cases, it has been found that the justice is not given in an efficient way rather the delivery of justice is done through biasness. It defeats the idea for justice for all irrespective of class, caste or religion. This is evident from the recent case of Porsche car accident, where the rich brat was given bail and was told to write an essay on road safety. Had this incident done by middle class man had the same procedure of justice been followed. In the recent news, he was granted bail after he submitted his essay to the court of law. This shows how these loopholes had denied justice to those two adults who passed away in the accident in Pune.⁸

- **Lack of accountability and transparency**

This is evident from incidents that have been happening in the court law. In the infamous case of Justice Ramaswamy who was framed under the allegations of misappropriate funds. Justice Ramaswamy was found guilty of misuse of his office. In another illustration, one of the judges of the apex court was accused of providing gratification to a certain committee so as to get a favourable result. He was later removed from his office. Another illustration that can be presented is that against one of the Chief Justice of India, a case of sexual harassment was filed. A committee was set up by the Chief Justice himself, that eventually proofs lack of transparency and accountability.

EVOLUTION WITH TECHNOLOGY- THE MODERN JUDICARY

The modern judicial system falls on the lines of technology where judgments are delivered online, online databases provide for easy analysis of cases, and the introduction of SCC Online and E-Courts. The idea of modernizing the judiciary began with the eGovernance mission which was started in collaboration with the Department of Law with the Supreme Court's mission⁹. It is the national mission to unify it with technology so that it can be inclusive to all and that our judicial system is at par with new technologies. Let's take the example of E-court and the availability of judgments through online databases such as SCC Online. Through E- Courts one can easily join the virtual courtroom and present their case and arguments from anywhere. Also, with the help of these E- Courts checking the date of the matter and even checking the item no. has been made

⁸ Das, N. (2024, July 9). Pune Porsche crash: here's what we know so far. *The Indian Express*. Retrieved July 9, 2024, from <https://indianexpress.com/article/cities/pune/pune-porsche-crash-what-we-know-9346927/>.

⁹ Satish, S. (2023, October 10). *History of Indian judiciary*. Clear IAS. <https://www.clearias.com/history-indian-judiciary/>

easier. Also, through the SCC Online website, one can avail services for getting judgments of all Courts in India with just a click away. These databases have made the understanding of law even easier. With the judgments being available online through various databases, it has made law inclusive for all.

ADVANTAGES OF MODERN JUDICIARY

Ever since modernity has hit the world it has made things become easier. All the work is done within a short period. Everything is available throughout the Internet. It has made the pace of the world faster. Since most of the individuals are known to the world of technology, especially law students it has made it easier for them to access things easily. Case briefs, case analyses, and judgments all are available through journals and other databases which has made the understanding of the law and its concepts far easier. Also, with accessibility to various websites and other databases through technology, the world has been connected. It has benefitted all including legal professionals. Also, adoption of tools like SCC Online has made legal research easier, it provides for comprehensive study of legal content that can serve as a secondary source and enhance research skills.

DISADVANTAGES OF MODERN JUDICIARY

One of the major disadvantages of the modern judiciary lies in availability and using these key tools is not an easy task¹⁰. Many people who come from backward areas face the issue of using these tools efficiently. Law students need guidance and help in their earlier phase to know the step-wise process to access these resources at their best. Thus, those who are not well-equipped with technological knowledge cannot avail themselves. In many a incidents, it has been found that the justice is not given in an efficient way rather the delivery of justice is done through biasness. It defeats the idea for justice for all irrespective of class, caste or religion. This is evident from the recent case of Porsche car accident.

CONCLUSION

In conclusion, the Judiciary is an age-old system that has been providing justice and equity to its citizens. The architecture of the Indian judicial system is as old as 5000 years and has developed for a long. The architecture has been well developed throughout the pre-independence and the British period also called the post-independence era. The British period witnessed a total of six

¹⁰ Murti, P. Retrieved July 9, 2024, from <https://heinonline.org/HOL/LandingPage?handle=hein.journals/juscrp3&div=246&id=&page=>.

stages that produced a huge judicial system in India. The pre-independence era witnessed the delivery of justice through customs and dharma that is religion. During that era, dharma and dhamma were associated. People were driven by their religious laws backed by religious texts, for instance, the Manusmriti, the Yajnavalkya, and many more. Law is a form of social engineering that needs to be changed as per society. To evidence this the mentioning and evaluation of the other six phases of the judiciary are important. The evolution began with the establishment of the Surat factory and an elementary system with no professionals learned in law. Then the Britishers for the first time established the Supreme Court in India under the Regulating Act of 1773. Eventually, with the beginning of the second and third phase, the judicial system advanced with the establishment of adalats and the circuit courts under the judicial plans of Lord Cornwallis. With issues ending up with the adalat system, another change in the architecture was seen under the High Courts Acts with the establishment of High Courts in presidencies, with the beginning of the next phase a Privy Council also referred to as King in Council was made to hear appeals from India both criminal and civil. Ending with the sixth phase, we began with the Government of India Act, of 1935 which led to the establishment of the Federal Court of India also called the Supreme Court in the present day. Technology combined with modernity has advanced judicial proceedings which is evident from examples like the E-Courts, Law Journals, SCC Online, etc.

HYPOTHESIS ANALYSIS

After a thorough evaluation of the research problem, hypothesis, and data, it is clear how the judicial architecture of the country is and how has it developed so far. With the analysis of the pre-independence, the British era, and the modern timeline, it is understood how our judiciary dates back to 5000 years now with a touch of modernity. With these advancements and evolution, we still face certain lacunas, lack of transparency, and several other drawbacks. Noting hypothesis 1 correctly denotes that inclusivity is lacking when there is technological development in the judiciary. Not everyone is well equipped with technological gadgets, so that might be a drawback in the area. Technology has not equipped all it has left some masses out of this, that is those who are untouched by the judiciary. For them the introduction of such new tools like the law journals, searching and accessing cases is of no use. Thus, the first hypothesis is proved to be correct. Critics claim that this has caused a hurdle to justice for all since not everyone has benefitted from it. Also, there is a lack of transparency since cases go on for decades and thereby lack of transparency and there has been no effort to tackle this in any fruitful manner.

The second hypothesis, mentions the necessity of evolution but that has now been shadowed by a lack of transparency that has overshadowed the idea of equity and justice to them. Members of the judiciary and judicial service sometimes cause haphazard in delivering justice due to lack of transparency and lack of accountability. This is evident from incidents that have been happening in the court of law. In the infamous case of Justice Ramaswamy who was framed under the allegations of misappropriated funds. Justice Ramaswamy was found guilty of misuse of his office. In another illustration, one of the judges of the apex court was accused of providing gratification to a certain committee to get a favorable result. He was later removed from his office. Another illustration that can be presented is that against one of the Chief Justice of India, a case of sexual harassment was filed. A committee was set up by the Chief Justice himself, which eventually proves lack of transparency and accountability.

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