Volume : 2 | Issue : 9 | Sept 2013 • ISSN No 2277 - 8160

Research Paper Law

Concept of Judiciary in Ancient India

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ABSTRACT

The ancient Indian system of social living was structured on the concept of peaceful existence based on Dharma (virtuous) principles. They had definite knowledge of law and judicial system. They cherished a hierarchy of courts such as Kula, Shreni, Gana, Adhikrita and Sasitha. Some of the foreign Jurists and historians especially the Europeans argue that there was no 'rule of law' in ancient India and that the ancient Indian civilisation was primitive and cannot be considered as a civlisation. They preach that there was no clear developed judicial system existed in ancient India. But the high level of civilian life attained by the ancient Indians, their development and the wealth generated which attracted the West could not be achieved without a highly effective dispute resolving system. To answer this prepositions a study of the ancient Indian system of dispute resolving mechanism has to be conducted in an impartial manner.

KEYWORDS: Dhrama, Vyavahára, , Smiritis, Surtis, , Paradivivaka, Kula, Shreni, Gana, Adhikrita, Sasitha, Nripa, Sbhyas, Rajadharma, Tarka

India had cherished a distinct legal history well before the earliest Vedic ages dating back to the Neolithic age (7000 BC to 3300 BC)[1]. There existed a Civil and Criminal adjudication process and it continued through the Bronze Age to the Indus Valley Civilization. The evidence can be traced from the ancient texts - The *Vedas, Smrithis, Upanishads* and *Arthasastra.* One of the salient features of the Ancient Indian Law was that it was Secular in nature based on *Dharma* Principle (Natural Justice). The Indian populace at that time was accustomed to the idea of living under the law and had court systems to deal with Civil and Criminal cases.[2] Thus 'India has the oldest judiciary in the world. No other judicial system has a more ancient or exalted pedigree' as said by Justice S. S. Dhavan.[3]

The ancient Indian legal system says about 18 main titles of law as envisaged in Manu Smrithi. These titles of law were non-repayment of debt, deposit, partnership business, resumption of gift, sale of an article by one other than its owner, non-payment of wages, breach of contract, duties of wife and husband, partition of the inheritance, repentance after sale or purchase, dispute between the master and the keeper (of cattle), boundary dispute, abuse, too severe inflicting of punishments, theft, violence, adultery, gambling and animal betting.[4]

As per the procedural law under the legal system of ancient Indian society, a cause of action arises when a person, being harassed in a way contrary to the rules of Smrithi and usage, lodges a complaint. The judicial proceedings usually comprise four parts, namely complaint, reply, evidence and judgement. Replies can probably be of four kinds, and these are admission, denial, a special plea, relating to a former judgement. Three types of evidences are mentioned namely document, possession and witness. [5]

Smrithis in Ancient India stressed the need for an effective judicial system to carry out the Justice according to *Dharma* and it emphasized that the primary duty of the King was the administration of justice. King was responsible for the rule of law and to protect the people and punishing the wrong doer.

In his work The Indian Judicial System A Historical Survey Mr. Justice S. S. Dhavan gives a clear picture on the system of Judiciary that had existed in the earlier times.

"The ancient India had the highest standard of any nation of antiquity as regards the ability, learning, integrity, impartiality, and independence of the judiciary, and these standards have not been surpassed till today ; that the Indian judiciary consisted of a hierarchy of judges with the Court of the Chief Justice (*Praadvivaka*) at the top, each higher Court being invested with the power to review the decision of the Courts below ; that disputes were decided essentially in accordance with the same principles of natural justice which govern the judicial process in the modern State today; that in criminal trials the accused could not be punished unless his guilt was proved according to law ; that in civil cases the trial consisted of four stages like any modern trial – plaint, reply, hearing and decree ; that such doctrines as *res judicata* (*prang nyaya*) were familiar to Indian jurisprudence ; that all trials, civil or criminal, were heard by a bench of several judges and rarely by a judge sitting singly ; that the decrees of all courts except the King were subject to appeal or review according to fixed principles ; that the fundamental duty of the Court was to do justice "without favour or fear".[6]

TYPES OF COURTS

The courts are graded as per their hierarchy into six as given by Katyayana Smrithi. They are:[7]

1. *Kula* (Family Councils) - A group of elderly taught persons in the family to resolve the disputes within the family or group of families of same origin.
2. *Shreni* (Councils of trade or profession) - An assembly of elderly and knowledgeable persons who are accepted as impartial among a group of traders, professionals and craft men to adjudicate the disputes.
3. *Gana* (Assembly of a village) - This was a large assembly of elders in the village or grama who are accepted by the people of the area as learned, impartial and having integrity.
4. *Adhikrita* (Court appointed by the King) - These are the courts authorised by the King for delivering the justice in which persons who are well versed in the Sutras and *Smrithis* are appointed as judges. This type of courts was of various types as according to their jurisdiction. They are (i) *Pratishtitha* which was established at a particular village or town. (ii) *Apratishtitha* was a mobile court which will assemble in a particular place to try a specific case as called up on by the King. (iii) *Mudrita* was a higher level court which was authorized to use the royal seal.
5. *Sasita* (Kings Court) – It was the highest court of law in the Kingdom. It was presided over by the King himself. There was a chief Justice called *Pradvivaka* and a group of Judges called *Sabhyas* to aid and assist the King.
6. *Nripa* (King himself) – The King was the Supreme authority in the adjudication legal process and he was guided by the principles of *Dharma*, which he could not over ride.

COURTS AND THEIR JURISDICTION

Kula, *Shreni* and *Gana* could trial all the civil and criminal disputes except for an offence of violence (*Sahasa*). The cases involving violence are to be tried by the *Adhikrita* a court appointed by the King. Corporal punishments are to be decided by the Sasita (Kings Court) but to be finalized by the King himself.[8]

A decision rendered by the *Kula* can be reviewed by the *Shreni* and a decision by *Shreni* can be reviewed by the *Gana*. Likewise the decision of a *Gana* can be reviewed by the *Adhikrita* courts.

The Law Commission in its Fourteenth Report had said: "Though an-

cient writers have outlined a hierarchy of courts as having existed in remote past, the exact structure that obtained cannot be ascertained with any definiteness; but later works of writers like Narada, Brihaspathi and others seem to suggest that regular courts must have existed on a considerable scale."[9] Thus the hierarchy of courts was considered to be existed in the ancient India with certain elements of authoritative ladder of review power over the courts below.

JUDGES OF THE COURTS

The ancient texts give details on the manner of selection and the qualification of Judges. Yajanvalkya enjoins: "The Sovereign should appoint as assessors of his Court persons who are well versed in the literature of the law, truthful, and by temperament capable of complete impartiality between friend and foe."[10]

The *Rajadharma* advises the King to appoint Judges with certain qualities. They are: The judge should be a person who was (i) well versed in *Vyavahara* (laws regulating judicial proceedings) and *Dharma* (law on all topics), (ii) a *Bahushrutha* (profound scholar), (iii) a *Pramananjana* (well versed in the law of evidence), (iv) a *Nyayasasthrevilambinah* (law abiding) and (v) has fully studied the *Vedas* and *Tarka* (logic) should be appointed to carry on the administration of justice.[11]

Katyayana gives some more criteria on the nature of a Judge and they are ' a King should appoint a person as a judge one who is not cruel, who is sweet tempered, kind, clever and energetic but not greedy'.[12] The old texts say that the judges must be impartial, independent and fearless.

The high and noble role of Judges in the administration of justice was laid down in the Smrithis and Sastras. The high level of fearlessness, impartiality and independence on their part, even if their decisions are against the wishes of the King, are of great value and a source of inspiration to us. This principle of independency of judiciary was also binding on the King as the supremacy of *Dharma* was omnipotent and law received its sanction from the faith of the people and the King in *Dharma* and was in conformity with the definition 'Law is the King of Kings'. Thus it can be seen that the Smrithis had laid down a clear and firm foundation for an effective independent judiciary.[13]

Every *Smritis* emphasizes the supreme importance of judicial integrity. *Shukra-nitisara* says: "The judges appointed by the king should be well versed in procedure, wise, of good character and temperament, soft in speech, impartial to friend or foe, truthful, learned in law, active (not lazy), free from anger, free from greed, or ill desire (for personal gain), and truthful." Vishnu says: "The state should confiscate the entire property of a judge who was corrupt. Judicial misconduct included conversing with litigants in private during the pendency of a trial. Brihaspati says: "A judge or chief justice (*Praadvivaka*) who privately converses with a party before the case has been decided (*anirnite*), was to be punished like a corrupt judge.[14]

LAWYERS

The concept of Lawyers appearing for the parties and helping the court was applied in the ancient times. Such a person well versed in law and was appointed by a party to litigation was called a *Niyogi* (Lawyer). The *Niyogi* was entitled to get fees and Sukra Neetisara states that 'the person authorized to represent a party in court was entitled to get his remuneration to the extent of 1/16 th, 1/20 th , 1/40 th, 1/80 th, or 1/160 th of the suit claim and the remuneration should be inversely proportional to the suit claim.[15]

PROCEEDINGS OF THE COURT

The courts in ancient times worked on well laid procedural system. If anybody was injured by others he can file a *Pratijna* (plaint) before the court. *Vadin* was the Plaintiff and *Prati Vadin* was the Defendant. Dharma Kosa gives the nature of the plaint as it should be brief in words, rich in content, unambiguous free from immaterial facts, devoid of improper arguments, precise and not self contradictory and it should have a meaningful prayer set out against the defendant.[16] The Defendant had to put forward his arguments in an *Uttara* (written statement) which should be conformable to the plaint. When a plaint was filed there was a provision for imposing a restraint by *Asedha* an interim injunction.

Court fees were also applicable as the judgement debtor was liable to pay 5% of the suit amount and the plaintiff was to pay an equal amount.[17]

The trial was done according to Dharma sastras and in a manner ensuring the faith and confidence of the litigants and the public in the judiciary.[18] Burden of proof was cast on the person alleges the offence. The parties can produce the witness and in the absence summons to the witness was ordered by the Judge.

Jayapatra (document of victory) was the judgement and it was called so as one party was to win the case. The *Jayapatra* should contain[19] (i) abrief statement of the plaint and the written statement; (ii) evidence adduced by the parties; (iii) framing and discussion on the issue; (iv) consideration of arguments by the parties; (v) application of law; (vi) the separate opinion of the judges; (vii) final decision; and (viii) the seal of the court. While delivering the judgement the judge should act according to justice equity and good conscience.[20]

Regarding the Criminal justice The King or his officers has to take cognize of the offence on their own motion or on a complaint from anybody. The offences were classified as (1) *Aparadhas* – small offences; (2) *Pathakas* – more grievous offences and (3) Chalas – offences against the government and public.[21]

The Mahabharata says' punishment protects Dharma, Artha and Kama'.[22] *Dhanda Neeti* is well accepted in Sastras and it was considered to be important that without the King and his power to punish the criminals human beings would have always been tormented by fear, insecurity and threat to life and property. It is difficult to find people who are always pure in all aspects and a deterrent is always needed to correct the wrong doer.[23] The punishments were classified in to (1) *Vagdand*a – admonition; (2) *Dhigdanda* – censure; (3) *Dhanadanda* – fine; (4)*Angaccheda* – mutilation; (5) V*adhadanda* – Death penalty.[24]

CONCLUSION

The ancient wisdom of Indians was of an eye opener for the present day law makers and the general public. The alien rule that India witnessed for centuries had devastated the ethnic, cultural and social awakening that India had in the distant past. The well developed Legal frame work and the Judiciary firmly bound on the Dharma principle and the pious nature of the Indian people sticking on to the rule of law has enabled India to lead the First Revolution in the history of mankind, the Agricultural Revolution. The Indian sub continent was rich in resources and wealth that attracted the foreign invaders was history. For a civilisation to acquire this development, needs a social system of peace living which in turn need a correct and corruption free law and order system and an active judiciary. The ancient judicial system laid down by the great seers of India has all the requirements for a stable and workable judiciary as can be seen from the above discussion and it was matching even with the present day system.

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