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Ancient Legal System and Present Legal System: Similarity and Difference

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Abstract: ***The Indian legal system, deeply rooted in historical traditions, has evolved through various phases, drawing influences from diverse legal frameworks. From the ancient system governed by Dharma and royal decrees to the modern structure shaped by British jurisprudence, law in India reflects a unique blend of customary, religious, and statutory laws. The ancient legal order emphasized social harmony and moral duty, with rulers administering justice based on religious texts and established customs. In contrast, the British colonial era introduced a codified system inspired by common law principles, fundamentally altering judicial procedures and legal interpretation. Despite the transition, remnants of the ancient system persist, especially in personal laws and customary practices. It is evident that while modern India operates within a structured constitutional framework, the echoes of its past legal traditions continue to shape its judiciary. This suggests that Indian law is not merely a colonial inheritance but a dynamic fusion of indigenous and external influences, constantly adapting to societal needs.***

Keywords: Indian legal history, common law, civil law, ancient justice, British legal influence

1. Introduction

The term 'Law' has been defined by different scholars in various era alike the evolution of distinct 'legal system' in the world. In simple words, the legal system defines as a procedure or process for interpreting and enforcing the law[1]. The purpose of a legal system is to provide a systematic, orderly, and predictable mechanism for resolving disagreements. There are three types of legal system in the world namely common law system; civil law system and Religious law system. The third type of Religious legal system has been followed in very few countries in the world where the religious texts are referred mainly to enforce the law within the countries. There is one more system involved during the colonial period which may be called as Mixed Legal system. The Indian Legal System is one of the most seasoned legal systems in the whole history of the world and has been consisting of features of both Common law system and Civil Law system. It has modified and in addition created in the course of recent hundreds of years to ingest surmising from the legal systems over the world. [2]

In brief, the Civil law system has its origin in Roman law as codified in the Corpus IurisCivilis of Justinian. The main feature of civil law system is that it is contained in civil codes which are described as a systematic, authoritative and guiding statue of broad overage, breathing the spirit of reform and making a new start in the legal life of an entire nation. [3] Civil law is largely classified and structured and contains a great number of general rules and principles. The main task of the court is to apply and interpret the law contained in a code or statute to case facts. [4] This law system place less emphasis on precedent and they give more emphasis to written statues and other legal codes that are constantly updated and which establish legal procedure, punishment and what can and cannot be brought before the court. [5]In civil law countries, judges are often described as "investigators." They generally take the lead in the proceedings by bringing charges, establishing facts through witness examination and applying remedies found in legal codes.

In contrast to the above legal system, the common law evolved in England since around 11th Century. It is based on the concept of judicial precedent. Judges take an active role in shaping the law here, since the decisions a court makes are then used as a precedent for future cases. Whilst common law systems have laws that are created by legislators, it is up to judges to rely on precedents set by previous courts to interpret those laws and apply them to individual cases. Common law country, lawyers make presentations to the judge (and sometimes the jury) and examine witnesses themselves. The proceedings are then "refereed" by the judge, who has somewhat greater flexibility than in a civil law system to fashion an appropriate remedy at the conclusion of the case. In these cases, lawyers stand before the court and attempt to persuade

[1]Legal systems, available at https://www.law.cornell.edu/wex/legal_systems, (Last visited on September 21,2019)

[2]G.Madan, and C.Renuga, "The Development Of Indian Legal System", International Journal of Pure and Applied Mathematics, Volume 120 No. 5 2018, pg. 347, https://acadpubl.eu/hub/2018-120-5/5/423.pdf, (Last visited on September 21,2019)

[3]Civil law and common law : Two different paths leading to the same goal, available at https://www.researchgate.net/publication/265244573_Civil_law_and_common_law_Two_different_paths_leading_to_the_same_goal, (Last visited on September 25,2019).

[4] Ibid

[5]Vcitoria Cromwell, "Common law vs. civil law: an introduction to the different legal system", available athttps://barbriqlts.com/common-law-vs-civil-law-an-introduction-to-the-different-legal-systems/, (Last visited on September 25,2019).

others on points of law and fact, and maintain a very active role in legal proceedings[6].

The Present Indian legal has taken the features of both the system. However it can be seen in the Ancient Indian Legal System time also. The Ancient Legal System, the main function of state were considered to maintain the peace and order and defense against aggression from outside. The sovereign head i. e. kings who ruled India exercised their control over their people by following their own Personal or Religious Laws thereon. India by virtue of its connection with Indus Valley Civilization has one of the most ancient civilized systems in the world. The concept of Nyaya can be traced back to the religious scriptures like Ramayana, Mahabharata, Smriti and Vedas. There were established courts which were given authority to settle the dispute between the individuals and group within and outside state. The king had authority to make law on any matter and such authority was unquestionable. In ancient Indian legal history, there were no independent written text on law and legal institution however some general code of conduct of people were present. Henry Mayne described the legal system of ancient India "as an apparatus of cruel absurdities". [7]The advent of British rule in the beginning of the 17th century ushered in a new era of justice in India. The British rule in India is responsible for the development of the Common Law based legal system in India. The development of the British Common Law based system can be traced to the arrival and expansion the of the British East India Company in India in the 17 Century. the early seventeenth century, the Crown, through a series of Charters, established a judicial system in the Indian towns of Bombay, Madras and Calcutta, basically for the purposes of administering justice within the establishments of the British East India Company. [8]

Statement of problem:

This paper focuses on the Ancient Legal system prevalent in India before the Mughal era and Present Legal system which consist of impact of British rule on Indian Legal system and its effects on post constitutional era. It is known fact that Indian legal system is mixed legal system of Common Law system and Civil Law system and the main contribution in forming the mixed Legal system is British rule over the India. But India having oldest judicial system, was followed some kind of system. The problem encountered while doing this research was different version with some similarities in the various literatures describing Ancient Legal system in India.

Research Question:

The issues which are going to be hashed out in this paper are:

a) Whether the practice and procedure to enforce the law adopted under Ancient legal System in India are the same with Present Indian Legal System.
b) Whether the component of Ancient Indian system has evident manifestation in Present Indian Legal system.
c) Whether the practice and procedure to enforce the law is different in ancient Legal system vis - à - vis Present Legal system in India.

2. Ancient Indian Legal System

The laws can not be the same for all ages and for all times. They change with the social conditions and needs of the people. The moral progress of a people is reflected in the evolution of the laws. The history of the Indian judicial system goes back to the ancient time when Manu and Brihaspati gave Indians *Dharma Shastras*, Narada the *Smritis*, and Kautilya the *Artshastra*. A study of these memorable books would reveal that in ancient India there was a fairly well - developed and sophisticated system of administration of justice. The history of the Indian judicial system goes back to the ancient time when Manu and Brihaspati gave Indians *Dharma Shastras*, Narada the *Smritis*, and Kautilya the *Artshastra*. A. study of these memorable books would reveal that in ancient India there was a fairly well - developed and sophisticated system of administration of justice. [9]

The administration of justice was a private affair settled by fight and might. But later it came to be administered by well - settled organs of the society such as 'Sabha', 'Samiti' etc mentioned in ancient scriptures. Though such bodies were essentially for tribal governance they also handled the task of jurisprudence. [10] The function of the tribal head (King) vis - a - vis the disposal of justice has been dealt with in ancient treatise on law like that of Manu, Narada and also in Mahabharatha. According to Mahabharatha the king who is the one who dispenses justice should not deviate from the path of truth and also he should be a cultured person with an intellectual bent of mind. In the 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. [11]

The Naradiya Dharma sastra says:

"Judicial procedure has been instituted for the protection of human race, as safeguard of law and order to take from kings the responsibility for crimes committed in their kingdom when humanity was strictly virtuous and veracious. There existed no quarrels, hatred or selfishness.

[6]Piyali Syam, "What is the Difference Between Common Law and Civil Law", c https://onlinelaw.wustl.edu/blog/common-law-vs-civil-law/, (Last visited on September 25,2019).
[7]Justice S. S. Dhavan, "The Indian Judicial System, A Historical Survey", available at http://www.allahabadhighcourt.in/event/TheIndianJudicialSystem_SSDhavan.doc , (Last visited on October 03,2019)
[8] Historical evolution of the Indian Legal system , available at http://cbseacademic.nic.in/web_material/doc/Legal_Studies/XI_U3_Legal_Studies.pdf, (Last visited on October 03,2019)
[9] Judiciary in Ancient India, available at https://www.iilsindia.com/blogs/2015/01/15/judiciary-in-ancient-india/, (Last visited on September 30,2019).
[10] EVOLUTION OF LAW FROM THE PRIMITIVE STATE TO MODERN SOCIETY, available at https://shodhganga.inflibnet.ac.in/bitstream/10603/21634/7/07_chapter%201.pdf, (Last visited on October,15,2019)
[11] Ibid.

Virtue having become extinct from them, judicial proceedings have to be established and the king having privilege of inflicting punishment has been instituted the judge of laws~its"

It was the king's duty to punish the lawbreakers and ensure what conditions were conductive for the smooth functioning of the society. Fear of punishment compelled the people to honour the rights of others. Every person had the right to receive justice and it was the state, which delivered it to him. The legal systems which then existed gave no power of legislation to the king. It was believed that a king should decide cases according to the rules of sastras. In the absence of a provision in a text he should follow the usual practice or tradition. King should never act according to his own fiat. Such an action on the part of the King causes danger to him and brings ruin to the people. The king was only an upholder and promulgator of law and the administrator of justice. King presided over the highest court of the state but his duties were performed as prescribed in the law books known as codes. [12]

The concept of 'rta' (the existence of an order in nature) which was originated and developed in Vedic age, led to an establishment of social order in nature, culminating in the development of law for regulating human relations. The thought that individual members of the society must get justice according to law of the land, and that their rights must be safeguarded resulted in introducing a system of judiciary. [13]

The major stages of development are traced as the Vedic i. e. the Pre - Mourya, Maurya and Post - Mourya (i. e. Gupta) periods. The state of affairs in the pre - Maurya periods is often traced in the Vedas, Upanishads, Jatakas etc. At that time jurisprudence or the legal systems (Vyavaharadharmasastra) was embedded in Dharma as propounded in the Vedas, puranas, smritis and other works. [14]

Dharma is a Sanskrit expression of the widest import. The word *dharma* is derived from the root *dhr*, which means to uphold, sustain, and nourish. *"Dharma"* is a comprehensive term that encompasses notions of duty, morality, ritual, law, order, and justice. There is no corresponding word for Dharma in other languages and even in Sanskrit it is interpreted in many different shades of meanings. Dharma literally deals with duty, religion and inseparable quality of the thing or order. It is formed based on the Vedas such as Smiriti and Sruthi (Lingat and Derrett). Dharma was derived from Vedic concept Rita which means straight line. Rita means Law of Nature. Dharma signifies moral laws based on righteousness. Dharma is anything that is right, just and moral. [15] Dharma aims for the welfare of the state and mainly to its people. *Dharma* is the ordered behavior of human beings; it gives coherence to the different activities of life; it gives direction to the harmony of the whole person, helping him find the right way to adhere to the just law of living. A human being is a composite personality expressing physical, vital, mental, and spiritual dimensions of life. The harmonization of these aspects of life is the primary domain of *dharma.* One's duty to one's family, group, society, humanity, and to God are all part of *dharma.* [16]

In Taittiriyopanishad Dharma is explained as follows.
"Dharma constitutes the foundation of all affairs in the world. People respect those who adheres to Dharma. Dharma insulates man against sinful thoughts and actions. Every thing in the world is founded on ~harm"[17]

The purpose of *dharma* is to maintain and conserve established social order as well as the general welfare of humankind. Social life implies adherence to common rules and regulations. The violation of laws is destructive of social life, hence there is a need to maintain law and order. The laws seek to restrain those who do not restrain themselves. They prescribe punishment for violation. Traditionally, the sources of *dharma* are first source is the *Veda* or *Vedas*. [18]The four primary Vedas are the *rigveda, Yajurveda, Samaveda, and Atharvaveda*. They are collections of oral texts of hymns, praises, and ritual instructions. Veda literally means revelation. The second source is called *Smriti*, which literarily means 'as remembered' and it refers to tradition. They are the humanly authored written texts that contain the collected traditions. The *Dharmashastra* texts are religion and law textbooks and form an example of the *Smriti* tradition revealed texts (*ruti*, for example), tradition (*smrti)*, conduct of the wise in the community (*sistacara)*, and the satisfaction of one's enlightened conscience (*atmatust -).* The King had no autonomous specialist however got his forces from `Dharma', which he was relied upon to maintain. The third source of dharma is called the *'âchâra'*, which means customary law. *Âchras*are the norms of a particular community or group. Just like the *smriti*, *chra* finds its authority by virtue of its connection with the *Vedas.* Where both the *Vedas* and the *Smritis*are silent on an issue, a learned person who knows the *Vedas* can consider the norms of the community as *dharma* and perform it. This way, the Vedic connection is made between the Veda and the *âchâra*, and the *âchâra* becomes authoritative. [19] Three systems of substantive law were recognized by the court, the dharma - shastra, the arth - shastra, and custom which was called sadachara or charitra. [20]

[12] Ibid.
[13] 'rta' and 'dharma', available at https://www.yogavedainstitute.com/wp-content/uploads/2018/08/RTA_and_DHARMA.pdf, (Last visited on October, 27,2019)
[14] Supra no. 10 (Last visited on September 27, 2019)
[15] Dharma, available at http://www.vedamu.org/Veda/KRP-Sir/Dharma.pdf, (Last visited on September 27,2019)
[16] L Shankar, The Concept of Dharma in Indian Thought, available at https://shodhganga.inflibnet.ac.in/bitstream/10603/137697/7/07_chapter%20i.pdf, (Last visited on October 03,2019)
[17] DHARMA the global ethic, available at https://www.vhp-america.org/wp-content/uploads/2018/09/DHARMA_Ram_Jois.pdf, (Last visited on September 30,2019)
[18] K.L. Seshagiri Rao, "Practitioners of Hindu Law: Acient and Modern", Volume 66 | Issue 4, pg. 1186.
[19]Historical evolution of the Indian Legal system , available at http://cbseacademic.nic.in/web_material/doc/Legal_Studies/XI_U3_Legal_Studies.pdf, (Last visited on October 03,2019)
[20] INTRODUCTION TO ANCIENT INDIAN LAWS, available at https://ilchslcu.wordpress.com/2015/08/24/introduction-to-ancient-indian-laws/, (Last visited on September, 21,2019)

There are less codification but wherever the codification had made, the reasons for codification were to preserve the king's person and his rights; to ensure the benefit of good governance and to prescribe punishments for such crimes which were not included in the texts.

The primary rights of life and property of law - abiding citizens are protected. Law is invoked where there is a transgression of rights. Acts that tend to harm persons or cause them injury, as well as those that deprive humans of their rightful possessions, are condemned. The former sort come under civil law, and the latter under criminal law. Sacred law (Dharma), evidence (Vyavahára), history (Charitra), and edicts of kings (Rájasásana) are the four legs of Law, of these four in order: the later is superior to the previously mentioned. Dharma is eternal truth holding its sway over the world; Vyavahára, evidence, is in witnesses; Charitra, history, is to be found in the tradition (sangraha), of the people; and the order of kings is what is called sásana (legislations). These principles of were administered by Court, in "Sangrahana", "Karvatik", "Dronamukha", and "Sthániya" and at places where districts meet, three members acquainted with Sacred Law (dharmasthas) and three ministers of the King (amátyas) shall carry on the administration of Justice. "Sangrahana" is centre for 10 villages, "Karyatik" for 200 Villages, "Dronamukha" for 400 villages and "Sthaniya" for 800 villages. This arrangement of judiciary suggests that there were sufficient number of Courts at different levels of administration, and for district (Janapadasandhishu) there were Circuit Courts. [21]

The Manusmṛti or "Laws of Manu", Sanskrit Manusmṛtiमनुस्मृति; otherwise called Mānavadharmaśāstraमानवधमशमास्त्र, is the most vital and soonest metrical work of the Dharmaśāstra printed custom of Hinduism composed by the antiquated sage Manu. These eighteen "Titles of Law" or "Grounds for Litigation" given by Manu mentions following grounds on which litigation may be instituted, (1) Non - payments of debts; (2) deposits; (3) sale without ownership; (4) partnership; (5) non - delivery of gifts; (6) non - payment of wages; (7) Breach of Contract; (8) cancellation of a sale or purchase; (9) disputes between owners and herdsmen; (10) the law on boundary disputes; (11) verbal assault; (12) physical assault; (13) theft; (14) violence; (15) sexual crimes against women; (16) law concerning husband and wife; (17) partition of inheritance; and (18) gambling and betting. According to BrihaspatiSmiriti, 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 which was known as Kula: Mitakshara as consisted of a group of relations, near or distant. When quarrel occurred by the family members, it was solved by the elders of the family. It is a type of an informal court. Thereafter if the family dispute not settled in Kula system, then the matter was taken to Sreni Court. And the sreni court heared guild disputes and settled commercial matters in ancient India. [22] 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 king's court was the highest court of appeal as well as an original court in cases of vital importance to the state. In the king's court the king was advised by learned people such as *Brahmins*, the ministers, the Chief Justice, etc. [23]The appeals system was practised and the king was the highest body of appeal. 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 VachaspatiMisra, "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".

It is found that jury system existed in Manu"s period and Manu recommended the king to give the power of judicial administration to Brahmins in his absence. As civilization advanced, the king's functions became more numerous and he had less and less time to hear suits in person, and was compelled to delegate more and more of his judicial function to professional judges. [24]Katyayana says: "If due to pressure of work, the king cannot hear suits in person he should appoint as a judge a Brahmin learned in the Vedas. Jurors were called as „sabhasada" or councilors who acted as assessors or adviser of the King. They were the equivalent of the modern jury, with one important difference. The jury of today consists of laymen - "twelve shopkeepers" - whereas the councilors who sat with the Sovereign were to be learned in law. 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. "[25]

These assessors or jurors were required to express their opinion without fear, even to the point of disagreeing with the Sovereign and warning him that his own opinion was contrary to law and equity. Katyayana says: 'The assessors should not look on when they perceive the Sovereign inclined to decide a dispute in violation of the law; if they keep silent they will go to hell accompanied by the King. " The same injunction is repeated in an identical verse in Shukr - nitisara. The Sovereign - or the presiding judge in his absence - was not expected to overrule the verdict of the jurors; on the contrary he was to pass a decree (Jaya - patra) in accordance with their advice. Shukr - nitisara says: " The King after observing that the assessors have given their

[21] Veya Surya M.S , "Judiciary in Ancient India" , IOSR Journal of Business and Management (IOSR-JBM), Volume 19, Issue 12, pg. 91.

[22]G.Madan, and C.Renuga, "The Development Of Indian Legal System", International Journal of Pure and Applied Mathematics, Volume 120 No. 5 2018, pg. 347, https://acadpubl.eu/hub/2018-120-5/5/423.pdf, (Last visited on September 21,2019)

[23]Ibid.

[24] The Legal system in ancient India, available at http://www.legalservicesindia.com/article/1391/The-Legal-system-in-ancient-India.html, (Last visited on September 24,2019)

[25] Justice S. S. Dhavan, "The Indian Judicial System A Historical Survey" available at http://www.allahabadhighcourt.in/event/TheIndianJudicialSystem_SSDhavan.pdf, (Last visited on November,03,2019)

verdict should award the successful party a decree (Jaya - patra). "In criminal trials it appears that the question of innocence or guilt of the accuse was decided by the judge or the jurors, but the quantum of punishment was left to the King. [26]

The king was judge who decides the matter and his order is binding on all. The principle of Dharma was also to be considered in deciding the matter. But at lower level of court, the matter has been settled through customs prevalent. Hence the customs played more role in deciding the dispute rather any other laws. The court of king is final authority and his order is binding on others.

3. Present Legal System

The Present Legal system is based on British Laws. However the legal system had been well developed in the muslim regime. But there was administration of court before arrival of muslim kings during the Delhi Sultan (1206 - 1526) in which Sultan, being head of the state, was the supreme authority to administer justice in his Kingdom. Courts which were established at the capital of the sultanate, may be stated as follows:

1) The Kings Court: The Kings Court presided over by the sultan, exercised both original and appellate Jurisdiction on all kinds of cases. It was the highest court of appeal in the realm. The sultan was assisted by two reputed Muftis highly qualified in laws. [27]
2) The Court of Diwani - E - Mizalim: It is the highest court of criminal appeal, the Chief Justice Qazi - ul - Quzat was presided in absence of Sultan. [28]
3) The Court of Diwani - E - Risalat: It is the highest court of Civil Appeal. [29]

The first Muslim settlers arrived in India in the early 7th century AD. Then, the Arab merchants came to the Malabar coast in South India. And in the 12th century AD, the Turkish invasion also brought Islam to India. Later, with the advent of the Mughal Empire in the mid - 16th century AD, the Mughal judicial and administrative systems were introduced in India. With the establishment of Slave dynasty in Delhi by Qutb - din - aibak there began the infiltration of Islamic jurisprudence in to Indian legal system The sources of Islamic law are the Quran and Sunnah. Quran is the holy book. Prophet is also considered the best interpreter of Quran. There are two other sources, which developed in order to meet the needs of expanding Muslim society. [30] They were

1) Ajma (Consensus of opinion among those who were learned in Quran)
2) Qiyas (Analogical reasoning having due regard to the teachings of Mohammed

Muslim law became the law enforceable in India with the establishment of Slave dynasty. The law covered various subjects such as inheritance, gifts, marriage, divorce, wakfs (Pious endowments with reference to the subject matter of trusts) etc which constituted the personal civil law governing the Muslims and also the Muslim criminal law which described the offences punishable and also the penalties for various offences. During Mughal Period 1526 to 1755, three important courts were established. [31]

1) The Emperors Court: The Emperor Court was the highest Court of the Empire. The Courthad Jurisdiction to hear original civil and Criminal Matters.
2) The Chief Court: It is the next Important Court at delhi and it was presided over by thechief justice to hear civil and criminal matters and hears appeals from the provincialcourts.
3) The Chief Revenue Court: It is the third important court at Delhi and it was the highestCourt of appeal to decide revenue cases and it was presided over by Diwan - e - ala. [32]

Influence of British Rule on the Legal System:

The development of the British Common Law based system can be traced to the arrival and expansion of the British East India Company in India in the 17 Century. The East India Company gained a foothold in India in 1612 after Mughal emperor Jahangir granted it the rights to establish a factory in the port of Surat. In 1640, the East India Company established a second factory in Madras (now Chennai) on the southeastern coast. Bombay Island, a former Portuguese outpost was gifted to England as dowry in the marriage of Catherine of Braganza to Charles II and was later leased to the East India Company in 1668. [33]

Different charters had been issued under Queen Elizabeth for administering the dispute of their subject. Charter of 1661 issued during the period of Charles I1 empowered the governor - in council of the company to act as judge for the disputes arising within their jurisdiction. Then came the charter of 1683 which gave the company full power to make 'peace and war. This charter also provided for establishing a court of judicature to be held at such place or places as the company might direct. In 1726 the crown by letters patent established mayors courts on English pattern at Madras, Bombay and Fort William (Calcutta). The courts had the power to hear all the civil suits and other similar disputes. In 1753 by letters patent 'courts of request' were established at each of the three presidencies. [34]

The jurisdiction of the Mayor's courts and other crown courts in Calcutta did not cover Europeans who lived outside the cities concerned. However the regulating act passed in

[26] Ibid.
[27] Criminal Judicial system Under Muslim Period available at https://www.academia.edu/36275592/Criminal_Judicial_system_Under_Muslim_Period, (Last visited on September 30,2019)
[28] The Development Of Indian Legal System, available at https://acadpubl.eu/hub/2018-120-5/5/423.pdf, (Last visited on October, 30,2019)
[29] Organisation of judicial system in India, available at http://shodhganga.inflibnet.ac.in/jspui/bitstream/10603/129032/10/07_chapter%202.pdf, (Last visited on October, 27,2019)
[30] Supra no.10. (Last visited on September,29,2019)
[31] Ibid.
[32] Ancient Period:- Mogul Period: - District Courts, available at https://districts.ecourts.gov.in/sites/default/files/Evolution%20of%20Judicial%20System%20in%20Godda.pdf, (Last visited on September 27,2019)
[33] Supra no. 19, (Last visited on October,30,2019)
[34] Ibid.

1773 provided for the establishment of a Supreme Court at Fort William, Calcutta as the Supreme Court of judicature. They had full civil, criminal and ecclesiastical jurisdiction and were empowered to administer English law to all British subjects and persons in the employment of the Company situated everywhere. At Madras and Bombay Mayors courts based on the British Municipal Model existed till 1797 till they were replaced by Recorders courts, subject to the same limitations as were imposed on the supreme court at Fort William by the act 1781. The system of civil courts established by Lord Cornwallis in Bengal was adopted in Madras presidency in 1802. By regulation 111 of 1807 the governor ceased to be judge. In 1826 the village heads were appointed as Munsiffs. In 1843 the provincial courts of appeal were abolished and new zilla courts were established. The following law was applied by the Supreme Courts in the three presidency cities: (i) common law as it prevailed in England in 1726; (ii) statute law that prevailed in England in 1726, including law subsequently enacted by Parliament; (iii) regulations made by the Governor General in Council prior to the Act of 1833 and also the Acts by the Governor General in Council under the Act of 1833; (iv) Hindu law and usages in respect of Hindus, and Muslim law and usages in respect of Muslims. So far as other communities, e. g., Christians, Parsees, Jews, etc., were concerned, English law in use was to apply to them. [35]

The purpose of Establishment of various courts and the concentration of power on the courts had to take over the judicial power fiom the existing rulers and religious heads and to enact and codify rules in such a manner as to help the British sovereign to spread its power all over India. [36]

The Supreme Court, under the Regulating Act of 1773, was a court of record and had the power and authority similar to that of the King's Bench in England. The Supreme Court of Calcutta had jurisdiction over civil, criminal, admiralty and ecclesiastical (laws governing the affairs of the Christian Church) matters. It had the power to issue writs such as *mandamus* and *certiorari*, similar to the jurisdiction of the present day High Courts and Supreme Court. An Act of the British Parliament made in 1797 also abolished the Mayor's Courts established at Bombay and Madras. The 1797 Act authorized the Crown to issue a Charter to establish Recorder's Courts at Madras. The Recorder's Court which was declared as a court of record, consisted of a Mayor, three Aldermen and a Recorder. Supreme Courts were soon established in Madras and Bombay during the reign of King George III. In 1800, the British Parliament passed an Act empowering the Crown to establish a Supreme Court at Madras in the place of the Recorder's Court. The powers of the Recorder's Court were transferred to the newly established Supreme Court, and it was directed to apply the same jurisdiction and be subject to the same restrictions as those applied to the Supreme Court of Judicature at Calcutta. In the case of Bombay, the Recorder's Court continued to function until 1823. In 1823, an Act of the British Parliament abolished the Recorder's Court and established a Supreme Court in its place. The Supreme Court in the Presidency Town of Bombay was established by a Crown Charter and consisted of Chief Justice Sir E. West and two other *puisne*judges. The jurisdiction of the Supreme Court was strictly limited to the town and the Island of Bombay at that time. [37]

The period of British rule had also made a significant role in codification of laws. Law commission was set up by Macaulay which codified the Indian laws. On the basis of this commission, while some of our major statutes were drafted in the British era (Indian Penal Code, 1860; Contract Act, 1872; Negotiable Instruments Act, 1881; Transfer of Property Act, 1882; Code of Civil Procedure, 1908 etc).

The Government of India Act, 1935 changed the structure of the Indian Government from “unitary” to that of “federal” type. The distribution of powers between the Centre and the Provinces required the balance to avoid disputes, which would have arisen between the constituent units and the Federation. It also provided for the establishment of a Federal Court, which was set up in 1937 with appellate and advisory jurisdiction. Its appellate jurisdiction was extended to civil and criminal cases. [38]

The present Indian Law is largely derived from English common law which was first introduced by the British when they ruled India. Various Acts and Ordinances which were introduced by the British are still in effect today. [39] However, the Indian Constitution is founded upon the doctrine of separation of powers. As per this doctrine there are three organs viz., Legislature, Judiciary and Executive and all these three organs should discharge their functions independently, none should encroach one upon another. Nevertheless in India, this doctrine is not applicable strictly, but checks and balance theory is applicable. The judicial system includes the Supreme Court, the High Courts, and the Subordinate Courts. The Supreme Court is the highest court or the apex court in India. It has original, appellate and advisory jurisdiction. Under its original jurisdiction, it takes up disputes involving Government of India and State Governments; individuals or groups may approach the Supreme Court for enforcement of their fundamental rights or human rights as enumerated in the fundamental rights chapter. The Supreme Court is the final court of appeal (appellate jurisdiction) for cases from all courts and tribunals in India. [40]

Indian legal system is hybrid of Common law and civil law system. Common Law simply speaking is Judge made Law or Case - law. Whenever the disputes between different citizens reach a stage at which of the parties seek redressal

[35] Legal history, available at http://janhitlaw.in/K-%20113%20LEGAL%20HISTORY%20by%20Mr.%20Zeshaan%20Sir.pdf, (Last visited on October ,30,2019)
[36] Supra no.10. (Last visited on September 27,2019)
[37] Supra no. 19 (Last visited on September 29,2019)
[38] Development of Judicial system during British India, available at https://www.jagranjosh.com/general-knowledge/development-of-judicial-system-during-british-india-1518441346-1, (Last visited on October, 30,2019)
[39]Raj KumariAgrawala, History of Courts and Legislatures, in (Minattur Joseph), The Indian Legal System 1978.
[40] R K Singh, “Separation of powers‟ and the Indian constitution” available at https://shodhganga.inflibnet.ac.in/bitstream/10603/32340/9/10_chapter%204.pdf, (Last visited on September 30,2019)

of the grievance in the court of law, the decisions by the courts are responsible for the development of Common law. In deciding the disputes between the people, the Judges interpret and apply Black letter Law or Civil Law if it is available and they decide the cases on the basis of the principle of Stare Decisis. If there are no precedents or codified law in respect of a particular fact situation the Judges apply some very fundamental principles to the dispute and decide the same. They are the principles of justice, equity and good conscience. In this process Judges, not only apply the law but even make the law. [41]

After independence, the same was continued under our Constitution by virtue of Article 372. Article 32, 226 and 227 are also incorporated where the power if given for judicial review i. e. our judiciary is empowered to strike down any legislation if it is found to be violative of the fundamental rights of the citizens. As far as making of law is concerned, there are various occasions where the statute is silent and judge on the basis of the sense of justice in fact carve out new principles of law. Thus judge not only find and make the law but also stat what law ought to be. [42]

In civil law system, law needs to be certain, precise and predictable. Codified law or Black Letter Law is looked at to fulfil the requirement of certainty. The role of judge decide each case on its merits by applying the law as enacted into the code and not in conformity with the system of Stare Decisis. Codification of Indian laws had started during British Regime. Major procedural and substantial codes had been drafted and came into force. By the virtue of Article 372 of the constitution, they remained binding laws till today. [43]

In common law system, the Judges hear the parties, act as referee to allow both sides equal opportunity and decide on the basis evidences presented. On the contrary, in civil law system, which is a inquisitorial system, judges play a role of both referee and interrogator.

But with the introduction of PIL and several major reforms in judiciary as a part of Judicial Activism, today Indian Judiciary has a more mixed approach. Judges now have active involvement in matters (particularly PILs) and this somewhere reflects Civil Law system attitude, but since *precedence* is the norm of Common law, therefore India is a common law country with elements also incorporated from other legal system. [44]

As far as religious law is concerned, India doesn't abide by that and adhere to the personal law, which are provided to court through a legislation. Courts have adhered to the statutes for interpretation of matters before it when it comes to religion.

The study of Indian Legal system includes the study of the Indian constitution, enacted laws and the study of judicial Administration. The constitution of India is the founding stone of the present Indian legal system. The constitution is the source, guideline, and also the limitation of our legislation, Executive is the implementing body of the laws. Finally judiciary is the supreme body which helps judicial administration and guides both executive and legislature by interpreting laws Judiciary also add among the laws by various decisions as judicial precedents.

Difference and Similarity of Ancient Indian Legal System and Present Legal System

The ancient legal system and present legal ancient has been evolved through various phases. Each phase has different impact on the administration of justice to their subject. It is quite difficult to enumerate the difference and similarity between Ancient and Present Legal systems since there is always a mechanism of justice which has been administered in some or other ways. Law in India has evolved from religious prescription to the current constitutional and legal system we have today, traversing through secular legal systems and the common law.

In ancient legal system, it is found that jury system existed in Manu‟s period and Manu recommended the king to give the power of judicial administration to Brahmins in his absence. Jurors were called as „sabhasada‟ or councilors who acted as assessors or adviser of the King. They were the equivalent of the modern jury which was prevalent during British rule till the case of Nanavati. The Law Commission recommended its abolition in 1958 in its 14th Report. In 1974, the Code of Criminal Procedure was fully overhauled. The new version finally removed all references to juries. Interestingly, the Parsi community continues to use juries in special matrimonial courts even today[45]. Says Katyayana: "If the king wants to inflict upon the litigants (vivadinam) an illegal or unrighteous decision, it is the duty of the judge (samya) to warn the king and prevent him. 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. ”

These assessors or jurors were required to express their opinion without fear, even to the point of disagreeing with the Sovereign and warning him that his own opinion was contrary to law and equity. Katyayana says: „The assessors should not look on when they perceive the Sovereign inclined to decide a dispute in violation of the law; if they keep silent they will go to hell accompanied by the King. ” The same injunction is repeated in an identical verse in Shukr - nitisara. The Sovereign - or the presiding judge in his absence - was not expected to overrule the verdict of the jurors; on the contrary he was to pass a decree (Jaya - patra) in accordance with their advice. Shukr - nitisara says: “The King after observing that the assessors have given their verdict should award the successful party a decree (Jaya -

[41] Indian Legal System, available at https://shodhganga.inflibnet.ac.in/bitstream/10603/136861/6/06_chapter%201.pdf, (Last visited on October 30,2019)
[42] Ibid.
[43] Ibid.
[44] M S Ahuja, “Public interest litigation”, available at http://etheses.lse.ac.uk/1417/1/U084680.pdf, (Last visited on October 03,2019)
[45] Judged by twelve , available at https://www.thehindu.com/features/magazine/Judged-by-twelve/article14581947.ece, (Last visited on October, 30,2019)

patra). " Their status may be compared to the Judicial Committee of the Privy Council which "humbly advises" their Sovereign, but their advice is binding. It may also be compared to the peoples‟ assessors under the Soviet judicial system who sits with the professional judge in the People‟s Court but are equal in status to him and can overrule him. However, if the decision of the Sabhyas (Judge) were fined and removed from the post, banished their property was also forfeited. They compelled to make good the loss. If the decision of Sabhyas is promoted by greed, fear, friendship, etc each one was fined twice.

It was also observed that Customs and conventions, rituals, taboos, legislations and judicial precedents are the main sources of law. Custom is an important stage among the three, in the development of morality. The King being head of the state had to exercise his administrative and judicial powers to his subordinate. There was no separation of powers. The kings who ruled, followed their own Personal or Religious Laws. There is no statutory laws which defined the act and conduct and mostly everything is governed by the Dharma which had different connotation. Whatever be the decision of the King, was binding on all. The king's court was also considered to be supreme court and his decision was not challenged by way of appeal or review. Moreover, the profession of lawyers, oradvocates, was unknown during ancient legal system. There is no trace of the evolvement of advocate and it seems that the complainant and defendant used to safeguard their rights by appearing in party. One significant feature of the ancient Indian legal system was the absence of lawyers. Another notable feature was that a bench of two or more judges was always preferred to administer justice rather than a single individual being the sole administrator of justice.

The doctrine of precedent has evolved from the English law and is parimateria to India. Though being a concept of the judicial decisions and philosophies 'precedent' is considered as an important aspect for emergence of setting examples by following the judge made laws in the country. In Ancient legal system, the importance of the decisions as a source of law was recognized even in very ancient law times. Though there are texts which suggest, that "that path is the right one which has been followed by the virtuous men" to say, on the basis, that there was theory of precedent in India in ancient times, would be going too far. There are no records of cases or any other reliable evidence upon which anything can be said definitely. There seems no possibility of any doctrine of precedent as it is understood in the modern times. The Law, in the most part, was codified (textual law) and the rest was customary law. The cases in those days were not of such complicated nature as they have become in the modern times. Therefore the arbitrator or the judge was not required to lay down novel points and show originality. The court were generally local which, decided most of the things orally. The ancient courts were kula, sherni, puga, and shashan of which the former three were the tribal, professional, and local tribunals respectively. The decided the cases falling within their respective jurisdiction. Though in ancient texts we find the classification and the title of the suits and a very comprehensive procedure, there being no record of cases, it is not fully known to how it practically worked. There were no printing machines, and hence no reporting system and for want of reporting, there was little possibility of developing a doctrine of precedent. [46]

Indian jurisprudence was found on the rule of law; that the King himself was subject to the law; that arbitrary power was unknown to Indian political theory and jurisprudence and the kind's right to govern was subject to the fulfillment of duties the breach of which resulted in forfeiture of kingship; Alike the present legal system, the king being judge did not have the suomotu power to address any issues in the society and the concept like Public Interest litigation and judicial review was unknown as there was no separation of power in the system. A concept of curative petition is also evolved which is the last judicial corrective measure which can be pleaded for in any judgment or decision passed by the Supreme Court which is normally decided by Judges in - chamber. It is only in rare cases that such petitions are given an open - court hearing. The same was not available in the ancient legal system since the order from judge was considered as last word.

There are some similarity also in the ancient and modern legal system. The Procedural law or adjective law, prescribes the procedure and machinery for the enforcement of those rights and liabilities. To say, in other words, the procedural law is concerned with enforcement of those rights and liabilities determined in accordance with the rules of the substantive law. During the ancient period legal procedure, including that of case filing, was called vyavahara. The equivalent of modern "complaint"was called purvapaksha, and that of "written statement" uttar (or "reply" in modern civilprocedure). The trial was called kriya and verdict nirnaya. In modern legal system, For the first time in 1859, a uniform civil procedure Code was introduced by passing the Civil Procedure Code (Act VII of 1859). The Code of 1859 was amended regularly from time to time and was replaced by passing the Civil Procedure Code, 1877. This code of 1877 was amended in 1878 and 1879 and the third civil procedure Code was enacted in 1882, which replaced the previous code. The Code of Civil Procedure 1882 was also amended several times and ultimately the present code of Civil Procedure, 1908 was passed overshadowing the defects of the Code of 1882. [47] Alike in criminal law also, the British rulers passed the Regulating Act of 1773 under which a Supreme Court was established in Calcutta and later on at Madras and in Bombay. The Supreme Court was to apply British procedural law while deciding the cases of the Crown's subjects. After the Rebellion of 1857, the crown took over the administration in India. The Criminal Procedure Code, 1861 was passed by the British parliament. The crpc was created first time ever in 1882 and then amended in 1898, then according to 41st law commisssion report in 1973. [48]

[46] Monika Bhakta, "Evolution of Precedent in Indian Society: How, Where and by Whom?", available at http://ijlljs.in/wp-content/uploads/2016/02/19.pdf, (Last visited on October 03,2019).
[47] Introduction to civil procedure code, available at https://www.legalbites.in/introduction-civil-procedure-code/, (Last visited on September 30,2019)
[48] Code of Criminal Procedure (India), available at https://en.wikipedia.org/wiki/Code_of_Criminal_Procedure_(India) #History, (Last visited on October 03,2019)

There has been a network of judicial courts in India. There was a Kings Court which was presided by king to render justice. Brahmanas adviced the king and they were called Adhyaksha or Sabhabathi. Apart from king, the court consists of Pradivivaka - chief Justice and three juris (Jatar and Paranjape). Other court is Principal Court where it was existed in large towns to hear the disputes. Othe court is Kula where quarrel occurred by the family members, it was solved by the elders of the family. It is a type of a informal court. Other court is Sreni came into picture If the family dispute not settled in Kula system, then the matter was taken to Sreni Court. And the sreni court heared guild disputes and settled commercial matters in ancient India. The lowest court was known as Puga which is an informal court. Likewise, The Supreme Court is the highest independent court. The judges of the Court are appointed by the President of Indiaon the recommendation of the Collegium of the five most senior judges of the Supreme Court. The Supreme Court has (i) original, (ii) appellate and (iii) advisory Jurisdiction. Every state or two or more states have High Courts which have the highest judicial power in the state. The judges of the High Courts are appointed by the President of India on the recommendation of the Collegium of the Supreme Court. In addition to the High Court ina state, there is a network of subordinate courts deciding civil and criminal cases.

The grounds of litigation was defined and laid down by Manu which is as following grounds on which litigation may be instituted, (1) Non - payments of debts; (2) deposits; (3) sale without ownership; (4) partnership; (5) non - delivery of gifts; (6) non - payment of wages; (7) Breach of Contract; (8) cancellation of a sale or purchase; (9) disputes between owners and herdsmen; (10) the law on boundary disputes; (11) verbal assault; (12) physical assault; (13) theft; (14) violence; (15) sexual crimes against women; (16) law concerning husband and wife; (17) partition of inheritance; and (18) gambling and betting. However, different statues has been enacted during British regime and after independence, which has defined all the grounds. For example: The Payment of Wages Act, 1936 and Minimum Wages Act, 1948 are enacted for non - payment of wages. The Transfer of Property Act 1882is an Indian legislation which regulates the transfer of property in India. It contains specific provisions regarding what constitutes a transfer and the conditions attached to it. The Indian Contract Act, 1872 prescribes the law relating to contracts in India and is the key act regulating Indian contract law.378 of IPC defines the offence of theft. The chapter xvi of offences affecting the human body defines in IPC from Section 299 to 377. With regards to law concerning the relationship between husband and wife is defined and governed by Special Acts and customs.

4. Conclusion

It is quite natural that laws which derives its source from rituals, believes and also from particular social system are subject to change. Every society develops its own values, habits and institutions. Any violation of these institutional values or laws or principles leads to internal discord within the society. History comprises of the growth evolution and development of the legal system in the country and sets forth the historical process whereby a legal system has come to be what it is overtime. The legal system of a country at given time is not creation of one man or of one day but is the cumulative fruit of the endeavor experience thoughtful planning and patient labor of a large number of people through generation. With the coming of the British to India the legal system of India changed from what it was in the Mughal period where mainly the Islamic law was followed before that the Hindu laws were followed. The legal system currently in Indiabears a very close resemblance to what the British left with.

A study of Indian Legal system includes the study of the Indian constitution, enacted laws and the study of judicial Administration. The three inevitable parts of our nation namely legislature, executive and judiciary contribute to the legal system. Here the constitution is the source, guideline, and also the limitation of our legislation, Executive is the implementing body of the laws. Finally judiciary is the supreme body which helps judicial administration and guides both executive and legislature by interpreting laws Judiciary also add among the laws by various decisions as judicial precedents. As the prime source, the study of the constitution includes the short history it's enactment, philosophical aspects, and amendments which took place after it's enactment on being passed by the parliament to make it's provision to suit the changing social and political atmosphere. Major laws existing in India came into force during the period of British rule. However, the ancient legal system has also contributed into the development of Judicial Administration. The Constitution of India has looked to make a more equivalent and simply manage of law amongst people and gatherings than what existed under customary experts in antiquated India. The Indian Constitution endeavors to kill the embarrassment that individuals endured under the customary social arrangement of standing and male controlled society, consequently making new ground for acknowledgment of human poise. The laws are not defined and cleared with respect to crimes against women, children, and disadvantaged people. With the reform of the society, various tribunal concerning administrative law; environment laws, fiscal laws etc., are formed. There were flaws in the ancient legal system which was improvised by bring out the law into written form and in case when the law needs to be change due to evolution of the society, the same has been provided in the law. From the above discussion, it is evident that the hypothesis fails as the present legal system is well refined and has developed to its best and even though the British rule has also contributed to the development of judicial system. However, the ancient system is also development but the present legal system is developed.