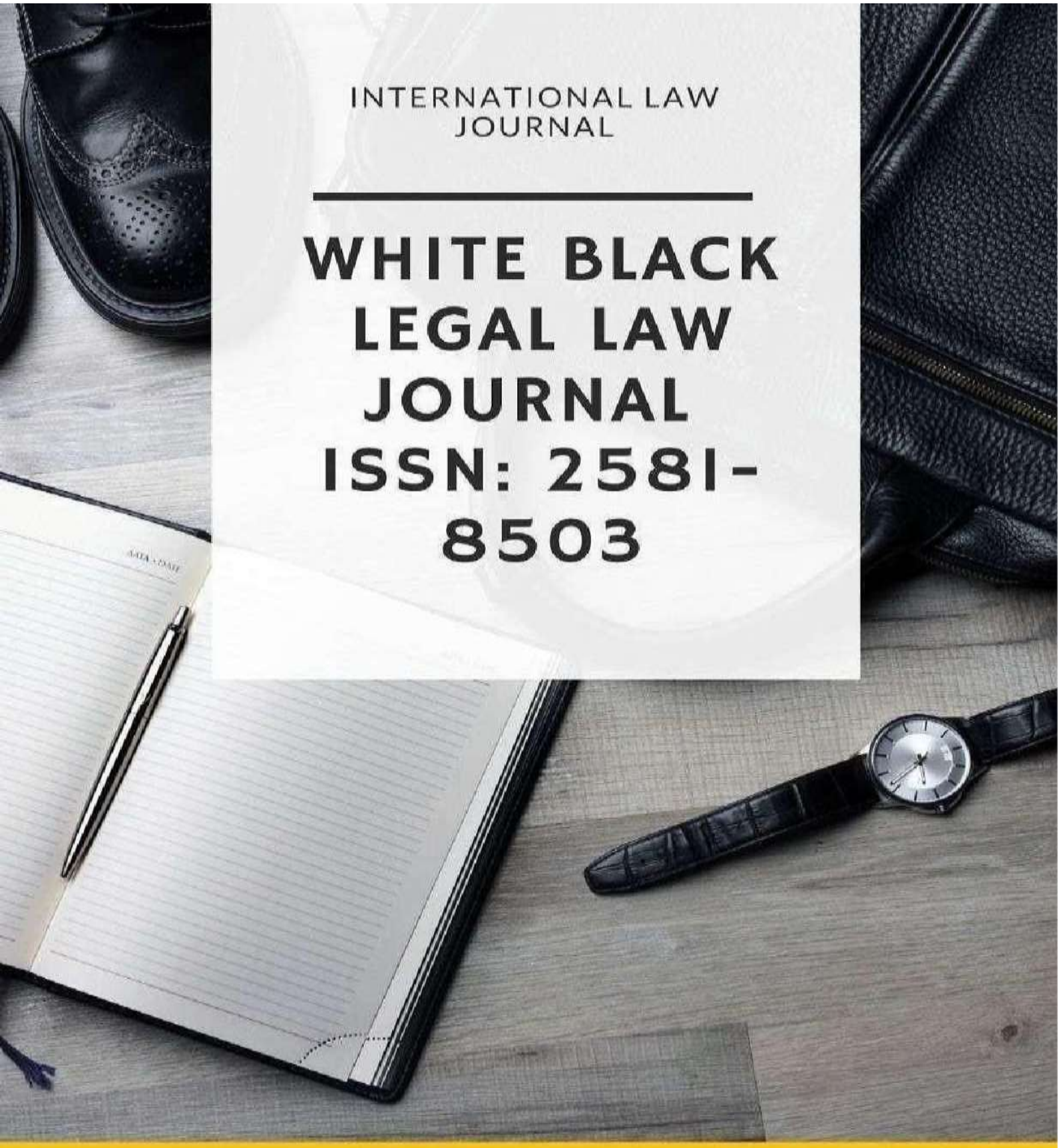

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THE SUPREME COURT OF INDIA: HISTORIC ESTABLISHMENT AND JURISPRUDENTIAL MANDATE

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Abstract

Since time immemorial, India has been a land of judicial propriety and legal ethics, followed to the core by one and all. The very basis of Indian politico-sovereign state is the establishment of the principle of rule of law and the foundation strengthening of justice, equity, and good conscience. One must understand that the judicial system of India, as well its procedural trial systemic apparatus, is not something anew, it is as old as time and as organised as a perfect lime. The establishment of the Supreme Court of India is regarded as the watershed moment for justice delivery mechanisms in India. The foundation of the honorable Apex Court of India was laid down in the year 1950 and its functioning has increased, with the passing of time. One of the busiest apex courts of the world, has one of the richest historical pasts associated with it. The present manuscript strives to establish the link between the ancient, medieval, modern, post-independence and present-day justice delivery system in India, while also acknowledging the deep scriptural and spiritual, as well as ethno-linguistic values that drive the whole system in a mechanized and organised way. From talking and researching about the texts of Arth-shastra and medieval India theologists, the present research manuscript aims at delving into the glorious past and the creatively harmonious balance that the Apex Court has now created in its functioning, while balancing the fundamental rights of the people, as well as connecting the lives and liberties with the principles of living constitutionalism.

Keywords

Supreme Court; Constitution of India; Apex Court; Arth-Shastra; Scriptural and Spiritual values.

I. Introduction: The Philosophical and Jurisprudential Aspect of Indian Judicial System

Justice is the first promise of law. Law is the essentiality of any civilized society. Every society and every societal norm are directed and played by the forces of legal players and has been, the basic vehicle and push-force of all the good actions and good deeds of the societal public. Initially, in the ancient times in India and in the world, generally, the elders of a particular village used to solve all kinds of disputes arising in the society. They tried to avoid any confrontation and thereby sorted out the issues with utmost grace and contentment for both the parties. The ancient judicial system of India, was much more grown and intricate in its functioning than the modern systems. It aimed at delivering speedy, yet thoughtful justice. The understanding of law and justice that we possess in our modern contemporary world, is derived from these systems and older mechanisms only. They help us introduce and recognise what we truly stand for and understand the foundation of our legal systems. Many digests and manuscripts as well as the scriptural texts of India, have time and again exhibited the need of relooking into them and truly understanding what Indian judicial system actually stands for. The various negative opinions that have been stated by foreign scholars must be discarded over here and the very need to understanding the basics of the legal and judicial system that we possess, is essential and quintessential to really interpret and comprehend why we need the courts, in today's world and why is there a need to revisit the historical concept of law and justice, as well the very genesis of the honorable Supreme Court of India.

India has the oldest judiciary in the world. No other judicial system has a more ancient or exalted pedigree. The present concept of Rule of Law has its origins in the older civilisations of the world, especially the Indian cultural and traditional civilisation, which has always aimed at integrating the whole society and interpreting the law of the land, for benefit of all, without any kind of discrimination and distinctions. The ancient history of the Indian judicial system has been more of a revolutionary and progressively accommodating aspect rather than being a tough shift of transformations. The concept of rule of law states that no person is above law and the rules and regulations of our legal system are the supreme most. The very history of the legal system of India is based upon the concept of jurisprudential philosophy and the need to integrated friction points for betterment of the society. The examples of establishing 'rule of law' in India can be taken from the scriptures of ancient India, which have now become the pathways of enlightening our roads to development. 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."[1] *"The people should execute a king who does not protect them, but deprives them of their property and assets and who takes no advice or guidance from anyone. Such a king is not a king but misfortune*."[2] These provisions indicate that sovereignty was based on an implied social compact and if the King violated the traditional pact, he forfeited his kingship. Coming to the historical times of Mauryan Empire, Kautilya describes the duties of a king in the *Arth-shastra* thus: "*In the happiness of his subjects lies the King's happiness; in their welfare his welfare; whatever pleases him he shall not consider as good, but whether pleases his people he shall consider to be good.*[3]"

It is further stated that, "the principle enunciated by Kautilya was based on a very ancient tradition which was already established in the age of the Ramayana. Rama, the King of Ayodhya, was compelled to banish his queen, whom he loved and, in whose chastity, he had complete faith, simply because his subjects disapproved of his having taken back a wife who had spent a year in the house of her abductor. The king submitted to the will of people though it broke his heart. In the Mahabharata it is related that a common fisherman refused to give his daughter in marriage to the King of Hastinapur unless he accepted the condition that his daughter's sons and not the heir apparent from a former queen would succeed to the throne. The renunciation of the throne and the vow of life-long celibacy (Bhishma Pratgyan) by Prince Deva Vrata is one of the most moving episodes in the Mahabharata. But its significance for jurists is that even the sovereign was not above the law. The great King of Hastinapur could not compel the humblest of his subjects to give his daughter in marriage to him without accepting his terms.[4]" It must be thus understood that the concept of law, legal system and judicially vigilant kings and kingdoms has gone through the phase of huge development, even in ancient India, whereby the benevolent kings had the benefit and the welfare of the people and their subjects in minds; without even a single unwanted causality and illegal transgressions. Our ancient scriptures and the sayings, teachings as well as learnings of the rishis, sages and the learned men from all walks of life- have contributed to the understanding of the concept of justice, and justice without a doubt, must be universal and must speak to the minds of the

[1] Judicial System in Ancient India, *available at:* https://allahabadhighcourt.in/event/TheIndianJudicialSystem_SSDhavan.html#:~:text=In%20the%20Mahabharata%2C%20it%20was,executed%20like%20a%20mad%20dog.%22&text=%22The%20people%20should%20execute%20a,or%20guidance%20from%20any%20one. (last visited on September 11, 2024).
[2] *Ibid.*
[3] *Ibid.*
[4] *Ibid.*

forthcoming generations as well.

Justice in India was not just some written letter of the officer of the court; it was the spirit of the solution that was needed to justify the reasoning behind any order or direction, thus passed. It was righteous yet rational; it was contenting yet left a room for improvement; it was punishing at times but was the need of the hour, always and it was the just as well as the justified reasoned statement of the courts, at all times. According to various reports and texts that state the condition of justice and courts during the ancient India, it is understood that, *"administration of justice is one of the most essential functions of the state. Being human, disputes are bound to arise amongst us. For the settlement of those disputes, we need guidelines in the form of laws and forums to redress the wrongs in the form of courts. Laws and courts have always gone together. There is a close nexus between them; neither court can exist without the laws or laws without the courts. Judicial system of ancient India was basically derived from Manu – Brihaspati's Dharam Shastras, Narada's Smritis, and Kautilya's Arthshastra. Description of the area of Godda, which was part of Anga Pradesh of ancient India has come from the travel accounts of foreign travellers Megasthanese and Hiuen Tsang and was ruled by Pal dynasty for some time. A civil judicial proceeding in ancient times, as at present, commenced ordinarily with the filing of a plaint or what was known as Purva Paksha before a competent authority. A plaint, it was required, must be brief in words, unambiguous and free from confusion. In case of disputes about property, elaborate rules laid down the requirement about giving detailed and full description of the property. Written statements known as Uttara Paksha were required to be filed by the defendants and the rules enjoined that they must not be vague and must meet all the points of the plaint. Normally, parties were required to produce their witnesses. The presence of the witnesses who were far away or would not stir out was secured by the orders of the judge. Different modes of proof for substantiating allegations were prescribed. On the conclusion of the trial, judgment known as Nirnaya was pronounced and the successful party became entitled to Jayapatra or a document of success, Execution of the decrees could entail imprisonment, sale, fine and demand for additional security. The doctrine of res judicata known as Pran Nyaya was well-known. In criminal law there was an elaborate classification of offences. Apart from offences like rape, dacoity and the like, there were other offence like not running to the rescue of another person in distress. Punishment was prescribed for causing damage to trees in city parks, to trees providing shades, to trees bearing flowers and fruits and to trees in holy places. It was an offence for a judge to give a wrong decision out of corrupt motive. Perjury by a witness attracted severe penalty. There were six types of*

punishment, namely, fine, reprimand, torture, imprisonment, death, and banishment. Theft was classified into three kinds according to the value of the thing stolen. There was also a classification of thieves. Some were considered open or patent thieves and others secret thieves. Open or patent thieves included traders who employed false weights and measures, gamblers, quacks, and persons who manufactured counterfeit articles. Secret thieves were those who moved about clandestinely.[5] ”

From the above information that is reproduced and the various understandings that are attached to the concept of law, justice, and legal systems; one must be understanding enough to grasp the fact that the various principles of natural justice, legal and theoretical systemic apparatus, as well as the issues of positive law, combined with the crux of law and judicial principles- India is the birthmother of all that is law and justice. In the ancient Indian society, the concept of adversarial system of justice, punitive as well as reformatory punishments, the trial system for the purpose of obtaining factual and legally admissible evidences, as well as the basic foundational humane values that govern the apparatus of arbitration, conciliation, and mediation; all were possessed and practiced in the territory of ancient India. These were the systems that upheld the foundational values of humanity and justice; these were the mechanisms those were carried forward by the medieval Indian rulers and the further, the British Raj as well as the independent Indian leaders.

II. The Honorable Supreme Court of India: A Historical Glance into the Glorious Past from Ancient to the Medieval Phase

Before delving into the historical past of the Indian Supreme Court, one must be aware of the history of the courts of India, right from the ancient ages to the medieval ages. But before that, one must know from where did the ancient law originate and what were the sources of law, because ultimately, it was the law which was made applicable and it was this law, which was followed by the Courts, as well. According to various writings on the ancient Indian law jurisprudence, “the Hindu law really emanated from books called the Smritis e.g. Manusmriti, *Yajnavalkya Smiriti* and the *Smritis of Vishnu, Narad, Parashar, Apastamba, Vashisht, Gautam,* etc. These Smirits were not laws made by parliament or some legislature. They were books written by certain Sanskrit Scholars in ancient times who had specialized in law. Later,

[5] Ancient India Jurisprudence: Banaras Hindu University, *available at:* https://www.bhu.ac.in/Images/files/JusticeKatjusLec.pdf (last visited on September 11, 2024).

commentaries (called Nibandhas or Tikas) were written on these Smritis, e.g. the commentary of *Vijnaneshwar* (who wrote a commentary called Mitakshara on the Yajnavalkya Smiriti), the commentary of Jimutvahan who wrote a book called the Dayabhaga (which is not a commentary on any particular Smriti but is a digest of several Smritis), Nanda Pandit (whose commentary Dattak Mimansa deals specifically with the Law of Adoption), etc. Commentaries were then written on these commentaries, e.g. Viramitrodaya, which is a commentary on the *Mitakshara* (which founded the Banaras School of Mitakshara).[6]" However, there were times when there was clash between the customs and the written laws- and for this purpose books of varied nature and in simplistic language were written, to basically make the customs comprehensible and comprehendible by the general masses, in toto. However, one must understand the initially all law was customary law only and no other kind of law existed. The ancient Indian law was customary and accommodating and did not emphasize or restrict itself too much on the practice of the sacred texts only. It rejuvenated and rehabilitated itself as and when the dynamics of the society changed. The various texts further go on to say, "*all law was originally customary law, and there was no statutory law in ancient India, for the simple reason that there was no parliament or legislature in those times. The problem with custom, however, was that it was often vague and uncertain, and did not go into details. Customary rules could of course tell us that when a man dies his property should go to his son. But what would happen if there is no son and the deceased only leaves behind him several relations who are distantly related to him e.g. second cousins, grand nephews, aunts, etc. Who will then inherit his property? This could obviously not be answered by custom. Hence text books were required to deal with this subject, and this requirement was fulfilled by the Smritis and commentaries in ancient India, just as it was done in ancient Rome. Custom no doubt prevailed over these written texts but for that clear proof was required by the person asserting its existence, which was not easy.[7]"* Similar trends were also followed in the world in ancient civilisations, for example, it is highly reported that, "In ancient Rome most of the law was not made by the legislature but by the writings of eminent Jurists e.g. *Gauis, Ulpian, Papinian*, and ultimately the great Justinian Code. This trend was followed in the civil law system which prevailed in Continental Europe where the commentaries of eminent Jurists are cited in the law courts, unlike in the common law system (which prevails in England and the former English Colonies

[6] Ancient India Jurisprudence: Banaras Hindu University, *available at:* https://www.bhu.ac.in/Images/files/JusticeKatjusLec.pdf (last visited on September 11, 2024); Roman Law, *available at:* https://www.britannica.com/topic/Roman-law (last visited on September 11, 2024).
[7] *Ibid.*

including India, USA, Australia, etc.) in which court decisions are cited as precedents.[8]"

Coming back to the court and justice system in India, according to various manuscripts and historical details, "in the Artha-shastra of Kautilya, who is generally recognised as the Prime Minister of the first Maurya Emperor (322-298 B.C.), the *realm was divided into administrative units called Sthaniya, Dronamukha, Khrvatika and Sangrahana* (the ancient equivalents of the modern districts, tehsils and Parganas). Sthaniya was a fortress established in the center of eight hundred villages, a dronamukha in the midst of 400 villages, a kharvatika in the midst of 200 villages and a sangrahana in the center of ten villages, Law courts were established in each sangrahana, and also at the meeting places of districts (Janapadasandhishu). The Court consisted of three jurists (dhramastha) and three ministers (amatya). This suggests the existence of circuit courts, for it is hardly likely that three ministers were permanently posted in each district of the realm. The great jurists, Manu, Yajn-valkya, Katyayana, Brihaspati and others, and in later times commentators like Vachaspati Misra and others, described in detail the judicial system and legal procedure which prevailed in India from ancient times till the close of the Middle Ages.[9]" Thus, one may understand that the sages of ancient India were in the know of writing legislations and interpreting them, for the betterment of the society and for the purpose of making the justice delivery mechanism, easy and affordable.

There was also proper hierarchy of courts in ancient India, and almost the same hierarchy was followed into the ages of medieval India, as well, albeit with slight differences. It is stated that, "according to Brihaspati Smiriti, there was a hierarchy of courts in Ancient India beginning with the family Courts and ending with the King. The lowest was the family arbitrator. The next higher court was that of the judge; the next of *the Chief Justice* who was called *Praadivivaka*, or *adhyaksha*; and at the top was the *King's court*. The jurisdiction of each was determined by the importance of the dispute, the minor disputes being decided by the lowest court and the most important by the king. The decision of each higher Court superseded that of the court below. According to *Vachaspati Misra*, the binding effect of the decisions of these

[8] Ancient India Jurisprudence: Banaras Hindu University, *available at:* https://www.bhu.ac.in/Images/files/JusticeKatjusLec.pdf (last visited on September 11, 2024); Roman Law, *available at:* https://www.britannica.com/topic/Roman-law (last visited on September 11, 2024); Law in the ancient world, *available at*: https://online.law.tulane.edu/articles/law-in-the-ancient-world (last visited on September 11, 2024).

[9] The Indian Judicial System: A Historical Survey, *available at:* https://allahabadhighcourt.in/event/TheIndianJudicialSystem_SSDhavan.html (last visited on September 11, 2024).

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 noteworthy that the Indian judiciary today also consists of a *hierarchy of courts* organized on a similar principle-the village courts, the *Munsif, the Civil Judge, the District Judge*, the *High Court*, and finally the Supreme Court which takes the place of the King's Court. We are following an ancient tradition without being conscious of it. *The institution of family judges* is noteworthy. The unit of society was the *joint family* which might consist of four generations. Consequently, the number of the member of a joint family at any given time could be very large and it was necessary to settle their disputes with firmness combined with sympathy and tact. It was also desirable that disputes should be decided in the first instance by an arbitrator within the family. *Modern Japan* has a somewhat similar system of family Courts. The significance of the family courts is that the judicial system had its roots in the social system which explains its success. The fountain source of justice *was the sovereign*. In Indian jurisprudence dispensing justice and awarding punishment was one of the primary attributes of sovereignty. Being the fountain source of justice, in the beginning the king was expected to administer justice in person, but strictly according to law, and under the guidance of judges learned in law. A very strict code of judicial conduct was prescribed for the king. He was required to decide cases in open trial and in the court-room, and his dress and demeanour were to be such as not to overawe the litigants. He was required to take the oath of impartiality, and decide cases without bias or attachment. *Says Katyayana*: The king should enter the court-room modestly dressed, take his seat facing east, and with an attentive mind hear the suits of his litigants. He should act under the guidance of his Chief Justice (Praadvivaka), judges, ministers and the Brahmana members of his council. A king who dispenses justice in this manner and according to law resides in heaven. These provisions are significant. The king was required to be modestly dressed (*vineeta-vesha*) so that the litigants were not intimidated. The code of conduct prescribed for the king when acting as a judge was very strict and he was required to *be free from all attachment or prejudice* Says Narada: *If a king disposes of law suits (vyavaharan) in accordance with law and is self-restrained (in court), in him the seven virtues meet like seven flames in the fire. Narada enjoins that when the king occupies the judgment seat (dharmasanam), he must be impartial to all beings, having taken the oath of the son of Vivasvan. (The oath of Vivasvan is the oath of impartiality: the son of Vivasvan is Yama, the*

god of death, who is impartial to all living beings).[10]"

Thus, one may notice that the whole hierarchy of courts in ancient India, is resplendent with the vast awareness of the needs of the society, the etiquettes that need to be followed by the presiding officers and other officers of the court, the mentality and attitude which a judge must possess as the highest authority of justice in this material world, the understanding that litigants and the prosecutors must have as important components of the justice system, the expectations that general public and masses have from the judges and other officers of the court, the basic foundational values that have been ingrained in our justice system since time immemorial, the importance of mediation via the mechanism of family courts, the actions and the behaviour of the sovereign as well as the learnings of the ancient civilisations. Everything, right from the issue of commission of an offence to the culmination of the same in a judgment, by a righteous justice, is mentioned and explained in detail in the ancient scriptures.

Apart from this, there are written laws for the interpretation of statutes, the qualities of judges, criminal trials, mode of proof, administrative courts, evolutionary concept of law, discovery of truth, dynamics of customs and sacred laws, criminal trials, jurors, corruption, delegation of judicial powers, administrative codes, etc. On discovery of truth and imparting of justice as the real test and responsibility of the established courts, it is stated that, "the real test of any judicial system is that it should enable the law courts to discover the truth, and that of ancient India stands high under this test. In disputes the Court has to ascertain what is true and what is false from the witnesses, enjoins Gautam. All available evidence indicates that in ancient India bearing false witness was viewed with great abhorrence. All the foreign travelers from Megasthanese in the 3rd century B. C. to Huan Tsiang in the 7th century A. D. testified that truthfulness was practiced by Indians in their worldly relations. ***Truth, they hold in high esteem,*** wrote Megasthanese. Fa Hien and Huan Tsiang (who visited India during the reign of Harsha) recorded similar observations. *A virtue practiced for a thousand year became a*

[10] The Indian Judicial System: A Historical Survey, *available at:* https://allahabadhighcourt.in/event/TheIndianJudicialSystem_SSDhavan.html (last visited on September 11, 2024); *Srimad Bhagavada Gita; Srimad Bhagavatam; Srimad Bhagavda Purana; The Puranas; The Upanishads; The Brahamanas; The Aranyakas; The Rig Veda; The Sama Veda; The Yajur Veda; The Atharv Veda; Sri Guru Granth Sahib Ji; The Holy Qoran; the Holy Bible; The Torah; Srimad Bhagavada Gita; Srimad Bhagavatam;* Spiritual Consciousness or Spiritual Intelligence, *available at:* https://www.tandfonline.com/doi/pdf/10.1207/S15327582IJPR1001_5#:~:text=spiritual%20consciousness%20stems%20from%20the,to%20one%20of%20consciousness%20and (last visited on September 11, 2024).

tradition.[11]*"* Further, it is stated that, "*the procedure and atmosphere of the Courts discouraged falsehood*. The oath was administered by the judge himself, and not by a peon as today. While giving the oath the judges were required to address the witness extolling truthfulness as a virtue and condemning perjury as a horrible sin. Brihaspati says, judges who are well-versed in the dharmashastra should address the witness in words praising truth and driving away falsehood (from his mind). The judges' address to the witness did not consist of set words but a moral exhortation intended to put the fear of God in him. All the texts are unanimous on this point. According to Narada, the judges should inspire awe in the witness by citing moral precepts which should uphold the majesty of truth and condemn falsehood. *All the Smirits were unanimous in holding that perjury before a law court was a heinous sin as well as a serious crime*. There were other provisions, calculated to reduce the changes of false evidence being given. Katyayana enjoined, with much common sense that there should be no delay in examining witnesses- *obviously because delay dims the memory and stimulates imaginatio*n.

The Sovereign should not grant any delay in the deposition of witnesses; for delay leads to great evil and results in witnesses turning away from the law.[12]"

For better understanding of medieval India courts, one must know that, it was Prophet Mohammad, in Islam, who upheld the ideals of the justice and just decision-making. It is stated that, *"the ideal of justice under Islam was one of the highest in the Middle Ages. The Prophet himself set the standards. He said in the Quran, that justice is the balance of God upon earth in which things when weighed are not by a particle less or more. And He appointed the balance that he should not transgress in respect to the balance; wherefore observe a just weight and diminish not the balance. He is further reported to have said that to God a moment spent in the dispensation of justice is better than the devotion of the man who keeps fast every day and says prayer every night for 60 years. Thus, the administration of justice was regarded by the Muslim kings as a religious duty*.[13]" This high tradition reached its zenith under the first four Caliphs.

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[11] Indian History, *available at*: https://nsktu.ac.in/wp-content/uploads/2022/11/CDOE-Study-PRAK-Sastri-Paper.4.-Indian-History.pdf (last visited on September 11, 2024); The Indian Judicial System: A Historical Survey, *available at:* https://allahabadhighcourt.in/event/TheIndianJudicialSystem_SSDhavan.html (last visited on September 11, 2024).

[12] Evolution of Judicial System of Ancient India, *available at:* https://ijesrr.org/publication/50/1.%20dec%202017%20ijesrr.pdf (last visited on September 11, 2024); The Indian Judicial System: A Historical Survey, *available at:* https://allahabadhighcourt.in/event/TheIndianJudicialSystem_SSDhavan.html (last visited on September 11, 2024).

[13]The Indian Judicial System: A Historical Survey, *available at:* https://allahabadhighcourt.in/event/TheIndianJudicialSystem_SSDhavan.html (last visited on September 11, 2024); [13] History: Supreme Court of India, *available at:* https://main.sci.gov.in/pdf/Museum/m2.pdf (last visited

The first Qadi was appointed by the Caliph Umar who enunciated the principle that the law was supreme and that the judge must never be subservient to the ruler. It is reported of him that he had once a personal law suit against a Jewish subject, and both of them appeared before the Qadi who, on seeing the Caliph, rose in his seat out of deference. Umar considered this to be such an unpardonable weakness on his part that he dismissed him from office. The Muslim kings in India bought with them these high ideals. It is reported by Badoni that during the reign of Sultan Muhammad Tughlaq the Qadi dismissed a libel suit filed by the King himself against Shaikhzada Jami, but no harm was done to him. (This however did not prevent the Sultan from executing the defendant without a trial). Individual Sultans *had very high ideals of justice. According to Barani, Balban regarded justice as the keystone of sovereignty wherein lay the strength of the sovereign to wipe out the oppression.* But unfortunately, the administration of justice under the Sultans worked fitfully. The reason was that the outstanding feature of the entire Sultanate period was confusion and chaos. No Sultan felt secure for a long time. One dynasty was replaced by another within a comparatively short period, and the manner of replacement was violent.[14]" Consequently, the quality of justice depended very much on the perpetuity of a particular ruler.

Thus, the ancient and medieval time periods were heavily set in the backdrop of justice, law and equity, coupled and juxtaposed with the principles of natural justice and good conscience.

III. The Establishment of the Supreme Court of India: From the British Raj to Upholding the Constitutional Mandate

The present-day judicial system is highly and heavily based upon the ancient and medieval systems of justice delivery, changing itself and metamorphosizing itself according to the dynamic societal paradigms. The Supreme Court of India, has a rich history of its origin, steeped deep into the ancient origins of justice and legal systems as well as the growth and development that has been achieved in the medieval ages.

The promulgation of *Regulating Act of 1773* by the King of England paved the way for

on September 11, 2024); Constitution of India: 1950, *available at:* https://www.constitutionofindia.net/constitution/constitution-of-india-1950/ (last visited September 11, 2024).

[14] The Indian Judicial System: A Historical Survey, *available at:* https://allahabadhighcourt.in/event/TheIndianJudicialSystem_SSDhavan.html (last visited on September 11, 2024).

establishment of the Supreme Court of Judicature at Calcutta. The Letters of Patent was issued on 26 March 1774 to establish the Supreme Court of Judicature at Calcutta, as a Court of Record, with full power & authority to hear and determine all complaints for any crimes and also to entertain, hear and determine any suits or actions against any of His Majesty's subjects in Bengal, Bihar, and Orissa. The Supreme Courts at Madras and Bombay was established by King George – III on 26 December 1800 and on 8 December 1823 respectively. The India High Courts Act 1861 was enacted to create High Courts for various provinces and abolished Supreme Courts at Calcutta, Madras and Bombay and also the Sadar Adalats in Presidency towns. These High Courts had the distinction of being the highest Courts for all cases till the creation of Federal Court of India under the Government of India Act 1935. The Federal Court had jurisdiction to solve disputes between provinces and federal states and hear appeal against Judgements from High Courts. After India attained independence in 1947, the Constitution of India came into being on 26 January 1950. The Supreme Court of India also came into existence and its first sitting was held on 28 January 1950. The law declared by the Supreme Court is binding on all Courts within the territory of India. It has power of judicial review – to strike down the legislative and executive action contrary to the provisions and the scheme of the constitution, the distribution of power between Union and States or inimical to the fundamental rights guaranteed by the Constitution. [15]" Apart from this, a briefer history of the Supreme Courts is stated in the following words, *"under British rule, the highest court of appeal was the Privy Council (officially, the Judicial Committee of Privy Council after 1833*). At its height, the Privy Council heard appeals from the courts of over 150 colonies and dominions – the equivalent of 1/5th of the human race. The subcontinent first fell within its jurisdiction in the early 18th century, during the rule of the British East India Company (EIC). The 1726 Royal Charter gave the apex courts (known as Mayor's Courts) of Calcutta, Bombay and Madras the right to appeal to the Privy Council (then known as King-in-Council). The power transfer from the EIC to the Crown in 1857 brought with it certain reforms. Shortly after the transfer of power, the Crown introduced the Indian High Courts Act of 1861. The Act created High Courts in Allahabad, Lahore, Nagpur, and Patna. Further, it replaced the Supreme Courts of Calcutta, Madras and Bombay with High Courts. All judgments of the High Courts could be appealed to the Privy Council. The Privy Council made a significant contribution to stabilizing the Indian legal system, primarily by consolidating precedents under principles of common law. This was

[15] History: Supreme Court of India, *available at:* https://main.sci.gov.in/pdf/Museum/m2.pdf (last visited on September 11, 2024); Constitution of India: 1950, *available at:* https://www.constitutionofindia.net/constitution/constitution-of-india-1950/ (last visited September 11, 2024).

perhaps best exemplified when one considers that several members of the Indian Constituent Assembly paid homage to the Privy Council. The Constituent Assembly drafted the Constitution of India. Veteran lawyer-statesman K.M. Munshi observed, [*The Privy Council] has been a great unifying force and for us Indians it became the instrument and embodiment of the rule of law. Similarly, lawyer Alladi Krishnaswami Ayyar said, whatever might be said about the executive government under the regime which has come to an end…there can be no doubt that…the record of the Judicial Committee of the Privy Council has been a splendid one. Of course, the Privy Council had its shortcomings.* It was often criticised as being inaccessible, both in terms of cost and location (it sat in London). Further, the judges who sat on the Council generally had no familiarity with the specific socio-cultural contexts that disputes from the subcontinent were rooted in. Ultimately this led to calls for a Federal Court of India in the first-half of the 20th century. Due to the inaccessibility of the Privy Council, the independence movement demanded a Federal Court of India. Eventually this demand was fulfilled with the enactment of the Government of India Act, 1935 (came into force in 1937). Part IX of the Act established the Federal Court of India, which served as the court of appeal for the various High Courts. Its judgments were binding on all courts in India.[16]"

Adding on to this, "the Government of India Act (GoI Act) also empowered the Federal Legislature to introduce amendments, so as to confer upon the Federal Court supplemental powers (see Section 215). In many ways, this paved the way for the creation of the Supreme Court. In 1948, the Federal Legislature passed *the Federal Court (Enlargement of Jurisdiction) Act I* that abolished direct appeals from High Courts to the Privy Council. Shortly thereafter, on September 24th 1949, India's connection to the Privy Council came to an end with the passing of the Abolition of Privy Council Jurisdiction Act. With its enactment, even judgments of the Federal Court could no longer be appealed to the Privy Council. When the Privy Council disposed of *N.S. Krishnaswami Ayyangar v Perumal Goundman*[17], the last Indian appeal, the two centuries long connection to the Council was finally severed. Subsequently, the Constitution of India replaced the Federal Court with the Supreme Court of India. *The Constitution was ratified on 26 November 1949 and came into force on January 26th 1950. Two days after the Constitution became effective, the Supreme Court was inaugurated on*

[16] Constituent assembly Debates, *available at*: https://indiankanoon.org/doc/1171678/?type=print (last visited on September 11, 2024); About the Supreme Court of India: Supreme Court Observer, *available at:* https://www.scobserver.in/about/supreme-court-of-india/supreme-court-of-india-overview/ (last visited on September 11, 2024).
[17] N.S. Krishnaswami Ayyangar and Others v Perumal Goundan and Others, PC (1949).

January 28th. Justice H.J. Kania became the first Chief Justice of India.[18]" Further it is stated that, "the role of the Indian judiciary cannot be isolated from the social objectives of the nation. Today the words economic planning and political democracy are accepted on both sides of the so-called iron curtain. Our Constitution attempts to achieve a synthesis of the two. It reflects the spirit of non-alignment in the field of constitutional law. The Indian Constitution has set before our people a very ambitious and difficult goal. A Constitution is not a collection of abstract theories, nor does it operate in a vacuum. It reflects a way of life which enables a particular people to realize its objectives and ambitions. If it fails to do this, it will be amended or discarded by agreement or otherwise. The Compulsive forces of social life are irresistible in the end.[19]" This is, in short the history of the establishment of the Supreme Court of India, which is filled with the achievements of ancient scholars, medieval theorists, modern protagonists and the common masses who have reshaped and rebuilt the whole structure and philosophical aura of the Supreme Court of India, which has made the whole difference in the functioning-especially in speedy justice delivery as well as thorough progression of legal paradigm of India.

IV. Conclusion and Way Forward

It is stated that the Supreme Court of India is the apex body of decision-making and justice delivery. It is at the summit of the constitutional and philosophical transformation of the nation. It is resplendent and replete with landmark case laws (like the case law of *Kesavananda Bharati v State of Kerala 1973 INSC 91)* which have not only aided in the progressive and transformative metamorphosis and comprehension of the ideal constitutional values that have been enshrined in the sacred document of India- the grundnorm[20], the Constitution of India; but have also tried to balance the different approaches of constitutional interpretation-such as the originalist and the living constitutionalist approach, which have also been sourced from the

[18] About the Supreme Court of India: Supreme Court Observer, *available at:* https://www.scobserver.in/about/supreme-court-of-india/supreme-court-of-india-overview/ (last visited on September 11, 2024); H. Venkatchala Iyyenagr v B.N. Thimaajama and Others, 1959 AIR 443.

[19] About the Supreme Court of India: Supreme Court Observer, *available at:* https://www.scobserver.in/about/supreme-court-of-india/supreme-court-of-india-overview/ (last visited on September 11, 2024).

[20] J.W. Harris, The Basic Norm and The Basic Law, https://heinonline.org/HOL/LandingPage?handle=hein.journals/honkon24&div=33&id=&page=, *available at:* (last visited on September 11, 2024); Stanford Encyclopedia of Philosophy, The Pure Theory of Law, *available at* :https://heinonline.org/HOL/LandingPage?handle=hein.journals/honkon24&div=33&id=&page= (last visited on September 11. 2024); Open Edition Journals, Fundamental Theory of Law, *available at:* https://journals.openedition.org/revus/5667 (last visited on September 11, 2024); Hans Kelsen, *The General Theory of Law and State* (1999); PSA Pillai, *Jurisprudence and Legal Theory* (2022); Ronald Dworkin, *The Law's Empire* (1986).

'Living Tree Doctrine[21]' of the Canadian Federal system. It is no doubt that the ancient values of the Indian civilisation have been a great aid in establishing this process, as well pushing us beyond the limits of our abilities, as common masses, and leaders of the nation. This is indeed, the most important task of a judiciary. A judicial system, which is proactive and understands the issues of the nation, the ideas of grievance redressal and the administrative work of the justice delivery system- is something which will always help in establishing rule of law, principles of natural justice and also the components of justice, equity as well as good conscience. The Supreme Court of India, is the most renowned and the most hard-working apex court of the world, carrying further the values that have been ingrained in the Indian blood from so long, a glimpse of which has been noticed in this research paper. Conclusively, the values of the ancient, medieval, and even the worldly structures and civilisations must be protected, preserved, and conserved in such a way that they continue to inspire the coming generations, while upholding the fundamentals of governance, constitutionalism, and constitutional morality of the land.

[21] Living Tree Doctrine: Centre for Constitutional Studies, *available at:* https://www.constitutionalstudies.ca/2019/07/living-tree-doctrine/ (last visited on September 11, 2024); Living Tree Doctrine: Role of Indian Judiciary Against Constitutional Silence in India, *available at:* https://www.rsrr.in/_files/ugd/286c9c_e47e66058b11400da5a404b3a648e316.pdf?index=true (last visited on September 11, 2024); Living Tree Doctrines of the Canadian Constitution and the Indigenous Law, *available at:* https://digitalcommons.schulichlaw.dal.ca/cgi/viewcontent.cgi?article=1428&context=djls (last visited on September 11, 2024); Living Tree: Osgoode School of Law, *available at:* https://digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?article=1721&context=scholarly_works (last visited on September 11, 2024); The Trouble with Living Tree Interpretation, *available at:* https://www.austlii.edu.au/au/journals/UQLawJl/2006/2.pdf (last visited on September 11, 2024); Living Tree Doctrine: Role of Indian Judiciary against Constitutional Silence in India, *available at:* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3787907 (last visited on September 11, 2024); The Original Living Tree, *available at*: https://www.canlii.org/en/commentary/doc/2019CanLIIDocs4296 (last visited on September 11, 2024); Living Tree Doctrines and the Canadian Constitutional and Legislative Laws, *available at*: https://digitalcommons.schulichlaw.dal.ca/djls/vol31/iss1/2/ (last visited on September 11, 2024); View of the Original Living Tree, *available at:* https://journals.library.ualberta.ca/constitutional_forum/index.php/constitutional_forum/article/view/29376/21375 (last visited on September 11, 2024); Justice (Retd.) A.K. Sikri, *Constitutionalism and the Rule of Law: In the theatre of democracy* (2023); Fali S. Nariman, *You Must Know your Constitution (2023);* H.R. Khanna, *Making of India's Constitution*(2022); K.G. Kannabiran, *A Speaking Constitution* (2022); Rohit De, *The People's Constitution* (2018); Granville Austin, *Working a Democratic Constitution: A History of India's Constitution* (2003); Arghya Sengupta, *The Colonial Constitution* (2023); Lokendra Malik, *the Power of Raisina Hill- The Constitutional Position, Functions and Powers of the President of India* (2023); David A. Strauss, *The Living Constitution;* Gilles A. Tarabout, *Conflict*; Lawrence B Solum, 'What is Originalism? The Evolution of Contemporary Originalist Theory', *available at:* https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=2362&context=facpub (last visited on September 11, 2024); Bradley W. Miller, Grand Huscroft, *The Challenge of Originalism: Theories of Constitutional Interpretation* (Cambridge University Press 2011).