

# Indian Society and Legal Education



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## Abstract

The society of India has got unique features of multifarious people residing together though their religion, language and communities are diverse in nature. This unique characteristic has developed with the contribution of their individual and group interest. Recently, the Supreme Court of India has delivered a judgement of a dispute which was age-old conflict between two religious communities. Accordingly, it was anticipated that there may be chaos in different parts of India. Government of India took initiative by deployment of security personnel in various sensitive areas so that no untoward incidents could take place. Immediately after the judgement passed by the Supreme Court on 9<sup>th</sup> November, 2019 at 10:30 AM, no single incident of chaotic situation reported in any part within the territory of India. Indians are proud to feel that out of knowledge Indians have developed a culture of tolerance. This incident is the good example before the whole world that the co-existence of multifarious communities pays. The role of judiciary in this respect played an important role when all other sources for the last 100 years failed to bring the sense of cohesion among Indians.

**Keywords:** Dynamic, Feeble, Neolithic, Nomadic, Cohesion, Moral Obligation.

## Introduction

In the evolutionary process of conceiving a society it is necessary to confront various kinds of events which are said to be part of the process. Ancient society of India upholds multidimensional qualities of a human being in a society through various kinds of practices and habits so that the members of the society can transform the demands of next generation properly. Today, when we talk about peace and development, they are perhaps the most important areas for establishing example before others. Peace demands a systematic, scientific and dynamic culture in a community. Of course education plays a vital role in this respect. When a community starts its journey with its culture, it is indispensable that the members of that community are interested or must have the inclination to know the relation of their particular mode of behavior in comparison to need of the time. In this regard, education helps to analyze, interpret and review the whole concept in the light of peace and development. It is said that peace is the first condition of development of a community or society. So the members of the society are required to have the mechanism to impart education to eradicate all kinds of parochial thinking and to invite dynamic idea among them.

In carrying out the research paper I have pursued doctrinal research methodology to find out the result analysis by analyzing various stages of development of a society. I have categorically mentioned ancient part of the issue, medieval part of the issue, finally recent part of the issue to find out the result analysis. I have tried to set the rules of development periodically in algorithm manner. In various stages I have tried to represent a work flow or a process how a modern society originates.

In ancient times the concept of development was a bit feeble owing to its intolerable character. Gradually, eagerness to know discovered the concept of tolerance for the cause of so-called development. The natural resources, position and conditions are so rich in India that the people, who are the members of this great India, naturally develops their ability with the help of various events that took place in the evolutionary process of development of the community. In this evolutionary process certainly there was unquestionable role of codified Law in our Indian society but un-codified law also contributed towards the process of development. Interestingly, the word peace and development has got inherent relation with both codified and un-codified law. There are plethora of examples such as Sati-Dah system, Dowry system, slaughtering of human being before Almighty for the fulfillment of particular necessity of a family or a society, Witch hunting, various kinds of germ- phobia, etc.

There was no concept of codified law in early ancient society. People had to depend on nature and the consequences of natural activities. The only law that prevailed among the barbaric society was Might is Right. In nomadic period, among the various groups or clans, war and quarrels often took place. The strong won the war and the weak had to sacrifice either their lives or to retreat without getting the interest in their favour. Gradually, the human beings started searching the ways to meet up their demands considering time and place. It is well said that human being though one of the species of the genus animal, but there was one vital difference: human beings have developed brain which animals do not have. By using the brain, human beings are able to choose the right and the wrong. Perhaps, the quality of inquisitiveness of the human being helped them to convert the situation in their favour with the help of experience of life and power of thinking.

#### **Ojectives of Stages**

History of human civilization had been divided into various ages. The ages are categorized as stone age, bronze age and iron age. It is asserted that human history crossed various stages to reach from nomadic age to Neolithic age. In early stage, the hunter gatherers started their settlement in a particular place and started agricultural settlement. Shortly, after stone age, human beings practiced agriculture. Neolithic period took an important place of change in human civilization. In that period humans began cultivation, breeding animals for food and also started their settlement in a particular place. In these period people had to depend on un-codified laws. These laws were basically natural law and the laws dictated by the head of the group. The head of the group was recognized as the strongest amongst the other members of the group having the capacity to control its group who were dominated to follow his dictate. As for example, the head ordered to pay certain specific benefits such as share of the produced goods or physical services with periodical basis to be provided as and when required by the head. We find the fishy smell of the value of un-codified law in the form of codified nature. There was none to protest against the dictate given to its subjects. The force of these orders was backed by punishment. Anybody who disobeyed the order given by the head of the group was treated as the decision of the whole group. As a result severe neglect or disagreement against the decision passed by the head of the group will amount to punishment like loss of life.

From the above, it may be understood that the nature of law or necessity of law was recognized by the various groups, communities and the societies for the benefit of their own interest. Though there was no specific date for growth of law in the evolutionary process of human civilization, but in these processes perhaps time was started from the very day of feeling for the benefit of interest between or among the members of the society.

Jurisprudentially, it may be said that the urge for better life or developed life was responsible for

recognition of law in the process of human civilization. It is a fact that various kinds of laws were come up considering the needs of the time and needs of the society. The awesome technique to know a particular culture, standard, life style of a particular period may be assessed with the help of habits of community, behavior of the individuals and overall nature of law prevailed within their society. As for example, to know from which particular time the people of the globe get the opportunity to register their complaints before the highest authority, the preliminary answer of the question above is from the date of Magna Carta i.e. 1215 A.D. For the first time the king had to consider the complaint made by its subjects over various issues which were not taken into consideration by the then administrators for a long time. It was also understood that the realm of law for the first time shared between King and its subjects because the king and his council was forced to consider the complaints made by the subjects so that the power enjoyed by the king could not be questioned.

John Austin, the famous jurist defined the term law as the dictate or order of the king upon its subjects to follow or to face the punishment. The concept was that the king's order was treated as the order of the God. Since the order of the God cannot be neglected, similarly as a representative of God, King's order was also treated as an order of the God. It was presumed that King can do no wrong like the God can do no wrong. Considering the sociological aspect of the then society, the administrator had to administer the country in the name of God since the people do not have the infrastructure of education. As a result, whatever the decision taken by the King or administrator, they had to convince the public that the decision was given by super power to regulate the society on the basis of the decision of the King. Gradually, the concept of imparting education in the line of religion developed and finally the process of formal education started. Due to development of education, the administrator had to change the system of education by giving chance of peoples' participation in the governmental activities. As a result, day by day various kinds of formal law were framed to administer day to day activities of the government. With the development of society, the concept of religion started changing with the inclusion of formal law in the form of codified law.

The Indian society, during ancient period had to pass through various phases of religious, cultural and social transformations. During the time of ancient kingdoms, in India, there were different kinds of customs, usages and practices followed by different kings, e.g. administrative setup of government had eighteen high ranking offices. Kalhana had recorded that King Jaluka of Kashmir who reigned a few decades earlier to 1184 B.C. had established 18 such offices while organizing his governments. According to Nilakantha, the commentator on the Mahabharata, the 18 offices of state are as follows:

1. Mantrin- Councilor
2. Purohita- Pontiff
3. Yuvaraja- heir apparent

4. Senapati- Generalisseeimo
5. Dvarapala-chamberlain
6. Antarvasika- Steward of the royal household
7. Karagaradhikarin-superintendent of prisons
8. Dravya samcaykrt-treasurer
9. Sannidhatr-auditor of the treasury and five other departments
10. Pradestr-Officer with joint executive and judicial functions
11. Nagaradhyaksha-prefect of the society
12. Karya-nirmanakrt- superintending engineer of works
13. Dharmadhyaksha-lord of Chief Justice
14. Sabhadhyaksha-President of the Assembly
15. Dandapala-warden with criminal jurisdiction
16. Durgapala-warden of fortifications
17. Rastrantapala-warden of the marches
18. Atavipaka-conservator of forest.<sup>1</sup>

The Islamic theory of sovereignty enjoined that the Khalifa was the spiritual and temporal head of the entire Muslim world and all the Muslim states were governed by his deputies. It was thus customary for the Sultans of Delhi to pay ceremonial allegiance to the Khalifa.

India had witnessed number of religious war, cultural war, social war and finally political war with the British Government for a long time of more than 200 years. During this period India had to change various kinds of practices out of pressure created by foreign intruders like British, Portuguese, French, etc. in different parts of India. In the year 1858, the East India Company had to lose its power of administration over India for their various kinds of tortures, extortion, rape etc., which were seriously criticized by the opposition parties in the then British Parliament. Finally in the year 1858 transfer of power from East India Company to British Government was affected creating a separate minister for Indian affairs in the British Parliament. British Government had undergone various kinds of changes in the administration of justice in India. For the first time British Government had included the natives in the Governor General Council officeto represent the various demands of the natives.

In the year 1833, the membership of the Governor General's Council was increased by addition of a fourth member known as the Law Member who was not a servant of the Company. Macaulay was appointed as the Law Member who was to participate in the deliberations of the Council only for legislative purposes. The most important characteristics of it were that it provided for the appointment of a Law Commission in India.

Human civilization is based upon values and morality. The legislators when formulate laws and the judges give their decisions, they are completely guided by the values which are recognized by the society. During the process of changing the society as per demands of the time, these values may be changed, but the values can never be ignored.

#### **An Assessment**

Frequently a question comes to our mind whether there is any difference between Law and morality. If we try to look back to our ancient Hindu jurists, we can notice that they made the laws on the basis of morality. They emphasized on good conduct of the people in the society. The Constitution makers of India also gave importance on these values. On the basis of the values, the constitution makers of India incorporated the Fundamental Rights and Directive Principles of State Policy. A healthy society always needs the importance of

ethical values of life. In a democratic country like India, these values are mostly needed. Equality before law, Freedom of speech, religion, etc. are included as fundamental rights on the basis of these values. These values are deeply rooted in the great epics and Vedas. Justice Krishna Iyer rightly observed that "We cannot regain our past glory unless we realize the importance of morality in our present legal system"<sup>2</sup>

#### **Aim of the Study**

The aim of my topic is to create a mechanism in our society a vibrant relationship within the members by developing an interest in the all round development of society. In this respect there is a sensitive role of codified laws. The need of the time is to community growth by organising extensive study of historical data for specific identification of defaulting areas. Sociological expert are to be involved in the whole process so that meaningful exercise can be carried out. The office bearers of the panchayats are to be accountable for implementations of all governmental schemes which are meant for proper beneficiaries. Periodical checking of all individual cases with full of honesty and responsible manner so that beneficiaries are given the opportunity to feel the necessity of respect to our law of the land.

#### **Conclusion**

The nature of a society depends on various factors such as natural environment, geographical position, historical events, political condition, economical status, education finally social conditions. Legal education in modern society plays a leading role in conceiving a dynamic society in the evolutionary process of development of a society the concept of cohesive character among and between the members of a society develops in the interest of the members within the system. Allegiance before a supreme power is part of the system. Hence the system which grows with a power in various form that is head of the family, head of the village, head of the religion etc. who works as source of power. Similarly the modern society is supposed to follow head of the state, parliament, state legislature and other institutions that are known as source of law making authority. A dynamic society frames law as per considering various aspects such as what was the previous law, force of such laws, demands of the society etc. for suitable and consistency of law in a society. Though in all cases it is not viable to consider the demands of the society considering future aspect and other related principles. Recently there was demand of capital punishment for the rapist before the highest judiciary but the apex court had to consider the demands as per law as well as future aspects of Indian society. The Supreme Court of India had pronounced the punishment of the rapist in Nirbhaya Case with death sentence mentioning it is a rarest of the rare case. From this historical judgement it is beautifully created a strong message that a criminal cannot be let free without punishment but to make one instance as a general one may be mistake considering principle of justice as such all demands are not based on valuable argument for consideration.

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**Endnotes**

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