Like the society itself, the institutions of administration of justice in any society are the product of an evolutionary process. In Indian society, the institutions of administration of justice have been growing and developing slowly and steadily along with the march of time. From the ancient times the process of judicial administration has evolved from a simple and less complex process to a much more complicated legal one. But the fact remains that the institutions of judicial administration were as indispensable a part of ancient Indian society as they are today. In fact, of all the forces, trends and institutions that have shaped the history of India, only the institutions of administration of justice virtually stand out.

The literary sources which give us knowledge about the judicial administration in ancient India are, as a matter of fact, "not older than the fourth century B.C."(1) . The descriptions of the judicial administration of ancient India are well-contained in the ancient law books called "Dharmasutras and Smritis which together with their commentaries are called Dharma Sastras."(2)

Many other texts like the Artha Sastra of Kautilya, Manusmriti, Naradasmriti, Brihaspatismriti and the epic like

2. Ibid, P.12.
the Ramayana and the Mahabharata also give us a good account of the judicial administration in ancient India.

The Dharmasutras which were compiled in '500-200 BC,' and the principal Smritis which were codified in the "first six centuries of the Christian era" give the detail of the duties laid down for different varnas and the king and the officials. The prescribed rules according to the Dharmasutras are how property is to be held, sold and inherited, and how punishments for persons guilty of theft, assault, murder, adultery etc. are to be administered.

The Vedas, The Ramayana and The Mahabharata make us believe that in the ancient India polity, justice and law were regarded as very important institutions, law was considered as the "king of king" and the rule of law prevailed in the society.

The Puranas and smritis like Naradasmriti, Yanjavalkyasmrati, Brihaspatismriti, etc., which belong to a comparatively later period than the Vedas contain information about the Hindu legal and judicial system. Similarly, Manusmriti, whose author Manu is still being regarded as the greatest law giver of India tells us about the functions of judges and the importance of justice in society.

3. Ibid.
4. Ibid.
5. Mukhi, H.R., Ancient Indian political thought and Institutions.
Another important law book is the Arthshastra of Kautilya. It is, in fact, an elaborate, comprehensive and authentic treatise that deals with all aspects of state administration including the judiciary.

Regarding the origin of the separate institutions of judicial administration, it is believed that in the beginning of the civilization the faith in the principle of co-existence, a high sense of morality and self-enforced social norms gradually gave rise to the system of 'PANCHAS'(6), that is a board of five representatives corresponding to the council of elders. "In some areas these became standing boards while elsewhere as and when necessary such boards sprang up. Decision-making started to be accepted as divine element and therefore Panchas who gave verdict were accepted without demur"(7). Thus a pledge that justice would be done to everybody gave rise to a "social dispute resolution mechanism"(8) and it gradually became a pattern of life in ancient Indian society.

From the literary sources, not much is known about the judicial mechanisms of the Indus-valley civilization. But during the pre-Vedic period, there were different departments in the judicial administration itself. For example— there

7. Ibid.
8. Ibid.
were provincial courts which used to look after the cases occurring in the area under their jurisdiction. There were separate military courts called 'KANTAKA SODHAN'\(^9\) that would investigate cases of robbery, adultery and forgery. An interesting and useful link in the chain of judicial administration was the system of "Popular Courts"\(^{10}\). There is no mention of such courts in the manusmriti but a reference about it is found in the Yajnavalkya Smriti. Mainly there are three types of such popular courts which are mentioned in the Yajnavalkya Smriti. These courts are "PUGA, SRENI \(^{11}\) and KULA", and were encouraged on the plea that justice was speedy and less-expensive through these courts and it also encouraged a spirit of local self government.

Besides the king, there is also reference to other functionaries such as "DANDADHAKSHYAS' (Judges of Criminal Courts), DHARMASTHIYAS (Judges of Civil Courts)"\(^{12}\) etc. There is also mention of minor courts in the villages. It seems that much depended on the judges and their method of working as far as the success of the judicial system was concerned. According to the Mahabharata, it was essential for a Judge to be familiar with the nature and the character of the people. The judges should be mild and polite and not very harsh. They should be free from rapacity and ignorance.

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10. Ibid.
11. Ibid.
12. Ibid.
SPELLMAN is very right when he remarks, "In some respects, the judicial system in ancient India was theoretically in advance... In theory at any rate the system was organised to promote the happiness and welfare of the people and such was the case in practice as the law always kept pace with society". (13)

In the Rigvedic and the later Vedic periods, the king was the fountain of Justice and power and he used to administer justice through popular assemblies like Sabha and Samiti. The Vedas do not mention any officer for administering justice. But spies were employed to keep an eye on unsocial activities like "theft, and burglary and especially on the theft of cows". (14) Judicial power, sometimes was delegated to the ADHYAKSHYAS or overseers. The village level cases were decided by 'GRAMYAVADINS' or village judges.

From the accounts of judicial administration of India provided by the Vedas, Smritis and the other texts of the ancient period, it is confirmed that the judicial administration was one of the most important aspects of administration during that period. It was the responsibility of the state to give justice to the people in accordance with Dharma which was placed above everything else, including the king who himself was bound by its provisions. Law was passed on customs and

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were considered the essence of man's wisdom. The Judges were expected to be well-versed in the dharma sastras. The king acted as the final court of appeal and was assisted by a Chief-Justice. It was the duty of the "King-in-Council" to see the "dharma-in actual operation."\(^{(15)}\)

Besides, being one of the important departments of state administration, Justice was also considered as a means to promote Dharma. Administration of Justice was under the absolute control of the king who was to see that his subjects got just laws and quick justice. It seems that at that point of time, the states were fully aware that without a proper judicial system, the whole administration is bound to sink and lose respect.

Justice was being administered on certain basic principles. One such principle was that the law was supreme and even the king was required to accept the supremacy of law. According to Manu, the great law giver, "the king was liable to pay fines and in fact a thousand times more than an ordinary citizen is required to pay for committing similar offences."\(^{(17)}\) Manavadharmasastra and Arthasastra also have confirmed that the king was never above the law of the land.

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Another basic principle of judicial administration was that the judiciary and the executive were separate from each other. It was secured by the Jury system as well as by the system of trial in public. According to Jayaswal, "The administration of justice under Hindu monarchy always remained separate from the executive and generally independent in spirit."\(^\text{18}\)

Administration of Justice was controlled by Brahmins, who were quite well-versed in the Vedas and the Sastras. There was no need of a lawyer as is the case with our present day Judicial system. There was no secret trial as these might morally weaken the subject. In addition to this, cases were disposed of in a reasonably short time and the expenditure involved was minimal.

However, according to the historians, Indian legal and Judicial system, in the true sense originated during the 5th century B.C., which R.S. Sharma termed as the "age of Buddha". Formerly people were being governed by the tribal laws which did not recognize any class distinction. But by now, the tribal communities have been divided clearly into four distinct classes. So the Dharmasutras laid down the duties of each of the four varnas and the civil criminal laws came to be based on varna division. Civil criminal laws were administered by royal agents. Who inflicted rough and ready punishments such as scourging,

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\(^{18}\) Ibid.
beheading, tearing out of the tongue etc. In many cases, punishments for criminal offences were governed by the idea of revenge, which meant "a tooth for a tooth and an eye for an eye".\(^{19}\)

Although the Brahminical law-books took into account the social status of the different varnas while framing their laws, they did not ignore the customs of non-vedic tribal groups which were gradually absorbed into the brahminical social order.

From the fourth century B.C. onwards and till about sixth century A.D. India saw the rise of some imperial dynasties like the Mauryas, the Guptas, the Kushanas and the Vardhans. Under the rule of these dynasties Judicial administration really occupied a very significant position. Besides the civil and the criminal courts, every village had its own panchayat which looked after the Judicial administration of the village as well. Though the village headmen or Gramikas usually headed the Judiciary, yet the decisions were taken by the village assemblies.

In the Kalinga edict of Ashoka, it is found that he enjoined on the Mahamatras, who were the city Judiciaries, to be devoted to the eternal rule of conduct and to avoid causeless imprisonment and harassment of the people. He also appointment special class officers to conduct every three year tour.

\(^{19}\) Sharma, R.S., Op.Cit, P.98.
Especially under the Guptas, Judicial administration of India was far more developed than in any earlier time. Several law books were compiled during this period by Yajnavalkya, Narada, Brihaspati and Katyayana for the first time. Civil and criminal laws were clearly defined and demarcated. Theft and adultery came under criminal law. Disputes regarding various types of properties came under civil law. Elaborate laws were laid down about inheritance. Like earlier times, many laws continued to be based on difference in varnas. It was the duty of the king to uphold the laws. The king tried cases with the help of the Brahman priests. The guilds of artisans, merchants and others were governed by their own laws.

For about 600 years, between eleventh century A.D. and the early eighteenth century A.D., the Muslim and the Moghul rule prevailed in India. The feudal lords who raised their heads during this period had also broadly accepted the system of Panchas, though the Muslim rulers introduced Muslim laws in the country.

During the Moghul rule, religious codes and moral injunctions were held at high esteem. These codes and injunctions were treated as "Law as coming down from the supreme law giver". To secure the faith of the people in the Judicial administration, Akbar even went to the extent of appointing Hindu Judges to dispose of the cases of the Hindu subjects.

But with the gradual decline of Moghul rule, the Judicial system of the country suffered a great setback. Many vices cropped up in the administration of Justice. According to Vereslt: "Every decision is a corrupt bargain with the highest bidder.... Trifling offenders are frequently loaded with heavy demands and capital offences are as often absolved by the venal Judges."(21) The people groaned under the tyranny of the corrupt Judges. Malpractices, and exploitations were not uncommon. The forms of justice thus existed, but the courts became the instruments of power rather than justice. These were more an instrument of oppression rather than a means of protection.

Thus until the middle of the eighteenth century the traditional system of judicial administration thrived in India. It, in fact, underwent a drastic change when the British acquired ruling power over the territory of India in the middle of the nineteenth century.

The system of law and justice and the machinery to administer them are perhaps the most valuable legacies that the British have left behind in India. Though India had an efficient judicial system in ancient times, yet it is not right to say that at any point of time, there was ever a uniform pattern of judicial administration throughout the country. Though the basic structure was the same, yet each dynasty had

its own characteristic style of administration. In fact, it was the British who gave us a uniform pattern of judicial administration. "The grand legal traditions like the rule of law, administration according to law and respect for law" (22) are the British legacies that have been duly enshrined in the present judicial system and the constitution of India.

The East India Company carried with it the concept of common law as was prevailing in England by then. The colonies they established in and around modern Bombay, Calcutta and Madras and their centres of power in other parts of the country came to be subjected to an admixture of the common law and the local system of adjudication. The British did not immediately dislocate the system of Kazis nor did they interfere with the panchas. But the establishment of adjudicatory courts in course of time brought about the formalisation of the judicial administration. Gradually the adjudicatory process became more and more formalised with the introduction of the Anglo-Saxon system of jurisprudence and when India became a part of the British empire under the direct suzerainty of the crown a full-fledged adjudicatory set up came into being. Sir A.S. MAINE aptly remarks: "In British India Judicial legislation is legislation by foreigners, who are under the thraldom of precedents and analogies belonging to foreign law, developed thousands miles away, under a different climate and for a different civilization." (23)

22. Ibid. P.187.
The British laid the foundations of a new system of dispensing justice through a hierarchy of civil and criminal courts. The system, started by Warren Hastings, was in fact stabilised by Lord Cornwallis in 1793. In each district, a Diwani Adalat, or a civil court, was established and presided over by a district judge who belonged to the civil service. Appeals from the district court lay first to four provincial courts of civil appeal and then finally to the Sadar Diwani Adalat. Below the District court were Registrars' Courts, headed by Europeans and a number of Sub-ordinate courts headed by Indian Judges known as "Munsifs and Amins." (24) To deal with criminal laws, the Presidency of Bengal was divided into four divisions, in each of which a "Court of Circuit" (25) presided over by the civil servants, was established. Below these courts were a large number of Indian magistrates to try petty cases. Appeals from the courts of circuit lay with the Sadar Nizamat Adalat. The criminal courts applied Muslim Criminal Law in a modified and less harsh form, so that the tearing apart of limbs and such other punishments were prohibited. The civil courts applied the customary law that had prevailed in any area or among the section of the people of any locality.

24. Chandra, Bipin, Modern India, New Delhi, Publication Department, NCERT, 1990, P.84.
25. Ibid.
In 1831, Lord William Bentinck abolished the provincial courts of Appeals and Circuits. Their work was first assigned to commissions and later to District Judges and District Collectors. Bentinck also raised the status and powers of Indians in the judicial service and appointed them Deputy Magistrate, Subordinate Judges and Principal Sadar Amins. In 1965, High Courts were established at Calcutta, Madras and Bomaby to replace the Sadar Courts' of Diwani and Nizamat.

The British also established a new system of law through the processes of enactment and codification of old laws. The traditional system of justice in India was largely based on customary law "which arose from long traditions and practices, though many laws were based on the Sastras and Shariat as well as on imperial authority". Though they continued to observe customary law in general, the British gradually evolved a new system of laws. They introduced regulations, codified the existing laws and often systematized and modernized them through judicial interpretations. The Charter Act of 1833 conferred all law-making power on the Governor-General-in-Council.

In 1833, the Government appointed a law commission headed by Lord Macaulay to codify Indian laws and eventually it resulted in the Indian Penal Code, "the western-derived codes of civil and criminal procedures" and other codes

26. Ibid.
27. Ibid.
of laws. Provisions were made to apply these laws uniformly all over the country and they were enforced by a uniform system of courts. Thus it may be said that India became 'judicially unified'. (28)

The British also introduced the modern concept of the rule of law. This meant that their administration was to be carried out, at least in theory in obedience to laws, which clearly defined the rights, privileges, and obligations of the subjects and not according to the caprice or personal discretion of the ruler. The previously the ruler of India had been in general bound by tradition and custom but they always had the legal rights to take any administrative steps they wanted and there existed no other authority before whom their acts could be questioned. The Indian rulers and chiefs sometimes exercised this power to do as they wanted. Under the British rule, on the other hand, administration was largely carried on according to laws as interpreted by courts.

Secondly, the Indian legal system under the British was based on the concept of equality before law which means that in the eyes of law all men are equal. The same law should be applied to all persons irrespective of their caste, religion or class. Previously, the judicial system used to pay heed to caste distinctions and had differentiated between the so-called high-born and low-born castes. Zamindars and nobles

28. Ibid.
were not judged as harshly as the commoners. In fact, they
could not be brought to justice at all for their actions.
But under the British judicial system, anybody can be moved
to the courts, irrespective of their status and position.

However, there was one exception to the principle of
equality before law. The Europeans and their descendants had
separate courts and even separate laws. In criminal cases they were
tried only by European Judges. Many English officials, military
officers, and merchants behaved with Indians in a haughty,
harsh and even brutal manner. When efforts were made to bring
them to justice, they were given indirect and undue protection
and consequently light or no punishment by the European Judges.

In practice, there emerged another type of drawback.
Justice became quite expensive as court fees had to be paid,
lawyers engaged and the expenses of witnesses had to be met.
Law suits were dragged on for years. Moreover, widespread
corruption in the ranks of police and rest of administrative
machinery led to the denial of justice. To quote the words
of Bentinck "The courts have become the resting place for the
members of the service who were deemed unfit for higher
responsibilities and the judicial system suffered from evils
like delay, expense and uncertainty".\(^{(29)}\) Thus while the new
judicial system marked a great step forward in so far as it

29. Vigasin, A.A. and Samuzvantsev, A.M., Society State
and law in ancient India, New Delhi, Sterling Publishing
Pvt.Ltd.
was based on the laudable principles of rule of law, humane man-made laws, it was a retrograde step in some other respects. It became costlier and involved long delays.

After India attained independence in 1947, the framers of our constitution, realising that the supremacy of law is the only security for maintenance of justice between man and man and for a disciplined and orderly growth of democracy, assigned a pivotal role to the supreme court and gave it a higher authority and a far wider scope to vindicate the supremacy of law.

A just and competent administration of justice does not merely depend on the powers conferred on the courts. The courts must have a complete freedom of action. To secure it, the framers of our constitution have made the principle of independence of judiciary, a basic principle of our constitution.

As India is a union of states, for an efficient judicial administration, our constitution provides a hierarchical judicial organisation. The Supreme Court stands at the apex with the high courts (almost one in each state) and other sub-ordinate courts under it. These sub-ordinate courts include the District and Session Judge's Court, Metropolitan Magistrate's Courts, City Civil and Sessions Judges-Courts, Presidency Small Cause Courts, Munsifs' Courts, Nyaya Panchayats, Subordinate Magistrate
Courts, Panchayat Adalat etc. All these steps were taken to ensure justice to the people.

From the ancient period till today, the Indian judicial system has come a long way undergoing a lot of changes. In fact it has changed in almost every respect. In comparison to the simpler and uncomplicated pattern of Judicial system, the present Judicial administrative system based on the British system of justice is much more complicated while in the ancient times a fair procedure was all that was adopted and depending upon given situations, procedure to ensure fairness was being innovated. Since the dispute resolution system was localised, it did not involve movement from place to place, assistance of lawyers and law-making persons. Once the dispute was resolved, there was no further challenge to the decision. The Panchas had a moral authority which was more or less persuasive and enforcement of their decisions used to get supervised automatically on account of the acceptability of the Panchas in the area. Very often no other effort was necessary to make the decision effective.

The British rule of almost two hundred years, and particularly the British model of the adjudicatory process, had the effect of formalising the procedure. Technicalities were introduced into the judicial process. Litigation turned out to be costly on account of the fees of lawyers and courts. It also became time consuming. The net effect is that the
the poor man finds it difficult to enter the portals of the court and the rich man is able to use the legal process as an instrument of harassing his poor adversary. Even after 48 years of independence, the colonial legacy still affects the administration of justice. The judicial process continues to be complicated and the poor man cannot even dream of legal remedies through the courts of law in case the basic rights are denied to him.

It is a well known fact that judiciary is one of the most important pillars on which the foundation of a democratic state rests. In the modern states for a smooth functioning of administration, the judiciary has an important role to play. In the next chapter, we will be discussing the role of judiciary in modern states in general and in India in particular.

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