

Ethics of the Legal System

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After the fall of the Mughal Empire, there was a time of anarchy in India. This lasted till the East India Company which had gained the tax collecting rights, found that a sound system of judicature was essential for settling the country and saving the peasantry from rapacious hordes. Otherwise there could be no agriculture and no trade and consequently no taxes. At first they set up the Sadr Courts and ensured that they worked efficiently. In a way even before Macaulay and the celebrated Indian Penal Code was born these Nizamuth and Diwanees that is, the criminal and civil courts 'unified' the people in the British East India Company ruled areas under a common legal system. It also bred a new class of lawyers well-versed in Hindu and Islamic legal traditions. Nevertheless they formed a growing middle class, capable of independent thought and aware conscious of the latest ideas in ethics and philosophy. Raja Ram Mohan Roy was an outstanding example of this new class. It was a passion for ethics that drove him. This induced him to strive for a reform of India's antiquated legal system as well as education system. He pursued his goal

tirelessly by meeting the top statesmen in England, Political philosophers of France who in turn lionized him no end. When he spoke in the British Parliament he was given a standing ovation.

Among the wish list that he cherished was TRIAL BY JURY. The English had enjoyed for long this comparatively better and hence ethically superior method of trial and why not the people of India? Ethics is indivisible and an ethical legal system can only flourish in an ethical education system and public administration based on ethics. Roy wanted a package deal comprising a new legal code, a liberal and scientific modern education and a more responsible administration. All these wishes were fulfilled later on in the nineteenth century with Queen Victoria's proclamation and Macaulay's reforms in education and the legal system. It is the unfortunate tendency of our times to blame Lord

Macaulay for all the ills of our polity. This is unfortunate because it is just not true. On

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the contrary, it is his efforts at modernizing the legal system and educational system that was copied by many other Asian countries that brought modernity to these areas. By modernity it is meant a more humane and therefore an ethical system. In any case, Macaulay was only fulfilling a much vaunted wish list ardently supported by very well meaning Indians such as Rajah Ram Mohan Roy. If blameworthy, the blame should be shared by Macaulay and many other great Indians. The very advanced English legal system of the time was improved and codified in the Indian Penal code. It was after much discussion that it finally became part of the Indian Legal system. The English Common Law from which our Penal code was derived was basically fair, humane and ethical in nature. It derived from not only the Magna Carta which for the first time contained certain Human Rights but, also included some of the celebrated legal maxims of ancient Rome. In the Roman Empire, every citizen could claim the benefits of the Ethical Quality of the Roman law. Remember St. Paul insisted that "Civic Romanus Sum" that is, I am a Roman Citizen! Similarly, subjects of the British Empire could claim "Civic Britannicus Sum" as a much misunderstood Niraj Chaudary wrote in his autobiography.

It is the Indian Penal Code which not only grafted ethically perfected ideas onto a cumbersome and antiquated unequal and dysfunctional truncated society. The Indian Penal Code unified the country. The same laws held in all the British administered areas of India. It was even copied by progressive native states such as Travancore and some other Asian

countries which were not part of the British Empire.

To begin with all were equal under the law and there was the Rule of Law. Punishment was the same for all castes. The country had been prepared for this since earlier times by the hanging of Nand Kumar for the crime of peculation by the East India Company courts. This caused much outrage in India. In English Law, this was the punishment and it happened a 100 years before Macaulay. In Macaulay's Indian Penal code however, peculation was not a crime punishable by death. One could expect what punishment one would get for the crime that was committed. It was not arbitrary or whimsical as in earlier Mughal times. Of all contemporaneous legal systems, that of British India, post 1858 was the most advanced, humane and ethical in nature.

This was because the Indian Penal Code was a development from the British common law. The common law had developed the logic of law out of practical experience and facts of life. The four principal branches of common law are:-

- 1) Law of Contract
- 2) Law of Torts
- 3) Land Law
- 4) Law of Crimes

It deals with the rules of the human conduct and seeks to enforce just conduct. This is the moral or ethical element. A man must not murder or steal or break his contract or injure his fellow man. If a man does so, the law punishes him.

We talk of “Just” conduct. The law makes clear that what is meant by just is what appears to be reasonable for the reasonable man in any particular case.

Justice does not consist in doing what is just in each particular case. The whole system is backed up by an ethical and moral outlook. Its character is built up over the centuries of experience of human conduct. The legal system must have a certain character based on healthy ethics. Right and Justice can be maintained only by struggling for it by pursuit and practice of it. Human conscience must be the basis on which laws are made. The Indian legal system gave ample scope for exercising the conscience of civilized humanity.

English common law came to India in separate flows. It had four important effects:-

- 1) It produced a very centralized legal system just as the normal conquest had produced a similar effect in Britain many years earlier.
- 2) Everyone was subjected to the Rule of Law.
- 3) Uniformity of law, i.e. the same law, applies to everyone, high and low, in all geographical areas of British rule. It gave consistency and certainty to all the people.
- 4) The Indian legal system contained all the principals and maxims which had been developed in England after a long historical experience.

Some of these legal maxims may be mentioned here. It may be noted that they are basically ethical in character. The same Latin

words became part of the vocabulary of the learned Indian lawyers who are part of the legal system.

- 1) **Saluj Populi Sest Suprema der.** In other words the welfare of the people is the supreme role.
- 2) **Audi Alteram Partem.** That is to say “Hear the other party”. It is essential to get the complete picture by hearing the version of the opposite party before deciding the case.
- 3) **Ubi Jus Ibi Remedium.** Every right that is infringed has a remedy in law.
- 4) **In Jure, Non Remota Causa Sid Proxima Spectatur.** The law does not take the remote cause but will consider only the proximate cause.
- 5) **Ignorantia Facit Excusat.** Ignorance of the law is no excuse.
- 6) **Ex Turpi Causa Non Oritur Actio.** Having done something wrong or immoral one cannot insist on protection by the law.
- 7) **Nullus Commodum Capere Potest De Inguria Sua Propria.** No one can take advantage of a wrong doing.
- 8) **Res Ipsi Locutur.** The things speaks for itself
- 9) **Nemo Debit Bis Bexari Pro Una Et Eadem Causa.** For the same cause no one can be punished more than once.
- 10) **Volenti Non Fit Injuria.** One who voluntarily or knowingly takes a risk and endangers himself has no legal redress.
- 11) **Actus Dei Nemeni Facit Inquanam.** An

act of God cannot be the cause for legal redress.

12) **Domus Sua Caique Est Tutassimum Refugum.** In other words, a man's home is his castle.

Only a representative sample of 12 well known legal maxims are given here. There are many more interesting principals and maxims. Undoubtedly together they serve to point out the ethical character of our legal system.

We can also point out that there were remarkable fall-outs which were consequent to the introduction of an advanced and ethical legal system in our country. Macaulay's Civil Procedure Code came into effect in 1859. The Indian Penal Code came into effect on 1st

January 1862. In it, the principals of justice equity and good conscience though not codified as such were bound to follow.

The initiative of introducing the legal system may be described as the first step in the modernization of this ancient country. The learned Indian judge says "The development in the administration of justice can be described as the first essential step in the unification of India". Generation of learned lawyers played a major role in bringing about self government and eventually led to Independence and after this contributed to the stability of the country to this very day.



Trade & Commerce in Ancient India

The history of Indian trade and commerce goes back to 3000 B.C. Indian merchants used to navigate many sea routes and the start of the caravan was an important event for the merchant community. Excavations in Babylon, Assyria, Sumer, Petra, Persia and Lebanon testify to trade exchanges with India. Merchants when travelling with a caravan, appointed one of themselves as a leader and a partnership was entered into by two or more merchants and they made an agreement to distribute profits and losses.

In 10th century B.C. and earlier, India had commercial relations with foreign countries. Indian merchants exported sandalwood, precious stones and Ivory to the Palestine. Indian elephants were exported to Assyria.

Indian sailors used to employ direction finding birds for locating the seashore. Indian ports were great centres for International trade. Indians had full knowledge of the ports of Red sea and Persian Gulf.

- Awakening Indians to India