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Evolution Of Law & Ways to Improve Biased Law System in Pakistan

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Abstract

Every citizen has a fundamental right to justice. The judicial system is essential for fostering harmony and peace in society. Examining how the law, legal procedures, and transitional justice have changed through time is the focus of this work. Around the turn of the 20th century, the idea of legal development saw a renaissance and is still present in many contemporary theories. Theories of the development of law use a variety of methodologies and include elements from philosophical, social, and historical viewpoints. The viewpoints of different legal scholars on how the law is applied to describe a trend in legal evolution are discussed. This work also analyses the discriminatory, historical legal, and practical issues related to the application of the law in Pakistan. The history of Pakistan's legal system may be traced back to various occurrences in the subcontinent's Hindu, Muslim, and English eras. Pakistan is an Islamic nation, but it continues to uphold the outdated British-provided law and has legal gaps. To enhance the legal system and bring justice to everyone at their doorstep, this research paper will examine the fundamental problems, their causes, and potential solutions. We are unable to meet the new difficulties facing the judiciary without them. We cannot discount the importance of judges in determining what constitutes social fairness. By implementing new advances and the judiciary's or law commissions' recommendations, we may strengthen our legal system.

Keywords: legal evolution; natural law; fundamental rights; judicial system; peace and harmony; International World Justice Project; affordable and swift justice.

1. Introduction

A subset of the legal theory called "legal evolution" contends that laws and legal structures evolve and change following regular, natural laws¹. It was created in the 18th century, reached its height of popularity in the 19th century, and then underwent a protracted hiatus². It is intimately tied to social evolution. The concept of legal evolution experienced a resurgence around the turn of the 20th century and is still prevalent

1 Stein, Peter (1980). *Legal Evolution: The Story of An Idea*. Cambridge: Cambridge University Press.

2 Elliott, Donald (1985). "The Evolutionary Tradition in Jurisprudence". *Columbia Law Review*. 85 (1): 38–94. doi:10.2307/1122404

in many modern theories. Theories of the evolution of law employ a range of techniques, incorporating components from historical, sociological, and philosophical perspectives³.

The phrase "legal evolution" encompasses a wide range of ideas with various objectives and methodologies, but there are some characteristics that are common to all of them. Theories of legal evolution make an effort to explain how laws change by referring to larger, extra-legal forces. For instance, Henry Maine in Britain continued the idea of the German historical school that law evolved alongside the nation which was found in his thesis on "progressive evolution."⁴ Similar to this, legal memetics analyses legal growth in terms of the interaction between societally relevant external information and the process of its "encoding" within legal standards⁵. Another prevalent theory holds that legal systems tend to become more complex, comprehensive, or "advanced" as they evolve. For instance, John Millar suggested that from hunter-gatherer tribes with little property to contemporary systems of intercontinental trade, legal systems developed⁶. Man-made law and justice should be closely related, and this is frequently the case. Law should seek to uphold justice. Instead of merely reflecting the subjective prejudices or whims of one individual, a group of people, or the entire society, laws should be the objective manifestations of the essence of reality. Natural law is objective since it is a part of the nature of the thing it applies to. Natural law's principles are understandable to human reason. For instance, it is obvious that no man or group of men should attempt to deprive him of a desired value or activity by the use of force because each man has a fundamental right to survive, flourish, and pursue his happiness. Before their adoption by political authorities, conceptions of legal principles frequently emerged in society following reality⁷. Before the creation of state law, customary private laws served as voluntary systems of governance that efficiently governed society. Law was created spontaneously and was found rather than enacted. The development of law is a systemic evolutionary process influenced by the experiences of a large number of people.

A wide variety of methodological approaches are used by theories of legal evolution. The rigorous historical technique used by the German historical school, which paid particular attention to primary sources and manuscripts, was notable. Similar to this, anthropological investigations, such as surveys of Native Americans, are a prominent source of information that evolutionary theorists use to infer the progression of laws from prehistoric cultures to contemporary market systems. A general sociological hypothesis or universal moral rules may also be used by the evolutionary theorist to explain a tendency in legal development. The frequent use of scientific metaphors is a recurring theme. Maine, in his book "Ancient Law," is based on theories of geology and perhaps Darwinism, although John Henry Wigmore contended that the complex interactions between planets are more analogous to how laws evolved⁸. Similar to how memetics in general draws heavily on biology, legal memetics also makes comparisons between genes, the pressure of evolution, and the transmission of ideas through culture⁹. Other theories have their roots in socio-biology and try to explain the evolution of laws, institutions, and ideas by extrapolating from alleged universal traits of people or perhaps of all living things¹⁰.

3 M. Reimann, 'Historical Jurisprudence' in M.D. Dubber, C. Tomlins, *The Oxford Handbook of Legal History* (Oxford: Oxford Handbooks Online 2018), 398. Accessed 14/11/20

4 Maine, Henry Sumner (1871). *Village Communities in the East and West*. London: John Murray.

5 Deakin, 'Evolution for Our Time: A Theory of Legal Memetics' (2002) *Current Legal Problems*, 55, 1, 1–42

6 J. Millar. *The Origin of the Distinction of Ranks*. (Indianapolis: Liberty Fund, 2012).

7 Barlow, J.W (1966). *Evolution and Society: A Study in Victorian Social Theory*. Cambridge: Cambridge University Press.

8 J.H. Wigmore, 'Planetary Theory of Law's Evolution' in Kocourek & J. Wigmore eds., *Evolution of Law: Select Readings on the Origin and Development of Legal Institutions (Vol 3)* (Boston: Little Brown & Co 1915-1918)

9 Deakin, 'Evolution for Our Time: A Theory of Legal Memetics' (2002) *Current Legal Problems*, 55, 1, 1–42

10 R. Petrucci, 'Natural Origins of Property Among Birds, Bees, and Fishes' in Kocourek & J. Wigmore eds., *Evolution of Law: Select Readings on the Origin and Development of Legal Institutions (Vol 3)* (Boston: Little Brown & Co 1915-1918)

Tracing the development of the law through processes incidental to the administration of justice and ingrained in our institutions may prove useful and is undoubtedly of interest to attorneys.

The initial steps toward resolving our issue would have been taken if we could articulate it earlier. What is law? There are many definitions, but it is obvious that much of what can be considered law must be eliminated to limit the subject to that which is necessary to achieve the aim of the jurist. Fundamentally, the law is the principle that governs how the elements and forces that make up the universe work¹¹. It permeates everything that can arouse the senses and is eternally present.

It is a notion of the consistent order of succession, such as the laws of motion, growth, and gravitation, which are inherent in objects' nature and rule the physical universe. It was formed "in the beginning," is everlasting and unchanging, and was only discovered by a human, not created¹². There is no external law that needs to be consulted or obeyed; uniformity is inherent in things. We are bound by physical laws because we are physical beings. Similar to this, irrespective of whether we are aware of it, we are subject to moral or spiritual laws. We constantly find ourselves under the thumb of fundamental laws, which tolerate no transgression and require no punishment from us¹³.

Laws of that nature, however, are entirely distinct from the concept of law that courts are concerned with within the course of their job and that attorneys argue over in the course of their routine administration of justice¹⁴. If our statutory and developed laws are sound, they must be compatible with the other laws listed, and to a certain extent, they must have been created by invisible agents and drawn from imperceptible sources¹⁵. The adage that states that humans discover laws rather than create them is accurate in this sense. We approach the topic of law as it is established by legislation and as it has developed via judicial reasoning from recognized postulates in a pragmatic fashion, passing the law of natural things, the sway of ethical sense, and the axioms of experiences as having the power of law. Such regulations are essential for the resolution of actual social problems as well as for controlling human behaviour in a structured society¹⁶. The concept of law with which we are presently concerned relates to the development and application of the laws and ordinances that control human interactions and transactions and are created or approved by established authorities. Some laws do touch the customers' lives, liberty, and property, and our goal is to uncover the origins of those laws and the principles upon which they were built. As stated by a writer in the most recent edition of Britannica¹⁷. It is suggested that law be defined for the jurist as the total of the factors influencing judgments made in courts of law.

From the historic Maulvi Tamizuddin case to the most recent accusations made by the former Chief Judge of Gilgit Baltistan, Rana Shamim, the judiciary's function in the nation has always been divisive¹⁸. The Pakistani court system was condemned in a recent report by the International World Justice Project as well.

11 Forbes, Duncan (1975). *Hume's Philosophical Politics*. Cambridge: Cambridge University Press.

12 Compare Carter, "Law, Its Origin, Growth and Function", pp. 9-25.

13 Patterson, Edwin. W. (1951). "Historical and Evolutionary Theories of Law". *Columbia Law Review*. 51 (6): 681-709. doi:10.2307/1119252

14 H. Goitein.

15 McLennan, J.F. 'Law' in *The Encyclopaedia Britannica* 8th ed (1857), XIII.255

16 Felix Frankfurter, 36 *Harvard Law Review*, 917.

17 *Law and the Modern Mind*, by Jerome Frank.

18 Sadaf Farooq, Abida Rafique and Ghulam Qumber, 'Independent Judiciary And Nationbuilding: A Case Study Of Pakistan' (2016) *I Global Regional Review*.

Although many people believe that these reports from Western institutions have always been exploited as a propaganda tool by the government's foes, the general public's assessment of these studies is similar across the nation. The judicial system of the nation is controversial with a large portion of the populace. They no longer have faith in Pakistan's legal system.

There are many causes for this lack of confidence in one of the most significant state institutions, but the prolonged proceedings and delayed justice are the main ones¹⁹. A quick and affordable judicial system is something that every citizen in the nation desires, but it is now only a pipe dream in Pakistan.

In order to acknowledge civil and political rights, including the equality of all individuals irrespective of their caste, language, ethnic origin, and region, democracy is built on liberal constitutionalism, which calls for a well-established constitutional and legal system. Part II of Pakistan's Constitution, which addresses citizen rights, is divided into two chapters: Chapter 1 covers the fundamental rights guaranteed by the constitution, whereas Chapter 2 covers the principles of policy²⁰. This last category includes a variety of socioeconomic rights.

Among other rights, the state is required to provide "affordable and swift justice" by Article 37(d) of the Constitution. An effective judiciary is one of the three basic governmental institutions, as described by the 1973 Constitution, and is essential to democracy, government, security, economic development, and fairness.

Abuse and exploitation have existed since the Middle Ages and even before. The Highest Court is supreme in Pakistan's legal system, which is based on UK law. The High Court is second, followed by the courts of a session.

Sadly, there is a widespread belief that the legal system is not very effective today. The widespread consensus is that, even when it does function in some circumstances, it favours citizens based on their social position, power, and financial status²¹. The judiciary is not an exception to the corruption and nepotism that the nation has experienced in all of its institutions. Pakistan received a 0.45 score and was ranked 120th globally in the World Justice Project's Rule of Law Index 2020²²; in the previous year, Pakistan was ranked 116. The worrying aspect of this WJP assessment is that it only places the country above Afghanistan in South Asia, which strongly suggests that there is a problem that requires immediate attention from the international community.

In Pakistan, justice is viewed as being forceful, sluggish, expensive, vulnerable to abuse and exploitation, difficult, and frequently unintelligible for the majority of litigants. Weak governance of the legal profession exacerbates the issues with the justice system. The long case pending times is just one of several factors contributing to this poor performance. According to recent data collected in July 2021, the Pakistani Supreme Court is now hearing more than 51,800 cases²³.

19 Picard, 'Factors of Legal Evolution' in Kocourek & J. Wigmore eds., *Evolution of Law: Select Readings on the Origin and Development of Legal Institutions* (Vol 3) (Boston: Little Brown & Co 1915-1918)

20 The Constitution Of The Republic Of Pakistan (Manager of Publications, Govt of Pakistan 1963).

21 Kristen Stilt and Swathi Gandhavadi Griffin, 'The Strategies Of Muslim Family Law Reform' [2011] SSRN Electronic Journal.

22 Weifang He, *In The Name Of Justice* (Brookings Institution Press 2020).

23 Supreme Court, 'Provisions Of The Supreme's Court On Several Issues Regarding Hearing Futures Dispute Cases' (2019) 43 Law & Government.

How can we establish an effective justice system?

An organisation that handles the cases of millions of people every day must have effective internal controls to guarantee that there are no delays, that cases are handled fairly, that any delinquency is reported and addressed, and that those responsible for intentional wrongdoing or unintentional misapplication of the law are prosecuted.

Second, it is important to note that efforts must be made to produce highly qualified adjudicators at the lower levels of the judiciary who are hired in an open and honest process by a professional council rather than by sitting judges and who receive in-depth training at a centre of excellence or a reputable university. As a result, emphasis must be put on the standard of justice. The rest would happen on its own once the standards of justice, impartiality, and fairness are established.

Third, the parliament must pass the necessary legislation. It means that a law should be passed mandating that judges not postpone a case for longer than four days. The fast distribution of information by the police is necessary for making this point. To achieve this, the gap between the police and the legal professions should be narrowed and their communication and cooperation encouraged.

Without a doubt, the aforementioned reforms will have a significant impact on how our judiciary now operates and will lead the country along the road Quaid-e-Azam Muhammad Ali Jinnah intended. The court's operating hours must be used to their greatest potential. Judges should show up on time, and unless essential, attorneys shouldn't request adjournments. And the rules of civil procedure must be properly followed when granting an adjournment. Judicial reforms won't be successful until we take ownership of them and institutionalise them in a way that best represents the interests of the vast majority of this nation's citizens.

Therefore, to offer fair justice to every member of this nation, Pakistan must have a well-established justice system built on the pillars of a quick and transparent judicial process. Because it fosters public confidence, the judicial system is a guarantee for the advancement of a nation. As a result, the current administration must take the initiative to calm the political atmosphere by concentrating its efforts on promoting judicial changes through some pretense of political consensus and shareholder reconciliation.

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