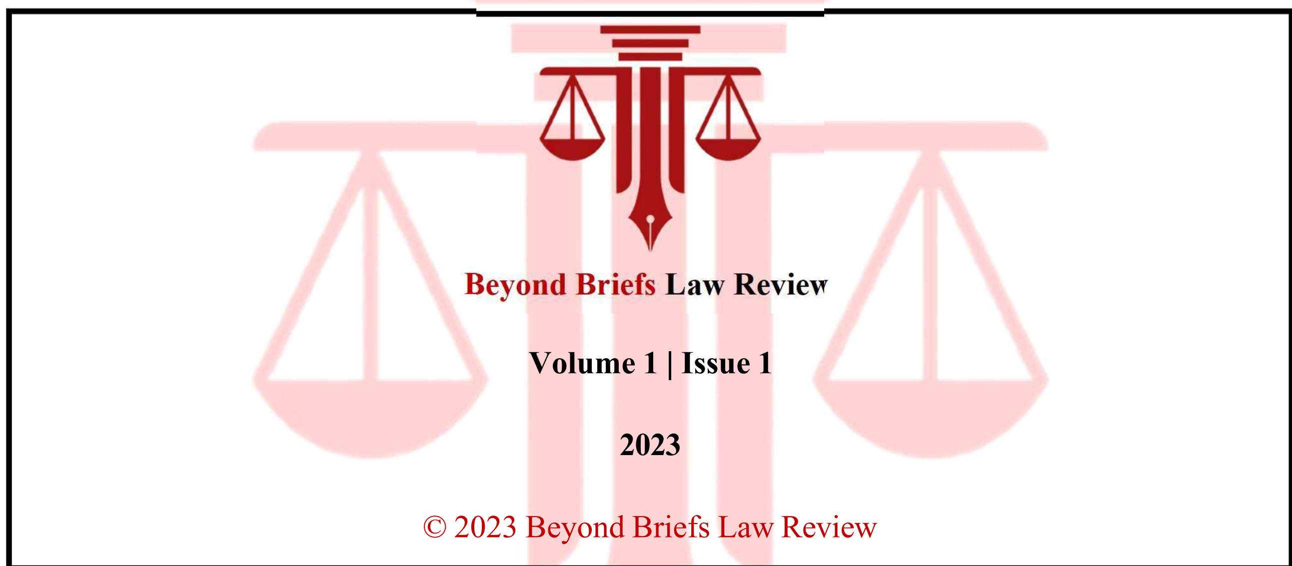

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REDISCOVERING THE LEGACY OF INDIAN JURISPRUDENCE: RECOGNISING THE UNTOLD CONTRIBUTIONS BY ANCIENT, MEDIEVAL, AND MODERN THINKERS

~ Snigdha Ghose[1] and Abhimanyu Vyas[2]

Abstract

Jurisprudence is the study of the philosophy of law. It is generally defined as the study of abstract principles which guide behaviour. However, its field of inquiry is much deeper than that. It dwells on subjects such as what is the purpose of law, what are its origins, how it has evolved, etc. The subject has a value-driven approach, conducting a philosophical inquiry into the essence of law, its fundamental principles, and its interaction with justice and morality. The field has been historically dominated by the thought of Western philosophers such as Plato, Aristotle, H.L.A Hart, John Austin, etc. to name a few. The field has largely turned a blind eye to the contributions of Indian jurists and the jurisprudence of India, which has a rich pedigree. Due to this fact, there has been very little research and attempts to document the theories and legal thought propounded by them. The jurisprudence of India, from the ancient period to the modern period, has seen the contributions of ……such as Manu, Yajnavalkya, Basavanna and jurist such as Justice V.R. Krishna Iyer and Justice P.N. Bhagwati, along with documents such as Manusmriti, Naradasmriti etc. The theories and thoughts of these jurists continue to remain relevant in the modern era, having become part of the very fabric of the society. This paper aims to explore their contributions to the Indian jurisprudence and trace its evolution from the ancient period to the modern period.

Keywords: *Constitutional history, Indian jurisprudence, manusmriti,, social justice, judicial activism*

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INTRODUCTION

Jurisprudence is the study of what law generally is. Its field of inquiry is much deeper, dwelling on subjects such as what is the purpose of law, how it originated, how it evolves, how it interacts with other institutions such as the economy, society, etc. Jurisprudence is thus more than just the study of abstract principles that guide behaviour; it is also a value-driven approach to resolving the various social issues that demand recognition by law and enforcement. It is a philosophical inquiry and investigation into the essence of law, its fundamental purposes, how justice and morality interact with law, etc. It is both a theoretical exercise regarding the evolution of law and a functional perception of social processes, ethos, and other factors which shape and condition the final quality and content of a legal system.

Indian jurisprudence has a rich pedigree, stretching from the ancient period to the modern period. Law has undergone a significant development in ancient India, as evidenced by the numerous legal treatises written. Hindu law originated from various smritis such as Manusmriti, Yajnavalkya-smriti, Naradasmriti etc. which were written by Sanskrit scholars in ancient times. Thus, the *corpus juris* of ancient India evolved from the thoughts of its law-giver *Rishis*, law researchers and jurists such as Brihaspati, Ved Vyas, Shukracharya, Manu to name a few, who postulated and expounded the universal theory of law and justice concerning life and society more rationally, humanly and objectively than most of their western contemporaries, and even modern western thinkers could, thousands of years ago. The following sloka gives us an insight into the depth of the study of jurisprudence in India:

धम्रएव हतो हिt धमR र◌ित रि◌तः ।

त4◌ाद् धमन wजा◌िम मानो धमR हतोऽवधीत् ।।

The abovementioned sloka communicates the following: *"Justice destroyed, destroys its destroyer, and justice preserved preserves its preserver. Hence never destroy justice, lest being destroyed it should destroy thee."* (Manu VIII, 14)

In this paper, we shall endeavour to analyse and uncover the contributions of Indian thinkers to the legal thought of India, whose contributions represent a core model not only for modern India

but for the entire world, which aspires to create a global community based on universal peace, social justice and basic human rights and fundamental freedoms.

ANALYSIS

I. Indian Thinkers in the Ancient Era

The jurisprudence of Ancient India was largely dominated by Vedic jurisprudence, which primarily spoke of "*dharma*." The primary objective of laws made in this period was to uphold dharma i.e., righteousness and duty. Dharma is the model code of conduct prescribed in the Vedic scriptures, wherein an individual has certain duties prescribed to him as per his role in society. Its thinkers are as follows:

A. Manu

The word *'dharma'* has its origins in the Sanskrit word '*dhr*', which means to uphold, sustain or nourish. It is often used in close association with '*rta'* and '*satya*.' '*Rta'* is the mental conception and awareness of God. 'Satya' means speaking the truth, and dharma means translating satya i.e., the truth, into action. As explained by Sri K. Balasubramanian Aiyar, an examination of the gravity of these words reveals the fundamental basis of dharma as the ideal for an individual.

"While 'rta' denotes the mental perception and realisation of truth and 'satya' denotes the exact true expression in words of the truth as perceived by the mind, Dharma is the observance, in the conduct of life, of truth. In fact, dharma is the way of life which translates into action the truth perceived by the man of insight as expressed by him truly. In short, 'rta' is truth in thought, 'satya' is truth in words and 'dharma' is truth in deed."

Dharma is thus anything that is right, just and moral and aims for the welfare of the society at large. It is nothing but a set of rules and beliefs consisting of religious rights, rules of conduct and duties. It regulated and guided the activities of one and all in the society, including the king. The legal system was one based on the duties of the individual, wherein the rights of an individual emanated from the obligation of another, and sometimes the social and prevalent rights superseded the right of an individual. As rightly articulated by Duguit,

"The only right which any man can possess is the right to do his duty."

The sources of law i.e., dharma, are the Dharma-Shrutis and the Dharma-Smritis. Some of the sages whose dharma-smritis are well known are Manusmriti and Yajnavalkya-smriti. Manusmriti or the Manava-dharma-shastra, is considered as the most authoritative book[3] on the jurisprudence of the ancient period, written somewhere between the 2nd century BCE and 3rd century CE.[4] The book, written by the first lawgiver of India, Manu, is a Sanskrit text written in the form of sloka-verses, comprising 12 chapters containing nearly 3000 verses. [5] Although the text has been controversial, having been seen as and associated with gender and caste oppression, its significance cannot be denied, having attracted 9 commentaries by other writers of the Hindu, tradition, and has been cited by other ancient Indian texts far more frequently than other dharmashastras.[6]

Manusmriti prescribes the ten crucial rules for Dharma's observance:

"Dhriti (Patience)

Kshama (Forgiveness)

Dama (Piety or self-control)

Honesty (Asteya)

Sanctity (Shauch)

Indraiya-nigrah (Control of senses)

Dhi (Reason)

Vidya (Knowledge or learning)

Satya (Truthfulness)

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[3] Matt Stefon, 'Manu-smriti' (*Britannica,* 4 March 2023) <https://www.britannica.com/topic/Manu-smriti> accessed 01 April 2023.

[4] Raghu Malhotra, 'Explained: What is the Manusmriti, the ancient Sanskrit text recently under controversy?'

(*The Indian EXPRESS,* 27 August 2022) <https://indianexpress.com/article/explained/explained-culture/explained-manusmriti-ancient-sanskrit-text-controversy-8111255/> accessed 02 April 2023.

[5] Justice Markandey Katju, 'Ancient Indian Jurisprudence by Justice Markanday Katju' (*Academia)* <https://www.academia.edu/16833641/Ancient_Indian_Jurisprudence_by_Justice_Markanday_Katju> accessed 02 April 2023.

[6] *supra,* n 3. See also Sinha, S. Prakash, 'Human Rights: A Non-Western Viewpoint.' (1981*) Archives for Phil. of Law and Soc. Phil*. <http://www.jstor.org/stable/23679419> accessed 02 April 2023

Krodha (Absence of anger)"

Manu further wrote,

"Non-violence, truth, non-coveting, purity of body and mind, control of senses are the essence of Dharma."[7]

The book is a comprehensive compilation of customary laws, covering a wide range of subjects such as the social obligations and duties of the varnas and of individuals at different stages or "ashramas" in life, the suitable social and sexual relations of the men and women of various varnas, guidelines on taxation, rules for kingship, advice for maintaining marital harmony, laws of inheritance and the procedures for settling everyday disputes of humans. [8] For example, Manusmriti Chapter IX, Sloka 106 and 187 states that on the death of an individual, his property will be inherited by the nearest *sapinda*.[9]

B. Yajnavalkya

The other most important dharma-smriti is the Yajnavalkya-smriti, which was written by the sage Yajnavalkya, who heavily featured in the *Brihadaranyaka* Upanishad, one of the earliest Hindu philosophical and metaphysical texts. [10] The Yajnavalkya-smriti is divided into 3 adhyayas: *Acharadhyaya, Vyavaharadhyaya* and *Prayaschittadhyaya.*[11] *Manusmriti,* when compared with Yajnavalkya-smriti, is strikingly dissimilar. *Manusmriti*, though comprehensive, is not a systematic work. It has slokas dealing with a variety of subjects, which are not well-differentiated. Thus, a sloka on law could be followed by one dealing with religion. However, Yajnavalkya-smriti is very well articulated. The first chapter, *Acharadhyaya*, talks about religion and morality. The second chapter, *Vyavaharadhyaya*, talks about law. The third chapter, *Prayaschittadhyaya*, talks

[7] *supra,* n 1. *See* also, Meena, Sohan Lal, 'Relationship Between State and Dharma in Manusmriti.' (2005) *The Ind. Jour. of Pol. Sci*. <http://www.jstor.org/stable/41856150> accessed 02 April 2023.

[8] *supra,* n 3.

[9] *supra,* n 4.

[10] Matt Stefon, 'Yajnavalkya' (*Britannica*) <https://www.britannica.com/biography/Yajnavalkya> accessed 02 April 2023.

[11] Bhim Shanker Rai, 'Authenticity of the Yajnavalkyasmriti' (1999) 60 (75), Proc. of the Ind. Hist. Cong. <https://www.jstor.org/stable/44144076?seq=2> accessed 03 April 2023

about penance. Thus, in Yajnavalkya-smriti, there is a plain distinction between law and morality. Additionally, Yajnavalkya-smriti is more succinct and methodical. It has circa 1000 slokas, whereas *Manusmriti* has nearly 3000 slokas.

Commentaries on these dharma-smritis are the sources of the two major schools of Hindu law i.e., *Mitakshara* and *Dayabhaga*. The commentary of *Vijaneshwar*, who penned a commentary entitled '*Mitakshara'* on the Yajnavalkya-smriti, serves as the foundation for the *Mitakshara* school of Hindu law. With the exception of Bengal and Assam, where the *Dayabhaga* system is dominant, the *Mitakshara* school has dominated all of India. The fundamental distinction between these two branches relates to how the word '*pinda*' is interpreted. The individual who was entitled to give Shraddha to a person who had passed away had the right to inherit that person's property, according to traditional Hindu law. Here, Shraddha refers to the religious ritual performed to appease the departed person's soul. According to *Vijneshwara*, the word '*pinda'* means *"the particles of the body of the deceased."* Inheritance, in other words, has nothing to do with the right to grant shraddha and is founded on blood and proximity in relationships.[12] Hence, the nearest blood relative will get the inheritance. [13] This method was revolutionary because it rejected the conventional belief that the individual who has the right to perform shraddha has the right to inherit property. Thus, *Mitakshara* is a more secular approach.[14]

The Mitakshara school is further sub-divided into five schools, namely:

<u>Benaras Law School:</u>

It covers the entirety of north India, with the exception of Punjab, where its application is restricted by the rural regions' customary laws. This school's authoritative text is Mitra Mishra's Viramitrodaya.

<u>Mithila Law School:</u>

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[12] *supra,* n 4.

[13] Neha Singh, 'Schools of Hindu Law' (*Patna Law College*) <https://www.patnalawcollege.ac.in/econtent/HINDU%20LAW%20SCHOOLS%20by%20Neha%20Singh.pdf> accessed 03 April 2023.

[14] *supra,* n 4.

It runs in Tirhut, North Bihar, and the regions around the Jamuna (Yamuna) river in Uttar Pradesh. The Vivad Ratnakara and Vivad Chintamani, both written by Chandeshwar Thakur and Vachaspati Mishra, are the authoritative texts of this institution.

Maharashtra or Bombay Law School:

It operates in Bombay (Maharashtra) and Gujarat. The Bombay School has a comprehensive set of religious and civil rules. This school's authoritative text is Nilkantha's Vyavahara Mayukha.

Dravida or Madras Law School:

It operates in south India. Authored by Devananda Bhatta, Smriti Chandrika is the authoritative text of this school.

Punjab Law School:

It operates in east Punjab. Local traditions dominate its primary legal system. This school's primary sources of authority are Mitra Mishra's Viramitrodaya and the regional traditions of Punjab.[15]

These schools of law come within the scope of the Mitakshara school, and follow the same foundational concept. However, they diverge in their application in certain situations.[16] These schools were formed on the basis of commentaries written on the Mitakshara.[17]

The Dayabhaga school is based on Jimutvahana's commentary, which he penned in a book entitled 'Dayabhaga.' This commentary is not on a single smriti specifically; rather, it is a digest of several smritis, including the Manusmriti and Yajnavalkya-smriti. The Dayabhaga school prevails in Assam and Bengal, has no subsidiary schools.[18] It differs greatly from the Mitakshara school in many ways, most notably in how it defines the word 'pinda.' Jimutvahana defines the term 'pinda' as the rice cake presented to the ancestors during the shraddha ritual. The Dayabhaga, therefore, states that the person who has the right to give the deceased the 'pindas' i.e., the person who has

[15] Neha Singh, 'Schools of Hindu Law' (*Patna Law College*) <https://www.patnalawcollege.ac.in/econtent/HINDU%20LAW%20SCHOOLS%20by%20Neha%20Singh.pdf> accessed 03 April 2023.

[16] Suryansh Singh, 'Important Pointers about the Sources & Schools of Hindu law' (*iPleaders*, 10 September 2019) <https://blog.ipleaders.in/sources-schools-hindu-law/> accessed 03 April 2023.

[17] *supra,* n 4.

[18] *supra,* n 14.

the right to give the deceased shraddha, has the right to receive the property. The persons who have the right to give shraddha are listed in the 'Parvana Shraddha.' The first in the line of succession is the son, the second is the son's son, and so on. The Dayabhaga school thus adopts the conventional belief according to which the individual who has the right to give shraddha also has the right to inherit the property. Due to this, unlike in the Mitakshara school, there is no succession upon birth in the Dayabhaga school. The Dayabhaga School approaches succession from a religious perspective.[19]

INDIAN THINKERS IN THE MEDIEVAL ERA

India's medieval period, roughly from the 6th century CE to the 18th century CE, saw considerable advancements in the law. Indian law changed significantly throughout this time, incorporating new legal frameworks and evolving to accommodate shifting social, economic, and political environments. The establishment of Islamic law and the expansion of Hindu law were two of the most important developments in medieval Indian legal theory. Due to the coexistence and interaction of these various legal systems, India now has a vibrant and complex legal environment. This time set the stage for the growth of contemporary Indian law, which is still developing and changing today. Some of its thinkers are discussed below:

A. Basavanna

Basavanna, often referred to as Basaveshwara, was an Indian philosopher, social reformer, and the creator of the Lingayat faith in the 12th century.[20] He was also a ground-breaking figure in the area of Indian legal jurisprudence, and his theories still have a big influence on contemporary Indian society and law. Social justice, equality, and human dignity served as the cornerstones of Basavanna's legal philosophy. He held that all people should have their rights protected by the law, regardless of their caste, gender, or social standing. He also highlighted the value of moral principles and ethical conduct in the profession of law, contending that justice could not be served without a solid moral foundation.

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[19] *supra,* n 4. See also Halder, Debarati, and K. Jaishankar, 'Property Rights of Hindu Women: A Feminist Review of Succession Laws of Ancient, Medieval, and Modern India.' (2008) *Jour. of Law and Religion* <http://www.jstor.org/stable/25654333> accessed 02 April 2023

[20] N.A., 'Basavanna and his contributions' (*JournalsOfIndia.*, 07 January 2021) <https://journalsofindia.com/basavanna-and-his-contributions/> accessed 03 April 2023

Basaveshwara is considered the foremost Indian scholar who initiated the practice of consultation and discussion, which makes him a true democrat. His *'Anubhava Mantapa'*[21] at Kalyan serves as a perfect example of a governing body. Its members hailed from diverse backgrounds and were called *'Sharana*,' [22] representing the pure and genuine citizens. During discussions and deliberations at the Anubhava Mantapa, *Sharana's* were free to express their opinions. Basaveshwara was the pioneer of this body, and he listened to everyone's views before reaching a conclusion, which demonstrated his genuine character as a fair leader. Basaveshwara followed the rules and regulations established by the Anubhava Mantapa, which was a representative body where all members were bound by its rules. The decisions taken by the majority in this body were binding, but the minority were not silenced. It can be ascertained that there was a rule of law in the *Anubhava Mantapa*.

According to Ranganath Divakar,

"although all other members of Anubhava Mantapa cooperated with Basaveshwara, he was the true leader, the chief, the driving force, and the central figure for all discussions."[23]

This statement suggests that he served as the democratic head of the group. However, he did not force his views on others. Before making a decision on any issue, the perspectives of all members were taken into consideration. Basavanna once said,

"*Work with a feeling that, there is none lower than me"* [24]
The creation of the idea of *dasoha*, which stands for the voluntary sharing of wealth and resources with others, was one of Basavanna's most significant contributions to Indian law. *Dasoha* was founded on the principle of doing good deeds and was created to advance social justice and compassion. Basavanna believed that the *dasoha* principle could be applied to the legal system,

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[21] N.A., ''Anubhava Mantapa': First Parliament Of The World' (*CHRONICLE.*, 2013) <https://www.chronicleindia.in/current-affairs/2428-lsquo-anubhava-mantapa-rsquo-first-parliament-of-the-world> accessed 03 April 2023

[22] N.A., 'Basavanna' (*INSIGHTSIAS.*, 8 May 2019) <https://www.insightsonindia.com/2019/05/08/basavanna/> accessed 03 April 2023

[23] Prof Maheshkumar R., 'Basaveshwara as a Social Thinker' (2016) 5 (4) ISRJ <http://oldisrj.lbp.world/UploadedData/10196.pdf> accessed 03 April 2023

[24] N.A., 'Basava quotes' (*Quotes Of Famous People*) <https://quotepark.com/authors/basava/> accessed 03 April 2023

allowing judges and attorneys to use their training and knowledge to better the community. The idea of *vachana dharma*, which denotes the pursuit of truth and justice via moral behaviour, was another essential component of Basavanna's legal theory.[25]

These renowned ideas and principles of his show a clear inclination toward the School of Natural Law. Naturalists, or proponents of natural law, claim that there are other sources of law outside those established by the government[26]. They contend that moral theory, religion, common sense, and personal conscience are all essential components of the law. In this way, vachanas played a crucial role in establishing the socio-legal system[27]. It can be successfully stated that he combined his mind, heart, and hands, or *jnyana*, Bhakti, and *Kriy* when it came to devising philosophies. His principles on human life and society have managed to stand the test of time and be relevant even in this era of modern jurisprudence.

To summarize, Basaveshwara was a true democrat who initiated the practice of consultation and discussion. He established the *Anubhava Mantapa* as a representative body where all members had the freedom to express their opinions. Basaveshwara followed the rules and regulations established by the Anubhava Mantapa and listened to everyone's views before making a decision. He acted as a fair leader, and his contributions to Indian legal jurisprudence and social reform continue to inspire people today.

B. Swami Vivekananda

Swami Vivekananda, born Narendranath Datta, was a Hindu spiritual leader and reformer in India. Vivekananda attempted to combine Indian spirituality with Western science, believing them to be supplementary and complementary to each other, rather than mutually exclusive. [28] His contributions were discussed in detail during the drafting of the Constitution of India in the Constituent Assembly Debates. His speech delivered at the World Parliament of Religions was

[25] Maheshkumar (n 4) 3

[26] Anne Kamiya, Brittany McKenna, Maria Airth, 'Natural Law Theory: Framework, Concepts, and Examples' (*Study.com,* 05 March 2022) < https://study.com/academy/lesson/natural-law-theory-definition-ethics-examples.html> accessed 03 April 2023

[27] Patil Jaiprakashreddy, 'Vachanas: A Source of Law' (*Study.com,* 17 July 2015) <https://www.lawyersclubindia.com/articles/vachanas-a-source-of-law-6753.asp accessed 03 April 2023

[28] Amy Tikkanen, 'Vivekananda' (*Britannica*) <https://www.britannica.com/biography/Vivekananda> accessed 03 April 2023.

discussed on 13th September, 1949, when discussions were being held to decide the language of the Union.[29]

Vivekananda advocated strongly for social justice and empowerment. His humanism had a spiritual praxis. He believed that the welfare of an individual lies in the welfare of others. Existence could not be viewed in anthropocentric terms, as all life was one.[30] He was famously quoted as saying,

"The more we come and do good to others, the more our hearts will be purified."

Thus he, motivated people to engage in selfless service and to work towards the development of the society. According to him, the more we engaged in 'seva', the more our minds and souls would be purified.[31] His humanist concerns transcended the limits of caste, creed, or nationality. His ardor and respect in this matter made him state the following:

"I would rather go to a hundred thousand hells... "Doing good to others (silently) like the spring"- This is my religion."

He deplored the educated for ignoring the downtrodden and asked them to find ways to improve themselves.[32]

Vivekananda also worked for the upliftment of the poor women of India. He regarded Sita as the ideal for all Indian women to emulate. He felt that given the popularity of the Ramayan and Ramacharitamanas in the masses, Sita would be a relatable figure for all. She was put forward as the ideal for all, as she was the epitome of suffering and patience in the Indian culture. She symbolizes unwavering love and devotion as the ideal wife and mother, but still remains a fiercely

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[29] L.S. Sathiyamurthy, 'Swami Vivekananda In The Constituent Assembly' (*CTC Library,* 16 March 2021) <https://www.ctclibrary.com/blogpage/?id=MTI1MTYw> accessed 03 April 2023.

[30] Dr. Satish K Kapoor, 'Vivekananda's Humanism has a Spiritual Praxis' (*The Tribune,* 8 January 2018) < https://www.tribuneindia.com/news/archive/lifestyle/vivekananda-s-humanism-has-a-spiritual-praxis-525058> accessed 03 April 2023.

[31] Bharat Dogra, 'Swami Vivekananda stood for unity and harmony of all religions to pave the path for justice-based progress' (*National Herald,* 12 January 2022) <https://www.nationalheraldindia.com/opinion/swami-vivekananda-stood-for-unity-and-harmony-of-all-religions-to-pave-the-path-for-justice-based-progress> accessed 03 April 2023.

[32] *supra,* n 29. *See* also N.A., 'Swami Vivekananda' (*JournalsofIndia*, 12 November 2018) < https://journalsofindia.com/swami-vivekananda/> accessed 04 April 2023.

independent woman. According to Vivekananda, there were a lot of hidden meanings in the character of Sita, which the society must uncover and emulate. In a world that is neck-deep in greed and self-indulgence, where there is an incessant clamour for more and more rights without any responsibility, Sita reminds us to exercise restraint and have equal regard for our responsibilities. The deadly disease of capitalism could be combated only when we anchor ourselves in our moral ethos and follow in the footsteps of Ma Sita and Lord Rama. Thus, Sita is all the more relevant for our times.[33]

Moreover, in his speeches, Vivekananda often referred to the Vedas as the foundation of the Hindu society. He proudly proclaimed that some of the greatest Rishis who were the 'discoverers' of Vedas were women. He claimed that the freedom and equality of women were inherent to the Indic culture, and these values had been passed down from one generation to the other by the people of the Vedic era. According to him, it was only the 'Aryan literature' which had upheld the freedom of women, where women could be seen as having an equal share as the men. He viewed the relationship between man and woman as one of perfect equality, in line with the view of traditional Indic scholars. However, he was not arguing for homogeneous unitarian equality which was oblivious to the differences between men and women, but instead sought a more harmonious form of equality, one which would be ready to accommodate the differences, and still be able to imbibe the qualities which were worth it.[34]

Vivekananda, above all, was a strong advocate for tolerance. In his speech at the World Parliament of Religions, he held:

"sectarianism, bigotry, and its horrible descendant, have ong possessed this beautiful earth. They have filled the earth with violence, drenched it often and often with human blood, destroyed civilization and sent whole nations to despair. Had it not been for these horrible demons, human society would be far more advanced than it is now."

Vivekananda presented a different perspective of tolerant faiths that were content to accept others as a response to these trends. He declared that he was proud to belong to a religion that had taught

[33] Yashowardhan Tiwari and Shivani Badgaiyan, 'Swami Vivekananda Views on Women' (*Indica.in*, 5 November 2020) <https://www.indica.today/research/swami-vivekananda-views-on-women/> accessed 03 April 2023.

[34] *ibid.*

the world tolerance and acceptance. He believed that all religions, various though they appear, ultimately lead to the same destination. He ridiculed those who held exclusivist and isolationist views of their religions. He famously said, in his closing remarks, that every faith should display the words *"Harmony and Peace and Not Dissension"* on its banner. Vivekananda emphasized serving other people and other lifeforms as the foundation of all religions in place of the intolerance exhibited by many religions that gave one precedence over the other. Former Indian President Pranab Mukherjee stated in his review of Vivekananda's writing,

"Service to humanity is service to God was the main principle of his gospel to social service."[35]

INDIAN THINKERS IN THE MODERN ERA

Modern Indian jurisprudence is a constantly evolving field that has seen many developments in recent decades. It recognizes the importance of individual rights, equality, and diversity and emphasizes alternative dispute resolution. Some of the prominent thinkers in this field include Justice V.R. Krishna Iyer, Justice P.N. Bhagwati, Reddy, and Desai, among many others. Some of their ideas have been elucidated below:

A. Justice V.R. Krishna Iyer

Justice V.R. Krishna Iyer (1915–2014) was a complex individual with exceptional judicial talents. He is frequently referred to as the moral guardian of justice in India. Throughout his nearly eight-year term on the Supreme Court's bench, he improved the Indian judicial system and defended the underprivileged and destitute.[36] He was also a prolific writer who wrote numerous books, essays, and presentations for important organizations. His unique writing style and command of the language were evident in the exceptional quality of his rulings. Justice Iyer is one of the greatest judges of all time because of his contribution to the growth of Indian law.[37]

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[35] *supra,* n 30. *See* also, Ahmad, Furqan, 'Understanding Islamic Law in India: An Assessment of The Contribution Of Justice V.R. Krishna Iyer: A Tribute.' (2015) *Jour. of the Ind. Law Inst.* <http://www.jstor.org/stable/44782785> accessed 03 April 2023

[36] Tariq Khan, 'Remembering the People's Judge: The Judicial Philosophy of Justice Krishna Iyer' *Bar and Bench* (Delhi, 04 December 2018) <https://www.barandbench.com/columns/remembering-the-peoples-judge-the-judicial-philosophy-of-justice-krishna-iyer> accessed 03 April 2023

[37] Vikram Raghavan, 'V R Krishna Iyer: A Long Life in Law and Politics' (2015) 50 (26) ISRJ <https://www.jstor.org/stable/24481118> accessed 03 April 2023

He is regarded as the forerunner of modern processual jurisprudence in India. Processual jurisprudence is a legal theory that emphasizes the importance of the legal process in determining the outcome of legal cases[38]. According to this theory, the legal process is not just a means to an end but is an important component of justice itself. Processual jurisprudence recognizes that the legal system is not perfect and that there may be flaws or biases in the system that can affect the outcome of legal cases. It emphasizes the significance of procedural safeguards, including due process, a fair trial, and access to justice, in order to overcome these problems. These protections aid in ensuring that evidence and legal argument—rather than prejudice or other unrelated factors—are used to resolve judicial issues. The concept was immaculately demonstrated by him in the case of Newaliganj Sugar mills[39], which stated,

"Processual law is neither petrified nor purblind but has a simple mission-the promotion of justice. The Court cannot content itself with playing umpire in a technical game of legal skills but must be activist in the cause of deciding the real issues between the parties… Further, the consumers of justice can have scant respect for a procedural policy which is obsessed more with who sparks the plugs of the Court system than with what the merits of the rights or wrong of the relief are. A shift on the emphasis, away from technical legislatics is overdue if the judicature is not to aid its grave diggers."

It is typically associated with the legal realism school of jurisprudence, which similarly emphasizes the importance of understanding the legal system as it exists in practice, rather than just in theory. Legal realism recognizes that legal decisions are often shaped by factors beyond the law itself, such as political and social influences. As such, it seeks to understand and analyze the legal system in its entirety, including its institutional structures, decision-making processes, and broader social and political context. Processual jurisprudence can be seen as a subset of legal realism[40], in that it places particular emphasis on the role of procedural safeguards and legal institutions in ensuring that legal decisions are just and fair.

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[38] Riaz Tejani, 'Efficiency Unbound: Processual Deterrence for a New Legal Realism' (2016) 6 (207) UCI Law Review <https://www.jstor.org/stable/24481118> accessed 03 April 2023

[39] Newabganj Sugar Mills Co. Ltd. v. Union of India, 1976 AIR 1152.

[40] Glynn Cochrane, 'Legal Decisions and Processual Models of Law' (1972) 7 (1) Man <https://www.jstor.org/stable/2799855 > accessed 03 April 2023

He is the first jurist to insist on a radical reform of procedural law, such as providing legal aid to the underprivileged, liberalising and expanding the idea of locus standi, ensuring that the average person has easy access to justice, providing free legal advice, accelerating court procedures, etc. It is solely due to his missionary zeal and vision which led to the appointment of Justice Bhagwati Committee on Legal Aid to the poor. As early as 1976, he advocated the need for processual jurisprudence to protect the interest of the weaker sections.[41]

One of the most important contributions of Krishna Iyer to Indian jurisprudence was the concept of public interest litigation (PIL). In the 1976 case of *Bombay Kamagar Sabha v. Abdul Thai*[42], he first popularised the concept of PIL in India, which essentially was meant to empower individuals or organizations to approach the courts to request redress for public complaints or to advance the interests of the public. This concept has had a significant impact on Indian law and has been used to address a wide range of social issues, including environmental degradation, gender discrimination, and corruption.

Moreover, he strongly advocated for the recognition and protection of human rights in India. He believed that fundamental human rights should be protected by the legal system and that the courts had a responsibility to ensure that these rights were upheld. He was particularly vocal in his support for the rights of women, children, and marginalized communities, and his contributions helped to promote greater social justice and equality in India. In *Som Prakash Rekhi v. Union of India*[43], he broadened the notion of the state for upholding fundamental rights in his judgment,

"We have no hesitation to hold that where the chemistry of the corporate body answers the test of 'State' above outlined it comes within the definition in Art. 12. In our constitutional scheme where the commanding heights belong to the public sector of the national economy, to grant absolution to government companies and their ilk from Part III may be perilous. The court cannot connive at a process which eventually makes fundamental rights as rare as 'roses in December, ice in June'."

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[41] Dr. S.N. Dhyani, *Fundamentals of Jurisprudence -The Indian Experience* (first published 1997, Central Law Agency 2004) 389

[42] Bombay Kamagar Sabha v. Abdul Thai, AIR 1976 SC 1455

[43] Som Prakash Rekhi v. Union of India, (1981) SSC 449

Justice Iyer's support for legal diversity was reflected in his legal theories. He supported their acknowledgment and incorporation into the larger legal system because he understood the significance of India's many different legal traditions and systems. A diverse legal system, in his opinion, would be more *just and equitable and better* meet the requirements of Indians.[44]

Lastly, to sum up, Justice Iyer was a trailblazing figure in the growth of contemporary Indian law. His legal views and modern jurisprudence ideas placed a strong emphasis on social justice, human rights, and legal diversity. His contributions to this profession will be recognized for many years to come, and his legacy will continue to motivate generations of Indian jurists and attorneys.

B. Justice P.N. Bhagwati

The restless legal activist Prafullachandra Natwarlal Bhagwati, who was born on December 21, 1921, saw his time as a Supreme Court judge as a rare opportunity to carry out some of the ingrained goals of the Indian Constitution's founding fathers. He weaved the doctrine of living law with a changing content in Indian Human Rights Jurisprudence.[45] He acted as the defender and protector of the liberties of voiceless Indian Humanity against oppressive social and political order. He, along with Justice Iyer, was the key developer of PIL in India[46].

Earlier to the Maneka Gandhi case[47], the Indian courts were following the Austinian sense wherein they adjudicated and interpreted the law in a draconian fashion and became more and more oblivious to the Kantian and Hart-Fuller moral imperatives. Judiciary no longer remained the guardian of human rights, but instead, it denied legal and constitutional protection to life and liberty, leaving zilch checks on the function of the executive. In this backdrop, it was the Maneka Gandhi case that called upon the State to accord justice, liberty and dignity to all its citizens in the Kantian Spirit and treat all men as means rather than an end.[48] Justice Bhagwati stirred and

[44] Raghvan (n 10) 28

[45] Shivansh Saxena, 'The unparalleled legacy of Justice PN Bhagwati' *Bar and Bench* (Delhi, 21 December 2020) < https://www.barandbench.com/apprentice-lawyer/the-unparalleled-legacy-of-justice-pn-bhagwati> accessed 03 April 2023

[46] N.A., '1979:The first PIL Petition' (*Frontline,* 14 August 2022) <https://frontline.thehindu.com/social-issues/social-justice/india-at-75-epochal-moments-1979-the-first-pil-petition/article65727193.ece> accessed 03 April 2023

[47] Maneka Gandhi v. Union of India, AIR 1978 SC 597

[48] Dhyani (n 14) 391

resurrected the soulless Article 21[49] and made it to the pages of history in Indian Human Rights Jurisprudence. In *Francis Coralie Mullin v. Administrator, UT of Delhi*[50], he provided a more nuanced definition of personal liberty by observing that,

"The right to life includes the right to live with human dignity and all that goes along with it, namely the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing ourselves in diverse forms, freely moving about and mixing and commingling with fellow human beings."

It can be observed that his theory of jurisprudence was influenced by Immanuel Kant (1724-1804), who belonged to the Philosophical School of Jurisprudence. This school of thought held that a person's character and behavior are framed by their ethics and morals. [51] Kant's ideals are a complete exposition of this school, in his view,

"law is the sum total of the conditions under which the personal wishes of man can be reconciled with the personal wishes of another man in accordance with a general law of freedom."[52]

He was strongly influenced by the Legal Realism school of law, much like Justice Iyer. This school of thought contends that law is a dynamic, evolving system that must adapt to shifting social and economic circumstances rather than a collection of rigid, unchanging principles. These ideals can be substantiated since he frequently underlined the significance of social justice and human dignity, and he was well renowned for his dedication to defending the rights of marginalized and underprivileged communities. He added a spark to the Indian Legal System by innovating the strategy of Legal Aid to Poor and Lok Adalat. In the judgment of *Hussainara Khatoon v. State of Bihar*[53], he opined:

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[49] The Indian Constitution 1950, art 21

[50] Francis Coralie Mullin v. Administrator, UT of Delhi, [1980] 2 SCR 557

[51] N.A., 'The Philosophical School of Jurisprudence' (*Indian Laws and Rights,* 17 October 2022) <https://indianlawsandrights.com/2022/10/17/philosophy-source-of-law-jurisprudence-origin-of-law-school-of-jurisprudence/?utm_source=rss&utm_medium=rss&utm_campaign=philosophy-source-of-law-jurisprudence-origin-of-law-school-of-jurisprudence > accessed 03 April 2023

[52] N.A., 'Discuss the ethical or philosophical school of Jurisprudence.' (*INFiPARK,* 2013) <https://www.infipark.com/articles/discuss-the-ethical-or-philosophical-school-of-jurisprudence-2/> accessed 03 April 2023

[53] Hussainara Khatoon v. State of Bihar,1979 AIR 1369.

"What faith can these lost souls have in the judicial system which denies them a bare trial for so many years and keeps them behind bars, not because they are guilty, but because they are too poor to afford bail and the courts have no time to try them. It is a travesty of justice that many poor accused, little Indians, are forced into long cellular servitude for little offences because the bail procedure is beyond their meagre means and trials don't commence and even if they do, they never conclude."

Additionally, he was a fervent supporter of judicial activism and held the view that the courts had a duty to actively participate in crafting public policy[54]. He reminded the Indian judges and lawyers of his time that,

"if we do not change and do not bring about a revolution through law there may be a revolution against law."[55]

Finally, another remarkable contribution of Justice Bhagwati was when he advocated the establishment of Environmental Courts with professional experts from legal-cum science and ecology backgrounds. He further laid out parameters with regard to the liability of a private enterprise for gas leakages towards workers and the community settled in the vicinity. His opinion in the M.C. Mehta case[56] has a far-reaching impact on environmental jurisprudence because he upheld corporate liability of hazardous enterprises and brought the private sector within the ambit of Article 12[57] and, therefore, subjected it to the Right to Livelihood.

In conclusion, Justice P.N. Bhagwati was a highly influential figure in the development of modern Indian jurisprudence. His ideas on social justice, public interest litigation, judicial activism, and contributions to environmental jurisprudence continue to shape legal thinking in India. It has helped in promoting greater equality and justice within Indian society.

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[54] Bharat H Desai, 'A Judge as a Philosopher-A Tribute to Justice P N Bhagwati' (2017) 52 (27) Ecn. & Pil. Wkly. <https://www.epw.in/journal/2017/27/web-exclusives/judge-philosopher.html> accessed 03 April 2023

[55] Bandhua Mukti Morcha v. Union of India & Ors. (1997) 10 SCC 549

[56] M.C. Mehta v. Union Of India Air 1987 SC 965

[57] The Indian Constitution 1950, art 12

CONCLUSION

India has a long and rich history of legal systems dating back to ancient times, but the modern Indian legal system has undergone significant changes. One of the most significant differences is the emphasis on individual rights, which are protected under the Indian Constitution. This is a marked departure from the ancient legal system, which was more focused on individual duties and responsibilities. Another significant aspect of modern Indian jurisprudence is the separation of powers. In ancient times, there was no clear separation between the different branches of government, but the modern legal system recognizes the importance of checks and balances by separating the legislative, executive, and judicial branches. Furthermore, the modern Indian legal system places a great emphasis on inclusivity and diversity. While the ancient system was often based on caste and gender, the modern legal system recognizes the importance of treating all citizens equally under the law. Discrimination and harassment are currently prohibited by law.

Therefore, the transformation of Indian jurisprudence from ancient to modern times has been significant and far-reaching. The evolution of the legal system has brought about important developments such as the recognition of individual rights, separation of powers, inclusivity, and diversity. These changes have made the legal system more effective in protecting the rights and interests of all citizens. While the ancient legal system had its own merits, the modern Indian legal system reflects a more democratic and egalitarian society. Despite the challenges that remain, the transformation of Indian jurisprudence over the centuries is a testament to the resilience and adaptability of the Indian legal system.

All these revolutionary changes can be attributed to those esteemed Indian thinkers. They have made significant contributions across centuries to make Indian Legal system what it is today. They have distinguished our legal system from the western world and adapted to the needs of its citizens. They have made it responsive to the needs of a diverse and rapidly changing society. From Manu and Yajnvalkaya’s instrumental shaping of the Indian Legal system to its polishing by Basavanna and Swami Vivekananda, and finally culminating in the contemporary world with the noteworthy influence of Justice Iyer and Justice Bhagwati, our legal system has gone through momentous changes and evolved as a protector of human rights and ideals.