

The Impact of British Rule on Indian Law

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In recent years, the study of Indian Law has been gaining popularity. The uniqueness of this legal system, which lies in the symbiosis of traditions from the Indian part itself and modern changes from the part that was influenced by the British, attracts many researchers. Such a hybrid legal model is truly unique and interesting to study, though it is not the simplest one. However, the British impact on the legal system of India was highly controversial, which brings Indologists around the world to debates whether this change was for the better or worse.

The study of this topic should begin with an immersion into the original characteristics of Hindu law. The legal system of India before the arrival of the British was closely connected with religion, both Hindu and Islamic [1], as well as with the so-called customary law. The first sources containing legal echoes were the Vedas (from Sanskrit «knowledge, sacred knowledge» [5]). These are the earliest monuments of Indian literature that have come down to us. They were followed by the Dharmasutras and Dharmashastras, which contained norms of both substantive and procedural Law [6]. However, they cannot be called normative legal acts: the echoes of religion were too vivid. The entire social structure of India was built, and continues to be built to this day, on four varnas and numerous castes — jatis. Varnas and castes emerged over centuries of development and cultural progress as something «self-evident» and were not synthesized artificially [8]. Such a social structure is well-established and quite customary for the Indian people.

The British conquerors were shocked by such a structure of society. This is quite natural: bourgeois revolutions were occurring everywhere in the world, industry was developing. Most importantly, ideas of equality, freedom, and human rights were taking root in the minds of people in Europe. In contrast to the events unfolding in Europe, the social structure of India seemed a somewhat barbaric relic of the past.

It should be mentioned that the post-conquest policy of the British conquerors could be characterized by the expression "divide et impera." British officials sought to build relationships with the Indian elite by distributing lands, while simultaneously altering territorial boundaries everywhere with the aim of inciting national struggle [3]. However, at first, the British did not seek to influence the social order of their colony. Moreover, early British rule was even called a period of «Brahmanical revival» due to the significant improvement in the position of the Brahmins [2].

Regarding the legal sphere, during the colonial era it underwent significant, «Europeanized» changes. The forced increase in the authority of the Brahmins had a very self-serving purpose: they were used as a “link” between the local population and the British expansionists. The Brahmins were to transmit English understanding of Indian culture to the masses, meaning a situation effectively arose where the conquerors were teaching the Indian people their own traditions [6]. As a result of this, the Dharmashastras were codified into a unified body of laws in English. They acquired the status of laws, although they were not originally ones. In 1796, a treatise was created with the rather telling title «A Digest of Hindu Law on Contracts and Successions» [6]. The British impact on Indian legal culture was gradual: while initially

the expansionists sought only to eradicate the most archaic legal norms, they later began actively introducing English Common Law into the Indian legal system [6]. The most significant innovation was the creation of the Penal Code, which came into force in 1862 and remains in effect to this day, though with some amendments. It granted significant support to Indian women and children, guaranteeing their freedoms. However, the codification of Indian law was not limited to this one act: the Codes of Civil Procedure and Criminal Procedure (1859 and 1861, respectively) were also created, thanks to which legal norms were formalized on the British model, but taking into account local traditions. Laws on Evidence and the Police were also systematized [7]. Another important innovation was the active opposition by the Governor-General to the ritual criminal offense of sati (the self-immolation of widows on the funeral pyre of their husbands) [4]. It is worth noting that before the British codification of Indian Law, one could not truly speak of a unified legal system due to the fragmentation of Indian principalities, which led to the widespread use of Muslim law, even in relation to Hindus and followers of other faiths. Consequently, the British can at least be credited with creating a national legal system.

The legal policy of the British conquerors laid the foundation for India's current legal system, which combines elements of both the Western model of Law and traditional Hindu Law. This period can be characterized as a kind of link between two radically different periods of history. And despite the fact that colonial dependence left its scars on India, the legal policy of the British cannot be called harmful, at the very least for overcoming legal pluralism between different parts of the country, as well as for ending the use of archaic norms, which inevitably led to various kinds of conflicts due to their incongruity with the era.

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