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LEGAL SOURCES OF ANCIENT INDIA'S LEGAL PROCEEDINGS

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The article reveals the general situation of the historical development of ancient Indian legal mind in the sphere of justice, analyzes the structure and procedure for implementing the basic procedural norms and institutions of judicial trial. Based on the specific legal norms of the ancient Indian sources of law - Arthashastra Cautilia and the Laws of Manu, the regularities of revealing and establishing the truth in the judicial proceedings are revealed.

The article also discusses the procedural position of the parties and the court, the originality of the development of legal relationship between the parties and other participants in the trial.

Keywords. The Ancient India, the criminal proceeding, the laws of Manu, the common law, the precedent law.

ПРАВОВЫЕ ИСТОЧНИКИ СУДЕБНОГО ПРОЦЕССА В ДРЕВНЕЙ ИНДИИ

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Аннотация. В статье раскрывается общее положение исторического развития правовых учений Древней Индии в сфере правосудия, анализируется структура и порядок реализации основных процессуальных норм и институтов судебного разбирательства. Исходя из конкретных правовых норм древних индийских источников права – Артхашастра Каутилья и Законов Ману, раскрываются закономерности установления истины в судебном процессе.

Кроме того, в статье рассматривается процессуальная позиция сторон и суда, история развития правовых отношений между сторонами и другими участниками процесса.

Ключевые слова. Древняя Индия, уголовное судопроизводство, законы Ману, общее право, прецедентный закон.

ҚАДИМГИ ХИНДИСТОНДА СУД ЖАРАЁНИНИНГ ҲУҚУҚИЙ МАНБАЛАРИ

Аннотация. Мақолада Қадимги Хиндистонда одил судлов соҳасидаги ҳуқуқий таълимотлари тарихий ривожланишининг умумий аҳволи ёритиб берилади, суд юритувида асосий процессуал нормалар ва институтлар тузилиши ва амалга ошириш тартиби таҳлил қилинади. Қадимги Хинд ҳуқуқ манбалари - Артхашастра Каутилья ва Ману Қонунлари ҳуқуқ нормаларидан келиб чиққан ҳолда, суд процессида ҳақиқатни аниқлаш қонуниятлари очиб берилади.

Бундан ташқари, мақолада тарафлар ва суднинг процессуал ёндашуви, тарафлар ва процесснинг бошқа иштирокчилари ўртасидаги ҳуқуқий муносабатларнинг ривожланиши тарихи ўрганилади.

Калит сўзлар. Қадимми Хиндистон, жиноят суди юритуви, Ману қонунлари, умумий ҳуқуқ, прецедент қонун.

Introduction. From the middle of the 19th century a new scientific approach arose in the cognition of human nature, and it was called an anthropological method. The main objects of this scientific thinking were recognized such important areas as the study of the historical and evolutionary formation of the physical type of man, the initial development of his work activity, the speech of society, as well as the formation and development of races.

It should be noted that understanding the nature of man, understanding his place in the universe, the evolution of society has always been the core of the development of diverse cultures of the world. This problem is seen in the ancient sources of Egypt, Tibet and India, in the writings of thinkers of ancient Greece, medieval Europe, the new era right up to the works of I. Kant.

Since the beginning of the 20s of the last century, on the basis of the division of anthropology - the "philosophy of life", the traditional science of the development of man's spiritual life has developed, undoubtedly, its roots were also nourished by judicial law.

It should be noted that the evolution of the culture of society is directly related to the spiritual life of man, in which the evolution of the development of society and of man himself plays an important role. A determining place in it, from the point of view of the methodology of cognition, is historical experience, including the experience of human activity in the field of justice. In this perspective, an important place in the knowledge of the culture of races is occupied by ancient Indian legal sources. The main ancient Indian sources of law are the Arthashastra Cautili and the Laws of Manu, which can be considered as one of

the most perfect legal systems in the countries of the Ancient East, they were an important step in the development of legal thought on a universal scale. Although until now no one has convincingly proved that the ancient Eastern law had a direct impact on the right of the ancient Greeks and ancient Romans, and through them to the modern law of Europe and America, the existence of connections between the legal systems of the ancient and modern East can be stated with With all certainty. It will not be a big exaggeration to say that the study of the history of ancient Eastern law, the analysis of its specific features and the elucidation of the trends of subsequent evolution are not only cognitive, scientific and theoretical, but also of great practical importance.

If we approach this ancient Indian legal source from this point of view, then they played an important role in the evolution of the legal thought of Indian society, remaining for many centuries the main and sometimes the only regulator of social relations, demonstrated to the world of Indo-Buddhist culture with its specifics of formation and development .

Thus, the scientific work of Arthashastra Cautili is considered as the "Guide to the Practical Activity of the king", which is an important political and economic treatise of its time for ancient India. In particular, it reflected such social and legal issues as the management of the king's economy, economic and social relations in the country. The compiler is Cautili (Cautuli or Vishnagupta), the chief adviser of Chandragupta (321-297 BC), the Rajah from the Maurya dynasty. [1]

This treatise consists of 15 books and is devoted to various issues of state structure and politics, of which the III-book is fully devoted to the activities of judges. From the contents of the legal norms included in this book, we can identify several features of the implementation of court

cases in the specified period of the historical period of India.

The first is related to organizational issues of judicial activity. According to the norms of this book, the judiciary can be divided into three stages: a) lower, b) secondary and c) higher levels. Such a vertical structure of the judiciary, above all, expressed the social structure of the then Hindu society. Since the main features of the structure of the ruling upper classes were due to the traditional division of ancient Indian society into class groups - the so-called "varna". In particular, if the act was committed by a person from among low castes, for example, a shudra, then his case could be considered by a lower court. On the other hand, this judicial vertical was due to the territorial features of Indian society. Thus, in the rural communities, the primary judicial authority acted. Although the cases were decided collegially - the community, but the final decision was taken by his headman.

In the border settlements and other territories, the judiciary functioned, whose powers were defined in Art. 1, Book 3 of Arthashastra. In particular, it stated that "... at the border point, sangrakhan, dronamukha, sthakhany, let the judicial affairs be decided by three official judges in each place." [2] Although in Arthashastra there is virtually no data on the jurisdiction of the cases relating to this judicial link, it can be concluded from the general rules of the book that all categories of cases in this territory were subject to these judicial bodies.

The third - the highest link of the judicial system of the ancient Indian society of that period, was occupied by the Rajah (king) court. The Raji court mainly considered cases involving the interests of the state, personally the raja, his family, as well as the deeds and misdemeanors of the higher caste - brahmana and kshatriya, and sometimes

vaishya. This court also assumed the functions of the appellate instance.

The next feature of the implementation of the Arthashastra case is related to the procedural rules and the procedure for conducting the trial. Thus, the trial on the wallpaper of historical books was of an adversarial nature, i. The trial began with the filing of a civil-law suit. In court, the plaintiff and the defendant acted, witnesses were involved, material evidence was examined. According to the rules of the law, proof of guilt was the duty of the plaintiff.

At the same time, to establish the truth, the court subjected the parties to various tests, most often they were limited to the passage of fire and water. To decide the case, it was necessary to establish the defendant's guilt. The defendant's own confession and vow also served as the basis for conviction (Book 3, Article 46 of Arthashastra). [3] The difference between the first and subsequent testimony in the case, the flight from custody also gave rise to the conviction of the defendant (Book 3, article 47 of Arthashastra). [4]

The law imposed on the court the duty of an honest examination of the testimony of both parties and witnesses. This requirement of the law was aimed at ensuring the principle of full and comprehensive consideration of the case (this provision is an important element of modern litigation).

Another important principle of legal proceedings, this law considered the establishment of truth in the case. In accordance with the law, the truth in the case was recognized only when the procedural phenomenon (the subject of the dispute) became the subject of judicial investigation. So, in Art. 17 3-books said that "... the legal evidence for establishing the truth in the case is not the one

who came first to court, and witnesses, in the absence of witnesses, have the traces of beatings or signs of a fight."

Moreover, the Law required from judges a rational approach and to the questions of the appointment of punishment. According to Art. 3, Book III, when imposing punishment, both the identity of the offender and the nature of the offense committed by him were taken into account.

Thus, the legislator recognized the importance of the internal conviction of the court and the participants in the trial in the proceedings. These procedural and legal approaches for their time were the most developed, and they show the sophistication of the then Hindu legislator.
In this form, the rules of Arthashastra lost their historical place to another, even more developed in terms of conducting legal cases in society - the Laws of Manu.

Scientific research usually indicates the period of drawing up the Laws of Manu between the II. BC. And II century. AD They were written by the brahmanas in the form of couplets and consisted of 2685 articles. They contained norms regulating religious, moral, legal, political, ethical and other prescriptions.

The sources of the Laws of Manu were religious traditions, writings; Legal customs; Norms of morality; Legal precedents and regulations issued by the kings of ancient India, including the normative acts of previously compiled collections of various rules of conduct for the Hindus.

In the Laws of Manu, the norms of procedural law are contained exclusively in Chapter VIII, in which the first more than 120 articles dealt with the composition of the court, the procedure of legal proceedings, the types of evidence, and Articles. 252-263 regulated the consideration of disputes on the border of adjacent land plots. [5]

During the time of the Law of Manu, the bearers of administrative and judicial power in the territories of the kingdom were the provincial governor (usually a close relative of the king), rajuk, the highest official of the region, mukhya, who performed the same functions on the territory of the urban quarter as rajuk in the territory Region. Since there was active community self-government, the head of the village (grama) was a village elder who was supposed to carry out economic, administrative, police and judicial functions.

In the procedural law of Ancient India, the principle of collegiality was fixed according to the Laws of Manu. Even the king had to strictly observe this demand. When considering cases in court, a certain ritual of case management was observed. Mostly they concerned the interrogation of interested participants in the judicial proceedings and the witnesses called (Articles 79-88 of Chapter VIII of the Laws of Manu). Cases should have been considered in a certain sequence. Since the legislator did not distinguish between a criminal and a civil offense, the process was, as a rule, the same.

The trial was adversarial and proceeded according to the rules of procedure established by law, during which, as stipulated by the norm of Art. 45, "one must bear in mind the truth, the object (the claim), the self, the witness, the place, time and circumstances." [6] This instruction expresses the requirement of the lawmaker in the court to consider carefully.

The trial began with the filing of a lawsuit. At the same time, there were 18 reasons for initiating the trial, including: failure to pay the debt; Sale of other people's property; It is not returned; Non-payment of salaries; Violation of the concluded agreement; Cancellation of the contract of sale; slander; An insult to an act; theft; violence; adultery; Dharmas of husband and wife and others.

Usually the process began with the submission of the plaintiff's application and was charged with presenting evidence (witnesses, material evidence). At the trial, first the plaintiff was heard, then the defendant, after which the judges examined the evidence submitted by the parties. At the same time, the trial was clearly differentiated, and had two orders of magnitude - normal and accelerated. Under the usual procedure, the court carried out all the specified procedural procedures, and in the accelerated action to investigate the subject matter of the claim depended on the defendant's attitude to the claim. If the defendant fully recognized the charges brought against him, the case was dismissed and the judges proceeded to make a decision on the case.

In the trial, the witnesses were important evidence in the case, because the legislator paid much attention to them (articles 60-83 and other Laws of Manu). The legislator divided witnesses into two categories: 1) witnesses who saw the incident, i.e. Witnesses, eyewitnesses, and 2) hearing witnesses who did not see what was happening. But, in spite of this, the legislator considered their testimony equally "important" (Article 74 of the Laws of Manu). In particular, to confirm the guilt of the defendant, who denied his guilt, it was enough to testify to 3 witnesses who "expose him" (article 60 of the Laws of Manu). [7]

In view of the special evidentiary strength of the testimony of witnesses, not everyone was admitted to court as a witness, they were presented with rather strict demands. According to Art. 63 witnesses could only be "worthy of trust, of all varnas, who know all the dharma, alien to greed, but who have the opposite qualities should be avoided."

The evidence on the case also included an oath (articles 109 and 113), ordalia (courts of God - articles 114,

115) and material evidence (contracts, landmarks, marks of beatings, stolen items found at the person - articles 249, 252 and Etc.), to which the legislator applied in the same way, prescribing that "a judge who does not know exactly the truth" in the absence of witnesses "may force her to open it even with an oath" (Article 109 of Chapter VIII of the Laws of Manu) "or induce the accused to take fire, Into water, or to touch the heads of the wife and sons separately "(verse 114 of the same chapter). The status and specificity of the vow depended on the varna status of the process side. [8] For example, for the argumentation of his words, the brahmana swore by "truthfulness" (otherwise sin fell on the next 100 generations), ksatriya - "chariot and weapon", Vaisya - "cows, grain and gold", and Sudra - "all crimes." [9]

If the legislator has given the discretion of the judge to decide what kind of evidence (oath or horde) should be applied, then the procedure for their implementation and assessment of the consequences of the ordalia are clearly defined by them in the norms of the Laws of Manu (Articles 113 and 115 of Chapter VIII).

In addition, the court also had material evidence, and in some cases, they were considered paramount, for example, lawsuits about the boundaries of adjacent areas, when considering the presence of landmarks, if the judges did not doubt their truth, was considered sufficient to solve the merits . And only in the case "even if there are doubts in the presence of signs, the resolution of the dispute concerning the border must be entrusted to witnesses" (Article 253 of the Laws of Manu). To a similar category of cases were cases of theft ("stealing"): "Let the king not order the execution of a thief, (if he) does not (found) stolen goods; (Caught) with a stolen (and) thievish tool, let him order to execute without hesitation "(Article 270 of Chapter IX of the Laws of Manu).

So, the construction of the judicial process of ancient India, based on the Laws of Manu, was built on important principles of justice, such as judicial contest of the parties, establishing the truth in the case, priority of the internal withering of the judge in making his decision, and the presumption of innocence. For the sake of justice, I must say that such legal approaches at that time had neither the laws of Hammurabi nor the laws of Ancient China and Egypt. However, the Indian judicial law could not at that time be absorbed from the dependence of Varna, because it played an exceptional role in the social and legal relations of the society of that time.

Despite this, the mentioned legal sources of ancient India played an unimportant role in the further development of legal thought in the field of justice, in particular, and universal human culture, in general.

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