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GENERAL MATERIALS

A
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Indian Legal Materials

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by

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Preface

The purpose of this bibliographical guide is to help my counterparts in selecting the Indian legal materials necessary for a basic workable collection of law reports, texts, and treatises on Indian law. By suggesting my own preferences by the use of an (*), I have tried to indicate the materials which would be a bare minimum for any library or which would be most useful. As funds are limited, libraries have to select some of the various works on a given subject, and I hope my choices will be a guideline in this matter. An exception may be made by some American law libraries which have enough funds and, therefore, have passed that stage of selection. I may mention that the asterisk does not, in any way, pass judgment on the quality of books that have been excluded, or that have not been marked with an asterisk. It only shows my choices, which, taken together make a good collection on Indian law.

Source materials have been listed in Part 1.1, *i.e.*, the constitutional, the legislative, and judicial materials. The legislative materials of the States have not been enumerated in detail as the pattern of each State is the same, and each State brings out its own gazette and debates. Information about these materials can be had from the respective State publishing agencies listed in Appendix III under the name of the State. Other government publications present great difficulty as information about their publication reaches libraries very late. In the case of legislative and judicial materials, which are regular, there is not the difficulty. Subscriptions are accepted in advance, and once paid, the material reaches the libraries automatically. Therefore, one has to be very watchful about the other casual publications. There are catalogues of the Central Government publications and of some States, but these catalogues are very late in giving

information and are not comprehensive.

Some of the regular publications, like the Annual Reports of the Ministries/Departments of the Central and State governments, are generally available to libraries free of cost. These Reports are very useful and efforts should be made to be on the mailing list. As they are not very costly, they may even be purchased if available.

Part 1.2 lists a bibliography arranged by subject in alphabetical order. A general tendency in India is to write commentaries by section on various Acts and, therefore, we find at least one commentary on many important Central Acts. On some State Acts also such commentaries are available. On the other hand, there are very few books with an analytical approach to a subject. The reason is that section commentaries are more useful for practicing lawyers; also academic writing has not developed very far in India. In listing books on a particular subject, I have confined myself to Central Acts; very rarely there may be some commentaries on a State Act also.

Number of volumes wherever given may not be taken as final as, they may change with the coming of new edition. Revision becomes necessary as the commentaries are not kept up-to-date by pocket parts or otherwise. Very few publishers bring out 'Supplements' to the main volume to bring the case law up-to-date. Even these few 'Supplements' are done after a period of three to five years or even more. Therefore, it becomes necessary to use the digests and law reports.

Prices have been deliberately not given as the pricing system of Indian materials for foreign countries is different and it goes on changing.

Part 2 contains old material—legislative material, Reports and journals, digests, and text books. While every effort has been made to check the commencement year and the year when they stopped and number of volumes, I have not been able to authenticate the information in certain cases. I would be obliged if the readers pass on to me any error which they come across so that I may correct the mistake in the next edition.

1st May 1970

H. C. JAIN

Acknowledgment

The idea to compile this bibliography came to my mind when I came back from Manila after attending the Seminar on Law Libraries Organization and Legal Research in August, 1966. Mr. Earl C. Borgeson, Librarian of the Harvard Law School who was the Director of the Seminar, encouraged me to compile such a bibliography when I discussed the utility of such a publication. I am very grateful for his encouragement.

The next person who encouraged me in this task is Mr. Philip F. Cohen of the Oceana Publications, Inc., New York, who very readily offered to all the participants at Manila Seminar to publish any work if any of us were to do some writing. This was a great encouragement for me at least, and I am very grateful to him for all his help. Also I am grateful to his editorial staff who went through my manuscript and suggested valuable corrections.

In compiling this bibliography I have been greatly helped by Mr. C. C. Shah of the Tripathis of Bombay, the 'moving encyclopaedia' as Mr. Cohen calls him. He has given me valuable suggestions, especially in matters of old materials, and made available to me information about old books and reports. I am very much indebted to him personally and to M/s. N. M. Tripathi Private Ltd., generally, who have taken up the publication of this bibliography in cooperation with Oceana.

Lastly, I am very much indebted to my wife who has been continuously encouraging me to write something even at the risk of waiting for long hours. Without her cooperation, I am sure, this work would not have been accomplished.

Introduction

In this chapter I want to give a general picture of the Indian legal system—its past and present. This, I feel, will help in understanding the legal materials fully.

Judicial Administration

India was subjected to alien rule for a long time. The Britishers who came here as traders in 1600, gradually captured the whole country and changed the pattern of government completely. They brought their own system—administrative as well as legal. They established a judicial system more akin to theirs. But, while doing so, they always modified it to suit the Indian conditions. Even the legal maxims prevailing in England were applied in India wherever necessary.

Prior to the Britishers, we had Muslim and Hindu rulers who had their own administrative and judicial systems. But very little is now known about these systems. Moreover, the present legal system of India has been much influenced by the British period and so it will be more helpful to study that period.

During the Moghul period, administration of justice depended on the whims of the 'Kazis' and 'Pandits'. Almost the same condition continued during the early British rule. It was only after the middle of the 17th century that the 1661 Charter¹ vested judicial power in the Governor and the Council of the Company, allowing them to try criminal cases according to English criminal law. On the other hand, civil cases came to be tried by Mayors' courts in the presidency towns of Calcutta, Madras, and Bombay. Proceedings of these Mayors' courts are very rarely availa-

¹ Granted by Charles II on 3rd April 1661.

ble. During the course of time it was found that the Mayors' courts were indulging in corrupt practices and, therefore, under the Regulation Act of 1773,² supreme courts were established, to do away with the defects of the Mayors' courts. The first supreme court was established in Calcutta in the year 1774, with almost complete power to try cases. Similar supreme courts were established in Madras and Bombay in the years 1802 and 1823 respectively. There was also a provision that appeals could be made to the Privy Council from the decisions of these supreme courts. Reports of cases decided by these courts are also available.³ Similarly, we have reports available of the 'Sadar Adalats' which were established in the adjoining areas of the presidency towns to try cases according to the indigenous system. These 'Adalats' were meant for Indians mainly, while the supreme court was meant for the Britishers residing in Calcutta. The 'Adalats' were *an altogether different system* and were not comparable either to the English or the supreme court system of the presidency towns. The 'Adalats' administered the personal laws of Hindus and Muslims according to the dictates of their respective religions. Appeals from these 'Adalats' could also be made to the Privy Council in England, and hence, they also came directly under the influence of the English system.

Then came the high courts at Calcutta, Bombay, Madras, and Allahabad. These courts were established under the Indian High Courts Act, 1861.⁴ Reports of these courts are available.⁵ These courts were to be manned by English judges. This, and the fact that appeals from the decisions of the high courts could be made to the Privy Council in England, had a great effect on the Indian legal system. Reports of the Privy Council cases are available separately in many forms, e.g. in Moor's *Indian Appeals, Law Reports—Indian Appeals*, and many others.⁶

Thus, in India we had good reporting system from the very beginning as in England, but a great difference can be seen between the two. Whereas in England we have had separate reports for the different jurisdictions, as even today, in India there has

² 13 Geo. III c. 63.

³ See Part 2.1, p. 72.

⁴ 24 & 25 Vict. c. 104.

⁵ See Part 2.1, p. 73.

⁶ See Part 2.1, p. 73.

been only one report covering all sorts of cases. This is mainly because in India the same court, i.e. the high court, tried many kinds of cases, while in England there were different courts for different types.

The High Courts Act of 1861 had provisions to establish Judicial Commissioner's Courts also in non-regulatory territories. The first Judicial Commissioner's Court was established in Oudh in 1865. After independence this court was merged in the Allahabad High Court.

After some time the high courts were established in more places as necessary. This power of establishing high courts was further liberalised by the Indian High Courts Act of 1911.⁷ The provisions of the 1861 and 1911 Acts were consolidated in the Act of 1915.⁸ Other High courts were established later on, e.g. at Patna in 1916; at Lahore in 1919, where the existing Chief Court was raised to the status of a high court; also in Nagpur, where the Chief Court was replaced by the High Court in 1936. The Government of India Act, 1935,⁹ provided for a federal system for India. After this Act, a number of changes were made in the procedure and constitution of the high courts. For the first time the judiciary was made independent of the executive. High courts were established in each province.

Reports of cases decided by these high courts are available,¹⁰ although it is very difficult to locate a complete set. The Indian Law Reports Act of 1875¹¹ made it possible to report cases of these high courts, and thus a separate series of law reports came into existence, known as the Indian Law Reports, which reported cases decided by these high courts.¹²

The above hierarchy of courts in India continued until the Abolition of Privy Council Jurisdiction Act, 1949,¹³ was passed by the Constituent Assembly of India. This Act, which came into force on October 10, 1949, abolished the jurisdiction of the

⁷ 1 & 2 Geo. V, c. 18.

⁸ 5 & 6 Geo. V, c. 61.

⁹ 26 Geo. V & 1 Edw. 8 c. 2.

¹⁰ See Part 2.1, p. 73.

¹¹ Act XVIII of 1875.

¹² See App. I, p. 109.

¹³ Act V of 1949.

Privy Council in India. Prior to this the 1935 Act¹⁴ had established the Federal Court of India to hear appeals from the high courts. In 1947 when the British Parliament passed the Indian Independence Act,¹⁵ the Privy Council jurisdiction also ended, and it became necessary to enlarge the jurisdiction of the Federal Court of India. Therefore, the Federal Court (Enlargement of Jurisdiction) Act, 1948,¹⁶ was passed, which empowered the Federal Court to hear appeals from the lower courts. This Federal Court also was abolished in 1950 when the Supreme Court was established. Reports of cases decided by the Federal Court are also available.¹⁷

Since the year 1950, the judicial system has been well knit into a hierarchy of courts. At the lowest level are the small causes courts established under the Small Causes Courts Act, 1887. In each district there is a district court and then high courts in each State. At the apex is the Supreme Court of India. Appeals from the district courts go to the high courts and they can even go to the Supreme Court provided they fulfil certain conditions. This has been done to avoid an unnecessary burden on the Supreme Court. The high courts in each State and the Supreme Court have original jurisdiction also and a citizen can go to the High Court or the Supreme Court direct if his fundamental right is infringed (Art. 26 and 332 of the Constitution). The Indian Law Report series covers high court cases and the Supreme Court Reports¹⁸ cover the Supreme Court cases. Both these are official reports. Although there is no bar on citing private reports also, the courts generally would prefer these reports only. There are a number of private reports which cover high court as well as Supreme Court cases. Most important of these is *All India Reporter*.¹⁹

The decisions of the Privy Council are no longer binding on the Indian Supreme Court as the latter is the top judiciary in the country. The Constitution (Art. 141) provides that the law declared by the Supreme Court shall be binding on all the courts

¹⁴ Supra note 9.

¹⁵ 10 & 11 Geo. VI c. 30.

¹⁶ Act I of 1948.

¹⁷ See Part 1.1, p. 9.

¹⁸ See Part 1.1, p. 9.

¹⁹ See Part 1.1, p. 10.

within the territory of India. But, according to Art. 225 of the Constitution, the high courts are bound to follow the Privy Council judgments, as the Constitution (Art. 372) provides that the principles laid down by the Privy Council are to be the law in force in the country.

It may also be noted that prior to Indian Independence there were many princely states which had their own judicial systems. Some of them had reports of cases also but these reports are very rarely available, nor are they much in demand, being of historical importance only.

Legislation

As stated earlier the administration of justice during early British rule depended on the whims of 'Kazis' and 'Pandits'. In fact no serious effort was made to give a sound body of laws until 1833, and everything was left in the hands of those who administered justice. Even after Warren Hastings' new judicial plan in Bengal in 1772, this practice continued except in cases of inheritance, marriage, and other personal matters where it was laid down by the new plan that the law was to be administered according to Hindu and Muslim laws of usages. There was no law in regard to other matters and, according to the Act of Settlement of 1781,²⁰ in these matters the law was to be administered according to the English maxim—'Justice, Equity, and Good Conscience'. As this maxim had no definite meaning, judgments based on similar facts differed from judge to judge. This led to utter confusion and uncertainty regarding laws in the country. Even in those matters where the judges could apply their own discretion and decide the case according to 'Justice, Equity, and Good Conscience', they were guided by 'Kazis' and 'Pandits'. Apart from this, local customs also played a great role in guiding the judges.

If we analyze the historical facts, we find that from 1600 to 1726 the East India Company could exercise legislative power through its General Court in England. The Royal Charter of 1726²¹ authorised the Presidency or the Governor and the Council in presidency towns to make bye-laws, rules, and issue ordinances subject to the confirmation of the Court of Directors in

²⁰ 21 Geo. III, c. 70.

²¹ Granted by King George I on 24th Sep. 1726.

England. Later on under the Charter of 1753,²² they could make bye-laws, etc., for the places which were subordinate to Fort William. All these bye-laws, etc., were to be in conformity with English laws. The Regulation Act of 1773²³ replaced the Governor and the Council by the Governor-General and the Council. This was done to cover the other two presidency towns also—Madras and Bombay. These rules and regulations were to be registered at the Supreme Court of Calcutta, Madras, and at the Recorder's Court at Bombay. Thus, each presidency town was able to make its own regulations, independent of one another. Each of these presidency authorities made a number of Regulations. This power was restricted to some extent by the Charter Act of 1813.²⁴ Later on experience showed that the Regulatory law suffered from many defects, such as parallel legislative authorities, uncertainty, and mixing of legislative with executive authority.

All these regulations of the three presidency towns were collected and published. Thus we had for Bengal, Bengal, Govt. of. *Regulations and Laws enacted by the Governor-General-in-Council for the Civil Government of the whole of territories under the Presidency of Fort William in Bengal*, v. 1-9, 1793-1834. Calcutta. 1827-34; and Clarke, R. *Regulations of the Government of Fort William in Bengal in force at the end of 1853 to which are added the Acts of the Government of India in force in that Presidency, 1793-1853*, v. 1-3. London. 1854; also *Harrington's Analysis of Bengal Regulations* which is supposed to be an authority. For Madras we had *Campbell's Collections of Regulations from 1802 onwards*. (1840); and Clarke, R. *Regulations from 1802 onwards*. (1840); and Clarke, R. *Regulations of the Government of Fort St. George in force at the end of 1847, to which are added the Acts of the Government of India*. London. 1848. For Bombay we had *Harrison's Code of Bombay Regulations* (1849). All these collections are now of historical importance only and are very rare.

As said above the Regulatory law suffered from many drawbacks. The Charter Act of 1833,²⁵ which came into force in 1834,

²² Granted by King George II on 8th Jan. 1753.

²³ 13 Geo. III c. 63.

²⁴ 53 Geo. III c. 155.

²⁵ 3 & 4 Will. IV c. 85.

made great changes in the legislative system of India, mainly with a view to do away with the defects of the Regulatory law. According to this Act, a legislative council was created which was an all-India body empowered to make laws for the whole of India. In a sense the Governor-General and the Council were empowered to make all sorts of laws, with certain restrictions. Thus, from 1834 onwards, we have a compilation of these legislative measures, which are called Acts instead of Regulations.²⁶

Although the Regulatory law suffered from many defects, it had introduced some good things also. All the regulations and bye-laws, under this system, were to be approved by the Supreme Court. Thus the judiciary was able to control the legislative powers of the Governor-General and the Council. The Council did not like this, and the Regulation Amendment Act of 1781²⁷ removed this restriction to some extent. The second important measure of the Regulation Acts was that the Council could legislate by a majority of votes and the Governor-General had no over-riding power on the Council's decisions. Thus majority rule was established.

Codification

As we have seen, until the year 1833, there was no systematic law and there was utter confusion and uncertainty. This was partly due to the fact that we did not have much written law during the earlier period. Personal laws of Hindus and Mohamედans used as their sources their respective religions, which were changing from time to time. But, wherever possible, the English judges tried to apply the English rule-of-law doctrine in Indian cases also, sometimes even in unsuitable circumstances. This led to an unjudicious imitation of English doctrines in India. On the other hand, as we have seen, there was utter confusion and uncertainty in judicial decisions. It was to stop all this, that the codification of laws began in India. All the principles of English law which had been thus far applied in India through judicial decisions were now introduced through legislation and codification. The main purpose of codification was to state Indian law in a simple, systematic and rational way.

²⁶ Supra note 25.

²⁷ 47 Geo. III Sess. 2.

Thus the Charter Act of 1833²⁸ made it possible to appoint the first Law Commission in 1834. Its main task was to codify the criminal law of the country. There followed a draft of the Indian Penal Code which went through many revisions and was finally passed in 1861. This Code is one of the best in the world even today.

The second Law Commission was appointed in 1853 and it recommended that India needed a body of civil law. This recommendation was accepted and a third Law Commission was appointed in 1861 to prepare a body of substantive civil law on the basis of English law. As a result of these Law Commissions, we had the Indian Succession Act, 1865; the Criminal Procedure Code, 1861; the Indian Contract Act, 1872; and the Indian Evidence Act, 1872.

Now after Independence, we have a Law Commission which is entrusted with the task of modifying and drafting existing laws as and when necessary. It is entrusted from time to time with the task of examining the existing law and suggesting modifications. It has submitted reports on various subjects, and most of these suggestions have been incorporated in the existing Acts.

We have seen how the legislation and codification in India embodied English legal principles. Even after Independence Indian legislation has largely been guided by English laws. This influence can be seen in the Industrial Disputes Act, 1947; Indian Companies Act, 1956; and Hindu Marriage Act, 1955.

Constitution

The framers of the Indian Constitution had a difficult task in giving a workable Constitution to India. They very carefully studied the past and the present conditions of the country before framing each and every clause. They depended largely on the 1935 Act and gave a federal character to the Constitution of India. But the most important part of the Constitution and a definite departure from the English Constitution, was the provision of the Fundamental Rights Chapter in the Constitution itself. This is just like the Bill of Rights provision in the American Constitution. There was a basic reason behind the inclusion

²⁸ 3 & 4 Wm. IV, c. 85.

of this chapter in the Constitution itself. Indians had suffered a great deal before Independence, and they had demanded inclusion of this provision in the 1935 Act but their demand was denied by the British. Therefore, when they had an opportunity, they provided this chapter in the Constitution in order to protect every citizen from state excess and encroachments on the basic rights of men. In other matters the Indian Constitution has taken from other constitutions of the world, especially from the United States, Canada, Switzerland, and Australia. It is, therefore, a mixture of the good points of all these constitutions.

Very good commentaries on the Constitution as well as the bare Constitution, published by the Government, are available.

Abbreviations

<i>A.I.R.</i>	All India Reporter
<i>A.L.T.</i>	Andhra Law Times
<i>A.P.</i>	Andhra Pradesh
<i>A & U</i>	Allen & Unwin
<i>Admn.</i>	Administration
<i>Alld.</i>	Allahabad
<i>A</i>	Annual
<i>Art.</i>	Article
<i>Assn.</i>	Association
<i>B.L.R.</i>	Bombay Law Reporter
<i>Bi-A</i>	Bi-Annual
<i>Bk.</i>	Book
<i>C.C.</i>	Chief Court
<i>C.L.I.I.</i>	Company Law Institute of India
<i>Co.</i>	Company
<i>Comp.</i>	Compiled by, Compiler
<i>Cr.P.C.</i>	Criminal Procedure Code
<i>ea.</i>	each
<i>Eco.</i>	Economics
<i>Ed.</i>	editor, edited by
<i>ed.</i>	edition
<i>Eng.</i>	English
<i>F</i>	Fortnightly
<i>Govt.</i>	Government
<i>Guj.</i>	Gujarat

Hse.	House
I.I.P.A.	Indian Institute of Public Administration
I.L.R.	Indian Law Reports
I.M.C.	Indian Merchants' Chamber
Instit.	Institute
J.C.C.	Judicial Commissioner's Court
J & K	Jammu & Kashmir
Jr.	Journal
M.L.J.	Madras Law Journal
M.P.	Madhya Pradesh
Mah.	Maharashtra
Mgr.	Manager
M.	Monthly
n.d.	no date
N. Delhi	New Delhi
O.U.P.	Oxford University Press
P.	Private, Press
P.P.H.	Peoples' Publishing House
Pol.	Political, Politics, Police
Pt.	Part
Pub.	Publishers, Public, Publishing
Pubn.	Publication, Publications
Pvt.	Private
Q	Quarterly
R.S.Sectt.	Rajya Sabha Secretariate
Raj.	Rajasthan
Rd.	Road
Sectt.	Secretariate
Ss.	Sections
Supp.	Supplement