

**SIR HENRY MAINE'S PERSPECTIVE: UNRAVELING
DICHOTOMOUS STATE OF PERSONAL LAWS OF
PUNJAB UNDER BRITISH RULE**

Prof. Devinder Singh*
Shruti Dahiya**

ABSTRACT

The Historical School of Jurisprudence has established that customs are driving force behind the development of codified laws and same has been witnessed in evolution of Personal laws in India. In the British India era when matter for codification of civil and criminal laws came up; the area of personal laws dealing specifically with succession, adoption, marriage etc. are left unaltered and customs prevalent at that time with respect to aforesaid matters are given due importance. During 1862-1869 when Sir Henry Maine acted as a legal member to Governor-General Council of India, it was observed that for the purpose of development of personal laws, customs and practices were stressed upon especially in the case of erstwhile State of Punjab. With the enactment of Punjab Laws Act, 1872, customary law was given legal status inspired by the fact that it regulates civil life and this is how the province of Punjab became an exception where customs of people became the law of the province by a single statute. Therefore, in order to understand why and how such customs got embedded into legal language it is necessary to conduct this study. Thus, in present paper the researcher with help of secondary data and historical research plan shall decipher process with which customs got embedded into legal language. It shall also reflect on its recognition altogether as a distinct code than Hindu Personal laws and critically examine Maine's perspective, analyzing its relevance, limitations, and implications for understanding Punjab's legal landscape under British rule.

KEYWORDS: - customs; personal laws; codification; Henry Maine; historical school of jurisprudence

1. INTRODUCTION

The central idea behind the theory propounded by Savigny¹, a Historical school jurist is that a nation's customary law is its truly living law and that law in its essence is not something imposed on a community from above but is an inherent part of its ongoing life, an emanation of the spirit of the people. To him law has been the product of customs, usages and practices observed for a period of time and to understand them he said that great importance should be given to the past of a nation as it is the actual repository. The future of a nation depends on its historical incidents, cultural roots and social practices because past is reflected in present and present decides the future. Hence it is necessary to understand the formation and working of early legal and social institutions, customs and attitude of early members of society². The future of a nation depends on its historical incidents, cultural roots and social practices because past is reflected in present and present decides the future. Savigny has asserted that "in the earliest times to which authentic history extends, the law will be

* Chairperson, Department of Laws, Panjab University, Chandigarh.

** Research Scholar, Department of Laws, Panjab University, Chandigarh.

¹ Robert Rodes, *On the Historical School of Jurisprudence* (2004) 49 (165) AMJ (Jan. 2, 2023, 10:10 AM), https://scholarship.law.nd.edu/law_faculty_scholarship/858.

² R.W. M. DIAS, JURISPRUDENCE (5th ed. Butterworths 1985).

found to have already attained a fixed character, peculiar to the people like their language, manner and constitution. That which binds them into one whole is the common conviction of the people, the kindred consciousness of an inward necessity, excluding all notion of an accidental and arbitrary origin".³ The historical thought was developed by Savigny and his followers who echoed for history in the name of tradition, custom and nation against the belief in conscious and rational law-making and by philosophers such as Henry Maine who develops a legal theory from the evolution of history.⁴ Sir Henry Maine has worked along similar lines and enquired into the legal histories of different nation such as Rome and India to establish a link between the jurisprudence of ancient world and contemporary legal concepts. His work stood out as the most important application of comparative legal research to a legal theory inspired by the principles of historical evolution. He was influenced by the Edmund Burke's thoughts and started as a moderate Liberal making efforts to promote reforms, reconciling old interests with new energies and preparing society for necessary changes while preserving their customs and culture practices too. His stay in India motivated him to look into the past of nations to understand their present.⁵ He believed that customary law is composed of a large body of rules observed by communities, evidenced by long usages and founded upon preexisting rules sanctioned by the will of the community.⁶ These forms of rules are result of consolidation of age-old norms practiced by people to regulate and govern various types of relationships in society and were known to be flexible. They were followed in absence of a specifically enforced legal system.

In the colonial period too, customs played a vital legal element in the society. These were recognized and followed as law independent of any sovereign injunction or enforcement. Before the advent of the British, religious scriptures, customs and usages had the force of law and these used to vary with region, religion, social background, level of economic development and even the political order. When the East India Company won the dewani rights of Bengal they discovered that the indigenous systems and the customs were ingrained in the society, obligatory and had force of law but the colonial rulers had no knowledge of either law or its language of governance.⁷ Thus, it got established that their rule over Indians could not be possible without adequate knowledge of native traditions, usages, customs and other religious texts acceptable to the people. Therefore, as early as 1781, customary laws and personal laws were taken into consideration and Pandits and Maulvis were

³ M.FREEMAN, LLOYD'S INTRODUCTION TO JURISPRUDENCE (8th ed. Sweet & Maxwell, London 2007).

⁴ W. FRIEDMANN, LEGAL THEORY (5th ed. Universal Law Publishing, Delhi 2013).

⁵ Russell Kirk, *The Thought of Sir Henry Maine*, 15 THE REVIEW OF POLITICS 86 (1953) (Jan. 3, 2023, 10:10 AM) <https://www.jstor.org/stable/1404750>.

⁶ S. ROY, CUSTOMS AND CUSTOMARY LAW IN BRITISH INDIA (1st ed. Thare Press 1911).

⁷ *Id.* at 10.

appointed as interpreters.⁸ Hindu law based on the texts such as the Smritis, Srutis, Dharamshastras and Muslim law on Shariat was given importance. Gradually, as they became more familiar with Indian conditions, they gave custom its due importance. Moreover, in certain regions such as the Punjab, Oudh, Kumaon Hills, Central Provinces, religious books were not established in any concrete manner and people were more under the influence of customary law and personal law than the shastric law.⁹

1.1 OBJECTIVE OF STUDY

The paper aims to analyse the influence of colonial administration on Punjab's personal legal systems under British rule using Sir Henry Maine's ideas as a framework. The study seeks to explore the intricacies of Punjab's legal system during British control, with a special emphasis on the contrast between traditional indigenous laws and the official legal structures established by the British authorities. The authors aim to attain deeper understanding of Punjab's legal history and the lasting impacts of colonial control on its legal systems. The study seeks to clarify the intricacies of legal pluralism by critically analysing Sir Henry Maine's opinions.

2. RESEARCH METHODOLOGY

The Doctrinal method of research is used to conduct an extensive review of existing literature on Sir Henry Maine's theory, colonial legal history in India, and the personal laws of Punjab during British rule to acquire a foundational understanding of the topic and for identification of gaps in the existing literature. Further an exploratory and historical research plan is employed for examination of contradictions between indigenous customs and colonial legal frameworks and to identify challenges faced by individuals and communities in navigating the complexities of Punjab's legal system during this period.

3. JURISPRUDENTIAL INSIGHTS: SIR HENRY MAINE'S THEORY AND LEGAL INSTITUTION DYNAMICS

The comparative study of the development of different legal systems, in particular the difference between Hindu law and Roman law helped Maine to formulate the distinction between static and progressive societies and their legal evolution. He stated that in static societies the development of legal institutions and methods of law-making did not go beyond a certain stage but in the progressive societies a desire of improvement and development is always reflected. In order to explain the development of legal institutions of society he

⁸ J. NAIR, WOMEN AND LAW IN COLONIAL INDIA: A SOCIAL HISTORY (1st ed. Kali for women 1996).

⁹ M.P. JAIN, OUTLINES OF INDIAN LEGAL HISTORY (5th ed. N.M. Tripathi Pvt. Ltd. 1990).

mentioned about the three stages of development of law which are universal i.e. have been seen in respect to every nation.¹⁰ He characterized the development of law in following stages; First stage is marked as Divine law, at this time the law is personal command of King who is believed to be acting under divine inspiration; Second stage is known as an era of Customary law, at this stage repeated application of King's rulings gave way to basis of formation of customs and thus priestly class came into picture for their interpretation and last stage is marked by the formulation of Codes such as the Twelve Tables of Rome, Manusmriti etc. To him this era of codes is the stage from which many societies never proceed further thus giving up the spontaneous social and legal development and such societies are termed as "static societies".¹¹

The progressive societies on the other hand reflects a further series of evolutionary changes as they stay keen to adapt new changes for improvement of social and legal institutions with the help of legal fiction, equity, and legislation. In such societies administration of law is the function of public courts established by sovereign authority in contrast to static or primitive societies where it had always been the function of family. Thus, the legal condition of static societies which had arrested development is characterized as "Status" by Maine, a fixed legal condition dominated by family dependency. It was supported by the fact of established patriarchal family as the earliest social unit and smallest, indivisible unit as the subject matter of civil law. The members of such families were dominated by the patriarch or oldest male member. All the property of group was held by him in trust, and all social relationships were fixed by each person's position within the family.¹² Relationships within the family were even determined by agnation and women were subject to the arbitrary will of their husbands or fathers. Therefore, status has played the most important role in primitive societies for determination of rights and duties.¹³

3.1 TWO PARALLEL ENFORCED REGULATING SYSTEMS

For the adjudication of disputes and regulation of law and order in State, the East India Company relied upon unwritten and undefined customs but their constant insistence for a uniform system of law caused myriad of problems. The forceful application of laws based on the English legal system and ignorance of aboriginal legal texts caused great hardship. Though the customs were placed on back foot but they still prevailed in an informal way. Colonial society thus,

¹⁰ Brian Smith, *Maine's Concept of Progress*, 23 JOURNAL OF THE HISTORY OF IDEAS 407 (1963) (Sep. 23, 2019, 07:10 AM), <https://www.jstor.org/stable/2708216>.

¹¹ M.FREEMAN, *supra* note 3, at 2.

¹² H. MAINE, *ANCIENT LAW: ITS CONNECTION WITH THE EARLY HISTORY OF SOCIETY AND ITS RELATION TO MODERN IDEAS* 171 (13th ed. John Murray, London, 1890).

¹³ *Id.* at 7.

had two parallel regulating authorities- the formal legislations enforced and upheld by the State and the informal system of customs and personal laws. All these developments created a very precarious situation and led to a conflict between customary law, statutory law and religious law. There was an unresolved tension between justice, law and society. It caused greater sufferings to the weaker sections of society i.e. women, children, lower castes and outcastes due to ambiguity of laws. Contradictory judgments amounting to varying interpretations and different perspectives created uncertainty. It hastened the disappearance of some local customs in the name of reforms and introduced uniformity where it had never existed.¹⁴

The Punjab was one of the last territories to be annexed by the British in 1849 with prevalence of customs regulating various social groups. Those customs were enforced by the Panchayats or Jirgas and the rulers seldom interfered with them. It was adherence to customary laws that helped in smooth functioning of society and kept disputes and anarchy at bay. Though Maharaja Ranjit Singh had set up a Chief Court (Adalat-i-Ala), the customs were supreme for the people of the region.¹⁵ The underlying reason for the prevalence and acceptance of customs was the presence of village communities inhabited by Hindus and Muslims acting as repositories of their multifold castes and classes, sects, divisions and their respective customs. They never followed religious scriptures and there was no presence of Maulvis or Pandits in secular matters. Due to this the Britishers set up a Board of Administration in Dalhousie where the Governor General, gave assurance to people of upholding their native institutions and practices and that popular institutions would be improved and consolidated. The directions were issued that lex loci or local customs which had been obeyed by any tribe or sect will be enforced. Judges were also asked to dissuade people from coming to Court with trivial matters. Nevertheless, the colonial rulers introduced a large measure of bureaucracy and the rule of law and a new kind of relationship was established between individuals and the State with introduction and enforcement of the Punjab Civil Code in 1853 to ensure uniformity in judicial procedure.¹⁶ The Britishers showed diplomatic reluctance in interfering with the customs and traditional practices of the agriculturist tribes of Punjab. They had realised the potential of peasants and saw Punjab as a model agriculture province hence invoked their own tribal customary laws governing private matters such as inheritance, alienation of land, etc. to establish a link between State and rural intermediaries. It was this primacy of customary laws which reflected the paternalist system of imperial

¹⁴ DR. PARAS DIWAN, CUSTOMARY LAW (OF PUNJAB AND HARYANA) (5th ed. Publication Bureau, Panjab University 2006).

¹⁵ O.P AGGARWAL, A TREATISE ON THE CUSTOMARY LAW OF THE PUNJAB (University Book Agency 1949).

¹⁶ N. Hancock Prenter, *Custom in the Punjab*, 6(4) JCLI (1924) (Feb.5, 2023, 07:10 PM), <http://www.jstor.org/stable/752774>.

rule in Punjab.¹⁷ It further reflects that a different trajectory rejecting the idea of Benthamite utilitarianism had been followed in Punjab to ensure both progress and paternalism. It was their conservative reaction and preference of order over the transformation that streamlined the idea of India being static and comprised of tribes who were in the chain of their own customs.

3.2 CONSOLIDATION & CODIFICATION OF CUSTOMS

In order to codify the customary laws of the region's the revenue authorities were entrusted with the task of preparing records of tribal and local customs. It served a dual purpose of maintaining revenue records and judicial records as the tribal customs were recorded which helped Courts in adjudication.¹⁸ These records served as authoritative statements of custom. Village headmen and other influential people of all the important tribes were asked questions regarding customs which were explained to them and their answers were also recorded. They were also required to quote cases or instances in support of their answers. The colonial officers recorded folk tale, ballads, songs and proverbs of peasants in the villages of Punjab. They investigated their custom and later codified the customary law. The enquiry was made into their property rights marriage patterns, inheritance customs etc. The first set of *wajib-ul-arz* or the village administration paper was prepared in the early 1850s to identify rights and customs of Punjab villages.¹⁹ Later in 1860s the first series of *Riwaj-i-am* of tribal customs were prepared. They were different from village customs. Gradually, more than 40 volumes on the customary laws of different districts of Punjab were generated, accompanied by a number of codes, digests and manuals.²⁰ When the *Riwaj-i-am*'s were prepared in the 1870s and 1880s, official observers were asked to carefully note the differences between actual practices and scriptures. The general tendency then was to repress the affinity between scriptures and practices, and to play on the differences.²¹

The Punjab Laws Act of 1872 was then enforced to place customs on front footing and it stated that the sacerdotal codes of Hindu and Muslim law were to be followed only to the extent that they coincided with, and had been absorbed within, customary practice. The practice of considering customs if any, before the state enacted personal laws concerning issues like marriage, succession, divorce, adoption etc. led to the recognition of "Customs as the First and Primary Rule of Decision in the Punjab". It was then incorporated in Section 5 of "The Punjab Laws Act, 1872" "to establish that matters stated above shall be

¹⁷ Ian A Talbot, *The Punjab under colonialism: Order and Transformation in British India* 14(1) JPS (1991) (Feb.15, 2023, 4:10 PM), Microsoft Word - Ian Talbot 14.1.doc (ucsb.edu).

¹⁸ PYARE LAL SHARMA, *THE PUNJAB CUSTOMARY LAW* (Jain Law Agency 1967).

¹⁹ *Id.* at 18.

²⁰ C.L. TUPPER, *PUNJAB CUSTOMARY LAW* (Government Printing Office 1881).

²¹ *Id.* at 9.

decided by any custom applicable to parties concerned, which is not contrary to justice, equality, and a good conscience and has not been by this or any other enactment, altered or abolished or declared void by a competent authority and personal laws of Hindus and Mohammedans shall be applicable only when customary rules don't prevail. With respect to the proof of customs it was stated that it should not only be limited to judicial precedents but the opinion of people living under and being governed by such customs should also be considered while deciding upon its validity and existence. While critically analysing a Court's decision in which the opinion of people was ignored and evidence provided by judicial or revenue records about customs enforcement were accepted the author remarked that though the judicial decisions have authority but the process required for establishing customary law need to be plural, uniform and constant.²²

A gradual shift was noticed when customs were preferred over the religious texts and village elders or headmen were approached instead of pundits and maulvis to ascertain the existence of any customary practice. No doubt the law accepted customs which stood different from what stated in above mentioned texts but in reality, it had always been difficult for parties to prove the existence of such custom. Thus, with the enforcement of colonial law the diversity of property relations among Hindus got diminished. Such practices had induced the Brahmanical interpretation of religious texts over and above anything else. By relying wholly upon the Mitakshara system, the colonial property laws too favoured rights of men above women and supported the control over land by particular men- as husbands, fathers and heads of families within agrarian society and such policy in turn helped the Britishers to form alliances within villages.²³ However to achieve that, the traditional practices of certain social groups which granted greater rights to women in property were disregarded and "a Brahmanical patriarchal family form with its reproductive sexual economy at the centre"²⁴ was established. That was the reason behind staunch support for colonial laws of joint ownership against individual claims by the upper-caste agrarian classes. There had been many evidences to show the efforts made by male dominated agrarian class to cause changes in the property related laws to suit their claims even when same didn't fall in line with prevailing social norms and resulting in enforcement of limited rights of women. In addition to all this, with disregard of matrilineal descent patterns that were practised in some tribes

²² OM PARKASH AGGARWALA, SIR W.H RATTIGAN, THE DIGEST OF CIVIL LAW FOR THE PUNJAB CHIEFLY BASED ON THE CUSTOMARY LAW (13th ed.) (Feb.7, 2023, 07:10 PM), <https://revenue.punjab.gov.in/?q=digest-civil-law-punjab-chiefly-based-customary-law>.

²³ K. Mukund, *Women's Property Rights in South India: A Review* 34(22) EPW (1991) (Jan.12, 2023, 08:10 PM), <https://www.jstor.org/stable/4408023>.

²⁴ Mytheli Sreenivas, *Conjugalities and Capital: Gender, Families, and Property under Colonial Law in India* 63(4) JIAS (2004) (Feb.18, 2023, 08:15 PM), <http://www.jstor.org/stable/4133196>.

and communities, women were slowly debarred from access to and control over property and resources.²⁵ Thus many factors such as economic and ideological changes along with law limited the women's customary rights over property and enforced male ownership and control.

4. FALLACIES IN THE PROCESS OF CODIFICATION

The British administration had made great efforts in codifying and consolidating the customary law of State of Punjab but was not free of flaws. The main reasons were inadequate enquiry procedure by the revenue officials who were neither interested in carrying out exhaustive investigation nor they had time, stereotypical form of village records on customs due to difficult, ambiguous and ill framed questions and sometimes issues relevant to colonial administrators were likely to be different from those considered important by peasants. Further the *wajib-ul-arz* dealt mainly with revenue payments and only a few questions with respect to village customs were interrogated, with *riwaj-i-ams* too only scope of enquiry was broadened with major focus still on to decipher the customs which don't fall in line with Hindu and Muslim law. C.L Tupper's digest too stressed on the questions of modes of transfer of property through inheritance, adoption, gift and on marriage thus leaving a whole range of customs and practices dealing with other important areas of the lives of people. On this basis one could say that many aspects of Henry Maine's theory about village communities of India being static and dominated by coparcenary system were not true in its actual sense and were based on imperial work done before him as we could see from the present text that coparcenary feature of village community was majorly established due to the codification of customary laws. The officials then relied on set of assumptions about the relationship between blood and soil resulting in determination of property rights via descent. Thus the descendants of original founder of the village were held to be first rightful heir to the land and those who fail to assert any relation to such mystical ancestry could not be considered members of such brotherhood.²⁶ Therefore records of rights prepared on above mentioned basis had denied the rights of all those who did not belong to the dominant lineage and later considered as tenants or even non-agriculturist tribes. It was even the colonial influence over customary law which enlarged the difference between the agriculturists and non-agriculturists, proprietary body and the lower castes. This difference was written into the very definition of customary law too with its application only to agriculturists and non-agriculturists were governed by personal law. On the basis of such facts, we can say that the depiction of customary law of Punjab and village communities in work of Sir Henry Maine was actually a re-assertion of facts narrated by his fellow men only and not mention of actual state of that region. The customary law of Punjab was result

²⁵ *Id.* at 4.

²⁶ O.P AGGARWAL, *supra* note 15 at 3.

of extensive and exhaustive dialogue between masters and natives in which the voices of people was constrained, regulated and ultimately appropriated and then redefined during their compilation under influence of their ideas, assumptions, beliefs, convention of language and conclusions, hence not free from some bias and prejudices.²⁷

4.1 NATURE & STRUCTURE OF VILLAGE COMMUNITY UNDER TWO GOVERNING MODELS

The British officials identified two forms of villages with individual ownership and independent holdings predominant in one in which joint rights and obligations were unknown, and the village was managed by hereditary headmen. In the other kind of setting, village was populated by a compact body of co-sharers who claimed a lineage, real or mythical, from a common ancestor or a group of ancestors.²⁸ The land of the village was equally shared amongst the male descendants of the original founder and the claim to common lineage cemented the village collectivity, and the notion of shares regulated duties and obligations, privileges and claims. The heads of co-sharing families were responsible and accountable for maintain law and order. This patriarchal structure, where the word of the patriarch was law, prevailed in Punjab and Sir Henry Maine focused mainly on the first type of village, whereas Punjab officials talked a lot about the second.²⁹ In Village Communities , Sir Henry Maine strongly asserted that the colonial administrators had done one of the most arduous tasks for India i.e., while framing an entire law of the land they had also prepared “Record of Rights” describing in details all rights over the soil in form they existed during annexation with the British Empire. On the basis of such records, disputes concerning ownership rights etc. used to be settled by the Settlement and Revenue officers only thus acting as quasi-judicial agencies. In former kind of villages, individuals were not free in reality and their existence were governed by the hierarchy of authorities such as by family in first instance, then by the immediate community of the proprietary body and last by the community at large i.e. the clan and the tribe. An individual had no right to act out of his own free will in matters concerning his share in the resources or assets held actually by his family. Further historical records of the State of Punjab suggest about the existence of a structure similar to a corporate management in village communities regulating social and economic order of people. In order to manage the revenue payments, the village republics were

²⁷ C.L. TUPPER, *supra* note 20, at 4.

²⁸ Neeladri Bhattacharya, *Remaking Custom: The Discourse and Practice of Colonial Codification, Tradition, Dissent and Ideology* (1966) (Jan.10, 2023, 10:15 PM), <http://cscs.res.in/dataarchive/textfiles/textfile.2008-07-22.0813407659/file>.

²⁹ H. Maine, *Village-Communities In The East And West*, Six Lectures Delivered At Oxford with Additional Addresses (3rd ed, B.R. Publishing Corp. 1915).

allotted a fixed identity on basis of territorial limits while ignoring the fact that their tribes and clans being spread to other estates too.

A great Change in the character of colonial administration was reflected when they didn't superimpose common law mechanically in another province.³⁰ There was a stark difference between adoption performed under customary law and Hindu law by agricultural tribes and non-agricultural tribes of the Punjab. The main difference was with respect to its nature as the former considers it as a medium to appoint an heir and thus secular and later consider it as a religious act done to save sonless father from falling into hell and to perform pind daan for peace of departed soul of the adoptive father.³¹ Further, under a customary mode of adoption, an adopted son doesn't lose his right of succession in the family of his natural father whereas, under Hindu Law, the adoptive son loses all his interest and rights of succession in the natural family, deriving its relevance from the concept of the formal transfer of *Patria Potestas* from natural to adoptive father as mentioned by Henry Maine.³² The adoption under customary rules had progressive elements as alienation of property and even inheritance was performed in favour of an unnatural heir thus rejecting the idea of status which is imbibed under Hindu law. The Britishers though in order to maintain the arrangements of village republics as existed earlier, preserved their customary institutions but to ease the process of revenue payments identified units on basis of territories and thus interfered with original setting of tribes and clans spreading beyond such units. It was further enforced with the help of Charles Boulnois, one of the first Judges of the Punjab Chief Court who in consonance with the Henry Maine reiterated that the individual person may be the supreme head of his own homestead, is still bound as a member of the community to conform strictly to all the village rules and usages with regard to rotation of crops, the alienation of lands and liability to share in the village order. In the same way their residents were also restricted by controlled mechanism of institution of reciprocal rights and duties. On this basis Sir Henry Maine had also stated that customary arrangements made to regulate estates and their people were based on usages and Indian village communities unlike villages in European Nations were actual source of law of land. These observations of philosopher like Sir Henry Maine and other British officials had made Vinogradoff to quote that "the historical development of law starts with custom. Rules are not imposed from above by legislative authorities but rise from below, from the society which comes to recognise them. The best opportunities for observing the formation and application of custom are

³⁰ C.L. TUPPER, *supra* note 20, at 4

³¹ DR. PARAS DIWAN, *supra* note 14.

³² H. MAINE, *supra* note 7, at 3.

presented when primitive societies live their life before the eyes and under the control of more advanced nations."³³

5. CONCLUSION AND SUGGESTIONS

The customs entrenched within any society represent the very essence of its existence, serving as the linchpin guiding individuals in their personal affairs and interactions with governing authorities. Embodied within these customs lies the collective consciousness of the populace, stemming from centuries of accrued wisdom and fortified by their collective will, rendering them the most organic and suitable form of governance. Their enduring prevalence has imbued them with an inherent authority, such that their non observance carries the weight of sanction. Echoing the sentiments of the Historical School philosophers, these customs stand as the bedrock upon which a nation's legal framework is erected. It is imperative, they argue, that legislative endeavours remain firmly rooted in the ethos of these customs to garner the populace's acceptance. Despite the British administration's apparent inclination towards incorporating this philosophy into personal laws, particularly within the confines of Punjab, their efforts were tainted by inherent prejudices and biases, thereby influencing the codification process. Recognising the fundamental significance of native village communities in overseeing societal matters, the British administration sought to maintain their core essence while delicately shaping them to align with their administrative goals. Sir Henry Maine emerges as a central figure in this storyline, advocating for the conservation of these village communities in alignment with enduring customs, thereby reaffirming their precedence over legislative interferences. However, the codification of various customs governing property, marriage, and succession introduced a sense of stagnancy, impeding the organic evolution that would have otherwise ensued over time. This stagnation, borne out of bureaucratic interests, thwarted the progression of society, relegating it to a state of arrested development. Consequently, the State of Punjab remains ensconced within the confines of dual legal systems, characterised by the coexistence of codified customary laws and state-enacted legislations. Over time, a perceptible shift in judicial attitudes towards customary law has transpired, with legislative actions frequently taking precedence over the resolution of disputes and the dispensation of justice in instances where evidence of particular customs is absent. Despite efforts to harmonize customary laws with formal legal systems, challenges persist in reconciling divergent legal traditions and ensuring equal access to justice for all citizens. However, Maine's perspective had certain limitations in capturing the

³³ M.C. Kaul, *Common Property Resources, Customary Law and Rural Self-Governing Institutions in Colonial North India*, WIPP (1991) (Mar.10, 2023, 10:15 PM), https://dlc.dlib.indiana.edu/dlc/bitstream/handle/10535/1216/Common_Property_Resources%2C_Customary_Law_and_Rural_SelfGoverning_Institutions_in_Colonial_North_India.pdf?sequence=1&isAllowed=y.

full complexity of Punjab's legal landscape. His emphasis on the patriarchal structure of village communities overlooked the communal solidarity and cooperation prevalent in villages with shared lineage. Moreover, Maine's theory did not fully account for the colonial administration's interventions and disruptions in Punjab's traditional legal systems, particularly in the context of revenue management and territorial administration. His theory still underscores the need for legal pluralism, recognizing the validity of diverse legal norms and institutions within a pluralistic society like Punjab. However, achieving a delicate balance between customary laws and formal legal systems remains a complex and ongoing endeavour.

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