HISTORICAL-LEGAL ANALYZE OF MAIN FORMS OF CRIMINAL LEGAL PROCEEDINGS IN ANCIENT INDIA AND CHINA

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ABSTRACT

In this article author had searched the historical stages of the organization and evolution of the criminal proceeding in the Ancient India, China states by direct analyze of the procession legal sources. In the article author had analyzed by the historical-legal aspects the specifics of the developing of the criminal proceeding relations in the Ancient India, China states

KEYWORDS: criminal, legal proceedings, ancient, india, china

INTRODUCTION

Historical development of social and legal foundations of criminal proceedings, the trial, certainly, cannot be analyzed in the context of the history of peoples, Nations and civilizations, particularly ancient Eastern civilization. It should be noted that in ancient historical sources the concept "Ancient East" is used not only as geographical value, but also as also wider, social and political as well as civilization sense. Not exaggeration to say that it is in the countries of the Ancient East was conceived in the history of humanity. [1]

One of right sources, which is considered, made the significant contribution to formation and development of legal thought of the Ancient East are Manu's laws – sources of the right of a civilization of Ancient India. It should be noted; in the territory of India, process of origin of the state took rather long time. Its formation preceded based on disintegration of the relations, thus this process consisted of association of radical tribes in the beginning, and in the subsequent, by association of tribes Arians, seized these lands. The civilization of India has very ancient history, but studying of all historical stages represents special complexity that is connected, first, with lack of reliable written sources. Therefore, at research of history of the state of India, scientists as such important historical sources are involved by laws of Artkhashastra Kautily and Manu's laws. [2] Among them Manu's laws are considered as the most perfect and reflect rather high level of legal consciousness of society of India of that time.

Manu's laws were developed by Bramhans in the period of about II century B.C. the II century of our era. Because of these laws, we can judge the level of a civilization of India, public and state system, legal status of the king and ordinary people today, and the main legal institutes, including the judicial right.

In Manu's laws, also as well as in written legal sources of other ancient states, the importance was attached to questions of regulation of a procedural law. In Manu's laws the procedural law received the regulation in separate VIII chapter, its initial 120 articles were devoted an order of formation of judicial structure, trial of affairs in court, and to evidences.
In the Indian society also considering the proceedings in court was based on the basis of private prosecution, the statement of claim had to be brought into court in a written or oral form. Consideration of the statement of claim in court began immediately with the moment of its giving; the burden of proof of the requirements was completely assigned to the party of the claimant. Manu’s laws did not divide criminal and civil legal proceedings; order in courts was identical to each of these fields. Intensity of judicial proceedings directly depended on sequence of the established procedural order of legal proceedings. In accordance with Manu’s laws, for clarification of truth on works the court had to investigate comprehensively a subject of the claim, indication of the claimant, witnesses, carefully to check a place and time of commission of an event of a crime (article of 45 law). The order of judicial proceedings also depending on sequence of consideration of these issues was defined by court free.[3]

Manu’s laws in full assigned burden of proof to the parties, the parties were necessary to be on judicial proceedings together with the witnesses and other evidences. The claimant and the respondent, also as well as witnesses before stating the indications, had to take the oath, thus taking into account social exclusive structure of the Indian society, oath form and content were differed. In many cases of the guilt accused, it became clear by various tests. Proceeding from requirements of the principle of spontaneity, judicial proceedings had to be complete in day of its beginning; all procedural requirements had to be carried out in the same day.[4]

Besides, intensity of judicial proceedings in many respects depended on the relation of accused (respondent) to the claim, which was put forward against it. If accused does not recognize the requirement of the claim or recognizes them partially, judicial proceedings had to be carried out in full within strict procedures, for the proof of its fault were indications of three witnesses (article of 60 laws) enough. However, taking into account social features of the Indian society, as witness’s persons of a high caste were more often involved.

However, if the defendant admits the claim in full, the court stopped checking evidence, immediately turning to the resolution of the case. The court's opinion in this case was immediately brought to the attention of the parties; it was subject to immediate realization. [5]Thus, in the society of Ancient India proceedings on the basis of the laws of Manu, was based in full on the basis of the adversarial system, its effectiveness is largely dependent on the parties’ evidence and the will, talent of the person called upon to administer justice. Similarly, the legal sources of that period, the laws of Manu provided an expedited procedure for the settlement of Affairs in the aspect of the intensity of the proceedings, it was connected with a rather simplified form arises in the courts of procedural relations. In the state of Ancient India, the issue of the trial was often based on evidence and witness testimony. This, naturally, led the court to formal proofs. The history of the proceedings of the Ancient East certainly looks depleted without analysis of the judicial law of Ancient China. Because, the culture of Ancient China for the first time not only brought to life the silk, paper, gunpowder, but deserves special honor, as a civilized society, who through great spiritual and academic potential on the basis of Confucianism, a significant contribution to the development of cultural education of the peoples of the Far East. So, the state of Ancient China, also as well as its social institutes has the big history History of Ancient China originates approximately in the XVII century B.C., in the III century of our era in the territory of China there are at once some large states. These are empires Shan (Yin), Zhou, Qin and Han. Territories of empires were subdivided into some areas; the country coped by means of the administrative structures created in these areas, implementation of functions of police and judgment hall. [6] Was included into power of regional administrative structures along with carrying out social and economic policy in the respective territories.

Among the tasks the special role was taken by judicial activity, it was connected with specifics of legal regulation in empires of Ancient China. Sources of the right of Ancient China along with a common law of implementation of criminal trial were subordinated to such specifics of legal proceedings

In this situation, providing the message about the crime became the official reason for the officials in charge of the preliminary investigation, to begin the implementation of their procedural tasks, including the use against the suspect the measure of restraint in the form of arrest. If the investigation establishes evidence of the guilt of the person they were recorded in writing, the testimony of the perpetrator and the witnesses were recorded. It was officially authorized the use of physical force to prove the guilt of the suspect or the accused, if the fault of persons confirmed in this way, the criminal case was immediately turned over to the court for adjudication. [7]

CONCLUSIONS

Thus, criminal legal proceedings of Ancient China can be considered the peculiar legal source, which created the base for introduction in criminal procedure culture of human special function of investigation of criminal cases – function of criminal prosecution. Strengthening in criminal trial of this state of the beginnings of "public interest", and gradual prevalence in proof of use the extremely brutal ways had a little negative impact on an intensification of the criminal procedure relations, respectively ensuring interests of the personality.

REFERENCES


