
AN EMPIRICAL STUDY ON ITERATION OF INDIAN LEGAL VERTEBRAE

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ABSTRACT

This paper contains various legal facets of journey of Adalats from British Era till establishment of Supreme Court and its inferior courts in India. Whether we look back at the position of Quazi in Mughal Period, prominence of judiciary in Mauryan Period or establishment of Diwani and Faujdari Adalats by Warren Hastings, Judicial System in India is present since very long period of time. The Judicial Plan of 1772 was made by Warren Hasting consisting 37 regulations coping with criminal and civil laws. It absolutely was the primary Anglo-Indian Code, which puzzled out on the idea of experience and customary observations. Despite of multiple merits the plan of 1772 has various demerits as well. Administration of Justice was majorly divided into three stages. First stage was the Judicial Plan of 1772 which constructed Mofussil Diwani Adalat in each district to look after civil cases and Mofussil Faujdari Adalat was formulated to provide justice in criminal matters. Dwani Adalats was made to deal with matters such as inheritance, contract, accounts, marriages and other matters related to religion. Hindu law was applicable on hindus whereas law of quran was dealt by muslim law. Including this Sadr Nizamat Adalat in Calcutta and Revenue Administration was also formulated in first stage. On demand of East India Company, Warren Hashting formulated Second stage on 23rd day of November 1773 and 3rd stage was declared in 1774. In Post Independence period, Constitution of India validated Union Judiciary for Union and State Judiciary for States. Code of Criminal Procedure, 1973 states the hierarchy of Criminal Courts. Likewise, Code of Civil Procedure, 1908 validates the hierarchy of civil courts. And, Constitution of India also legalized Administrative Tribunals for various matters. This paper discusses the journey of Adalat from Judicial Plan of 1772 to establishment of courts in Post Independence Period.

KEYWORDS: *Diwani, Faujdari, Adalat, Judicial Plan, Supreme Court, Civil, Criminal, Tribunal*

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INTRODUCTION

Justice is most prominent and moral phenomenon. According to **Plato**, *Justice is a virtue establishing rational order, with each part performing its appropriate role and not interfering with the proper functioning of other parts.*³ According to **John Rawls**, *to diminish the political pressure in a country, there must be political conception of justice.*⁴ But after the arrival of East India Company in India, They became de facto rulers of nation and their crown was asserting sovereignty over newly won territories.⁵

CONDITION OF JUDICIARY BEFORE 1772

In Mughal Period, There were Nizamat and Diwai Adalat. Nawab was the head of Nizamat Adalat whereas; Diwan became the head of Diwani Adalat. Nizamat adalat had criminal jurisdiction and Diwani Adalat was dealing with cases related to revenue. After establishment of Madras City the old concept of village adalats was there to prevail and maintain justice in the territory. Chowltry Courts were also present to give judgments in both civil and criminal matters.

Two servants of British East India Company were appointed to sit in Chowltry Courts in India. But that court had no jurisdiction related to both criminal and civil matters. Later on, Mayor’s Court was set up but dispensed justice according to charter instead of any fixed law. Basically, they followed principle of justice and good conscience.⁶

Regulating Act 1773

The basic principle of this act in terms of justice was separation of the executive and the judiciary was adopted and the District Collectors were divested of their judicial duties. Because of languages it became hard to prevail court system so to avoid this uncertainty, this act translated both Hindu and Muslim law into English. English law was administered in the Supreme Court. Since the jurisdiction of this court was clashing with that of other courts, a chief justice was appointed to act as head.

³ Plato, English: The Republic ; Greek: Politeia ; Latin: Res Publica (275BC)

⁴ Stanford Encyclopedia of philosophy, 25.MAR (2008)

⁵ B.Lindsay, Vol. 1 No.2, The University of Toronto Law Journal pp.343-348 (1936)

⁶ MP Jain, Outlines of Indian Legal History (1966)

Cornwallis Code Of 1783

Lord Cornwallis codified 48 new regulations in 1783. Those 48 regulations were discussed and passed after the procedure of revision. His code was basically stated the principle of Separation of Powers, because he separated revenue collection from the administration of civil justice to safeguard property rights against abuse of absolute power by revenue officers and their assistants.

The Collector at that time was divested of judicial functions and the office of District Judge was made to preside over District courts. They also carried out magisterial and police functions. His code was complete exclusion of Indians from every authority and it was racially superior in tone. The main features of newly declared Supreme Court were:

1. Matters related to the revenue offices and judicial offices were separated from each other.
2. Regulations inaugurated concept of appeals from lower courts to higher courts in every matter.

Concept of Munroe

After this, Munroe favored Panchayat and said that Panchayat System is as common in Indian as jury in England. He later opined his concept and stated that "*the native who has a good cause always applies for a Panchayat, while he who has a bad one, seeks the decision of a Collector or a Judge, because he knows that it is easier to deceive them*"⁷.

SYSTEMATIC DESCRIPTION OF COURT SYSTEM IN INDIA

Panchayat

Panchayat is made from two words: Panch + Ayat. Panchayat is very cultural and old terminology in India. Village Panchayat are present in India since very long period. In pre-independence era, villagers used to formulate a body of knowledgeable citizens of village. Those 5 members used to give verdicts on issues and matters of village. They didn't had any written laws but were based on justice, equity and customs.

The term panchayat is also written in Rig Veda, Atharva Veda and Chhandogya Upnishad. In the words of **Mahatam Gandhi**, "*Long ago, how long history does not record, the Indian genius worked out the village and the local panchayats. It remained our fort through many a*

⁷ Munroe, Minutes of Sir Thomas Muroe

turbulent period, kings and dynasties fought empire rose, ruled, misruled and disappeared, but the villagers' life maintained its even tenor, away from the din of battle and the rush of rising and falling empires. We had a village state which protected the life and property and made civilized life possible.⁸

Chowltry Courts

It was primitive court. Native judicial officer of this court were known as ADHIKARI. It had jurisdiction of both civil and criminal matters. After few years this court was re constituted and judicial officer was replaced by three Englishmen. But then it had no jurisdiction of civil as well as criminal matters.

Mayor's Court

The company's Charter of 1687 established a Mayor's Court at Madras. The members of this court were: Mayor, twelve Aldermen and sixty or more Burgesses. The primary Mayor and Aldermen were nominated by the Charter. The Mayor holds office for one year. Aldermen elected the Mayor annually. The Mayor and Aldermen selected Burgesses whose strength wasn't to exceed 120. The Mayor and three Aldermen were to be English servants of the corporate et al were to be from any nation.

Pagoda Pledge Case:

In Madras, Hindus gave proof in the Court on Bhagwad Geetha Pledge. Two Hindu Traders were put to prison by the City hall leader's Court for declining to make the pagoda vow which they said was in opposition to their religion and the principles of the manor. This made the Hindu Occupants angry and they approach the Representative to meddle. So, Representative discharged that dealer on parole. Simultaneously, the Court was coordinated to pay respect to the strict rituals and services of the locals.⁹

Moffusil Diwani Adalat

After Judicial Plan of 1772, these courts were formulated. Moffusil Diwan Adalats were established at district level in each district. They were made to deal with civil matters and ssues related to revenue. They were courts with original jurisdiction. The laws applied by this court were those exemplified in the Shastras, for occurrence of the Hindus and in the

⁸ Bharati, p.69 (1994)

⁹ Zeeshan, Legal History, March (2016)

Koran in the event of the Muslims. This court took care of all cases identifying with property, legacy, progression, marriage, ranks, contracts and related issues. The Gatherer was helped by the educated Pandits and Kazis who were knowledgeable in the Hindu and the Muslim laws separately.¹⁰

It dealt with the cases which had the value of Rs. 10. And, it also dealt with the cases which exceed the value of Rs.500 and comprise of Governor.

Moffusiil Faujdari Adalat

These courts were established to give verdicts in criminal matters. These courts were corresponding to moffusil diwani adalats. This court had original jurisdiction in criminal cases. It had power to give capital punishment. Supervisory control was vested in the hands of Collector. Proceedings of this court had to be submitted in Sadr Nizamat Adalat. Basically, it used to follow provisions of Muslim Law.

With regard to criminal judicature, collector would function as the Magistrate (the person who took cognizance of the criminal affairs), in order to issue warrants for people's arrest in order to be able to send them to the Mofussil Faujdari Adalat. But despite this, the collector could not sit for all the cases all the time. The collector was given the allowance of meting out punishments of up to 15 days imprisonment or 15 strokes or both¹¹.

Sadr Nizamat Adalat and Sadr Diwani Adalat

This was the court of higher jurisdiction. Sadr Adalats acted like Supreme Court. It reviewed many cases in in which Mofussil Courts lacked to give needful valid judgment. Basically, it was court with Appellate Jurisdiction.

ESTABLISHMENT OF SUPREME COURTS AND HIGH COURTS

The Supreme Court in India was established through Regulating Act, 1773. Under which, the court was said to be the superior body empowered by the crown. This court was consists of 3 judges, 1 Chief Justice and barristers with the work experience of 5 years. The first Chief Justice of Supreme Court was Sir Elijah Impey. First Court was established in Calcutta¹². By this, the framers of act introduced writ jurisdiction in India. It had jurisdiction of both civil and criminal matters but it had no jurisdiction out of Calcutta and it was very

¹⁰ Shambhav Ravishankar, *Understand the Creation of Indian Judicial system*, Academike 6.JAN, (2016)

¹¹ *Id*

¹² Vo.1 2, Gayatri Watt, *Evolution of Adalat System in India: Pre and Post British Era*, July (2018)

slow processing court. Supreme Court was established at Madras in 1800 and at Bombay on 1823. It had authority in the matters of law related to inheritance and succession.¹³

Later on, High courts were established in India through Indian High Court Act, 1861. The act allowed crown to establish High Courts in presidency towns. This court consists of Chief Justice with not more than 15 judges.

JUDICIARY AFTER INDEPENDENCE

In 1835, First Law Commission was duly created under the control of Governor General of India.¹⁴ It has highly unsuccessful it's working but somehow begun to codify Penal Code for India. Second Law Commission of India completed the codification of Indian Penal Code and begins working on codification of Code of Civil Procedure, Limitation act and Code of Criminal Procedure.¹⁵ Third Law Commission drafted law relation to inheritance and succession for non Hindus and non Muslims. And, drafted Contract Law, Insurance Law, Evidence Act, Negotiable Instrument Act and Property Law as well as reviewed Cr.P.C.¹⁶

Later on in 1950, Constitution of India validated Supreme Court for Union¹⁷ in Delhi. Supreme Court is enshrined in Chapter IV under Part V of Constitution of India. Unlike, other branches of government that is executive and legislature, Indian Judiciary is Integrated. It declared that, law declared by SC shall be binding on all courts within the territory of India.¹⁸ Its writ jurisdiction is vested in Article 32 of Constitution of India.

Likewise, According to the Constitution of India, Articles 214-231 deals with the provision of High Courts. And, there are District Courts under control of HC of the state to which it belongs. District Courts are subjected to appellate jurisdiction of High Court. Tribunals have been also established as quasi- judicial body for specified matters such as electricity, taxation, environment etc.

CONCLUSION

India has always been the land of equity, justice and good conscience. It has concept of village panchayats from vedic period. During Mughal Period, Quazi was accountable to give

¹³ Dr.N.V.Paranjapee, *Indian legal and constitutional history*, Vol. 7, central law agency , (2015)

¹⁴ Charter Act, 1833

¹⁵ Eugen Lang Maurice, *Codification In The British Empire And America*, Law book Exchange. pp. 78–92

¹⁶ Char, S. V & Desika, *Readings in the constitutional history of India, 1757-1947*, (1983)

¹⁷ Constitution of India. art. 124

¹⁸ Constitution of India. art. 14

the judgments. Adalat system was present during Mughal Period. Literary Materials like Arthashastra vindicates value and presence of judicial system in Maurayan Dynasty. In Pre Independence period many courts were formed and abolished. Many Acts were formulated, revised as well as repealed in pre independence era.

But, concept of and different adalats for civil and criminal cases became a milestone after independence. Britishers established Original Jurisdiction, Appellate Jurisdiction and Writ Jurisdiction in India. And, they contributed in idea of separating judiciary from the other two branches of government. Today, India has independent and integrated judicial system in the form of Supreme Court, High Courts, District Courts and other inferior courts. The foundation of court system laid down by East India Company is still present in India but in innovated and amended form. Today's Judicial System is an outcome of experiments done by East India Company.

Thus, it concluded that still Indian Courts have positive effects of foundation laid down by britishers in India. And, It had improved and developed in the terms of equality, approach and dependency. Independent India has Independent and Unbiased Judiciary.