

**“Evolution of Adalat System in India: Pre and Post British Era”**

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**INTRODUCTION:-**

Judiciary, of any country, plays an important role in its administration. A proper administration system consists of three organs i.e. executive, legislative and judiciary. When it comes to the judiciary, its independence is most important. Prior to the establishment of East India Company, the judiciary system was governed according to the customs or in accordance with Dharma. Later on, Britisher established their own court, under which they follow their own rules. After the establishment, they made certain reforms in the judiciary for efficient working. Before the independence of India, Britisher established the various forms of Adalat system in India.

For the proper functioning of their administration, they need a strong administrative body, so the Adalat system came into existence. Adalat system basically includes the fields of criminal and civil. Further, this was classified according to the districts and towns. Judicial system at the time of Warren Hastings considered revolutionary for the British period. Many of the reforms took place at the time of his administration. Judiciary system included all the small towns and districts, which was governed by the particular persons. Main aim to establish the Adalat system is to make the administration strong.

Various courts were made by the Britisher in the different places. Basically, the first court was established in Madras, Bombay, and Calcutta known as mayor court. It is also called as an establishment of the modern judicial system. Through different charter, the judiciary became stronger. The charter contained different -different norms for the particular fields. The judges were appointed for the courts. In the small area, the collector was appointed to collect the revenue and to deal with the civil cases in such area. This Adalat system gave birth to the mofussils Adalat, Diwani Adalat etc. This system also gave rise to the principle of natural justice in India for the first time. With the passage of time, the Supreme Court and the high court came into existence for the sake of administration.

**ESTABLISHMENT OF COURTS IN INDIA**

With the expansion of empire, a systematized administration is needed to govern the country. So, for the sake of administration courts were established in the presidency state (i.e. Madras, Bombay, Calcutta) .The Britishers invaded India for commercial purpose and made certain norms for the same. The court was run by the Englishmen, who were lacking in legal

knowledge. They gave decisions on the basis common sense which leads to variation in the decision making. For benefiting the judicial system following courts were established:-

- **MAYOR COURT**

**Mayor court, 1687**

The Mayor court was first established on Madras through the Charter of 1687. Under which a corporation was framed by the East India Company. This court consists of an English Mayor, 12 Alderman, 60 or more Burgesses. This court dealt with the civil and criminal matter both at the same time. Criminal cases were decided with the help of jury. The functioning of this court was governed by the East India Company not by the crown, thus no authoritative lies with the decision given by the Mayor. Most of the decisions under this court system were based on the principle of natural justice, i.e. equity, justice and good conscience. This gave rise to the existence of principle of equity, justice and good conscience in the land of India.<sup>1</sup>

**Mayor court, 1726**

Later on, when the English settlements were increasing with increase in trades, they established the Mayor court in the remaining presidencies state. Bombay and Calcutta was administered by the Mayor court, established through the Charter of 1726. This charter came up with the new ideas of administration. Under this system both the fields- civil and criminal got bifurcated, the civil matter was dealt by the Mayor with the help of nine Aldermen and similarly the criminal matter was dealt by the Governor- in – council. Here the appointed person got their power directly from the crown of England. Thus the decision given by them bound every person to follow it.

The criminal cases were dealt by the Governor with the help of grand jury. Imprisonment or fine, and cutting of limbs were the punishment given against the committing of such offence.<sup>2</sup>

**REFORMS DONE BY THE WARREN HASTINGS****JUDICIAL PLAN OF 1772**

Warren Hastings was appointed as a Governor of Bengal in 1772. Due to unsatisfactory performance of the administrative body, he decided to make changes in the fields of civil and criminal. He appointed the collector in every district to collect the revenue from the public. He made the stringent laws regarding the revenue collection. The collected amount was used to repay the loan. Warren Hastings has also done the reforms for the public welfare. Different rules for the different fields, civil and criminal fields were governed by the different people. The collector was appointed as a judge for the civil matters. The court was also differentiated

<sup>1</sup> <https://www.legalbites.in/the-mayors-court-2/>

<sup>2</sup> Dr.N.V.Paranjapee, Indian legal and constitutional history, 7<sup>th</sup> edition, central law agency,2015

in accordance with the value of matters. Two different courts came into existence, one for civil matters- mofussil diwani adalat, second for criminal matter- mofussil nizamat adalat. Both of the courts have their power guaranteed by the crown. Followings are the courts established at the time of Warren Hastings:

### **1. MOFUSSIL DIWANI ADALAT:-**

Basically, this adalat system deals with the civil matters. New revenue policies were made by him. All the civil matters relate to the marriage, intestate, business etc, are included in it. Again, this was classified into different categories:-

- Small causes case:- deals with the cases which had the value of Rs. 10. Headed by the head farmer of the district.
- Sadar diwani adalat:- this court deals with the cases which exceeds the value of Rs.500 and comprise of Governor. It also includes the appeal cases of mofussil diwani adalat.<sup>3</sup>

**2. MOFUSSIL NIJAMAT ADALAT:-** this court system was established specially for the criminal matters. Where the cases like murder, robbery etc was dealt by the Governor with the council. Mofussil faujdari adalat was governed by the Nawab. His main work is to validate the capital punishment. Without his permission no one would be punished with the capital punishment.<sup>4</sup>

The best things done by the Warren Hastings was that the person was punished or administered according to his personal law. The hindu was governed under the hindu law, where the priest was the head of such department. Similarly, the muslim governed under the muslim law and headed by the Qazi with a hindu officer.<sup>5</sup>

### **JUDICIAL PLAN OF 1774**

To make the judiciary work efficiently, certain reforms were made. The province of Bihar, Orissa, Calcutta was divided into six parts. This also leads to the establishment of provincial court in India. New judicial plan consists of abolition of collector, now the appointed people were known as “Diwan” or “Amil”. His only work is to collect the revenue. A council for revenue was set up in Calcutta. The diwan has to report to the committee t regular basis<sup>6</sup>

All the matters related to the value of more than the Rs.1000 was dealt by the provincial council. These courts have the original jurisdiction to give the decision. But the changes, which were actually proved beneficial for the society was that, any case of mofussil diwani adalat was appealable in the provincial council. And the governor was accountable for the same. But officers of faujdari adalat were prohibited for holding any farm or any other

<sup>3</sup> <https://www.lawctopus.com/academike/understanding-the-creation-of-the-indian-judicial-system/>

<sup>4</sup> <http://www.historydiscussion.net/history-of-india/warren-hastings/role-of-warren-hastings-as-the-governor-of-bengal/5922>

<sup>5</sup> ibid

<sup>6</sup> <https://www.coursehero.com/file/p4shnr5/Defects-Warren-Hastings-Plan-of-1772-was-failed-due-to-its-major-defects-The/>

property. Since, it was considered as the demerits of judicial plan of 1774. Despite of all affords the company failed to provide the fairness and justice to the people. Later on, this was changed in the next judicial plan.

Warren Hastings had done the various reforms in every field. He abolished the zamindari system and dual government. His judicial system was systematized in every manner. The main aim is to provide the justice to every person. He also established the rule that the muslim would be governed under the muslim law, i.e. Quran by the qazi and the hindu would be governed in accordance with the shastras. Every courts were composed of one Englishmen , assisted by the QAzi and moulvies.

## **DEFECTS OF BOTH THE JUDICIAL PLANS**

- **Lack of proper governance:-** The collector was powered to collect the revenue and at the same time , he was also powered to deal with the civil matters. Due to which there was a non compliance between the works. Their only motive was to generate the revenue, but due to increase in the offences in these fields, thus they had to make the laws for the same.
- **Lack of uniformity:** - Most of the decision was decided on the basis of common sense with the influence of the personal law; sometimes there was no uniformity between two decisions. The appointed personnel were also corrupted, who gave the decision on the favor of rich party. Due to which the judicial plan was failed to the some extent.

## **REFORMS BY IMPEY**

The council and the administrative body accepted the non compliance between the commercial activities and the judicial matters. The collector had no time to deal with the judicial activities. Thus, Elijah Impey was appointed as a sole judge of Sadar Diwani adalat. He tried to abolish the misuse of power done by the other official. For the effective working of judiciary, he made rules containing 133 articles. After which, it was recognized as the Civil procedure of court. He also worked to reduce the corruption in the judiciary system. Under his governance, executive and the judiciary were working separately.<sup>7</sup>

## **ESTABLISHMENT OF SUPREME COURT**

The Supreme Court was established through the Regulating Act, 1773.Under which, the said court is said to be the superior authority which was empowered by the crown. They derived their power directly from the order of crown directly. This court consists of one chief justice, three judges, including the barrister having 5 years experience. Sir Elijah Impey was the first chief justice of Supreme Court. For the first time the writs jurisdiction was introduced in India.

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<sup>7</sup> [http://www.msrlawbooks.com/file/INDIAN\\_LEGAL\\_HISTORY.pdf](http://www.msrlawbooks.com/file/INDIAN_LEGAL_HISTORY.pdf)

The Supreme Court was authorized to deal with both the civil and criminal matter but the punishment given to the criminal was harsh. First Supreme Court was established on Calcutta as the court of recorder. The massive importance to set up the Supreme Court was to maintain the justice in the society. Since, the expansion of their trade and business, the British residential were also increasing. To take care of the administration, they established the Supreme Court in India. All the rules were passed with the consent of crown. Every Governor and Governor General had to submit the report to the state authority.

But, though Britisher got benefited from these provisions then also there were some *lacuna* in their administration, the Supreme Court had no jurisdiction out of the Calcutta. Secondly, decision making process was too time taking in the context of rule making. Thirdly, there were lots of conflicts between the council and the Governor. Sometimes, the council rejects the decision passed by the Supreme Court.

On 1800, the Supreme Court was also established in the Madras, and on 1823, in Bombay. Since both the presidencies consist of many districts, there was a need to set up the court. The Supreme Court has the power to administer the different laws regarding personal laws, inheritance and succession etc.<sup>8</sup>

### **HIGH COURTS IN INDIA**

With the settlement of high courts in India, the Supreme Court was abolished. High courts were established through the Indian High Courts Act, 1861. This act authorized the crown to establish the High Courts in the presidency town. All the procedure was similar to the Supreme Court. High courts were established just because to remove the confusions between the decision given by the Council and by the Supreme Court. This court consists of Chief Justice and with judges not more than 15. The high court had original and appellate jurisdiction within the limits of Calcutta. Since, it was established in the territory of Calcutta, it also includes all the British residential also.

That era was specifically the starting time of emergence of modern judiciary because the reforms done by the Britishers were in accordance with the changing scenario.

### **DEVELOPMENT OF NATURAL JUSTICE IN INDIA**

The concept of natural justice consists of three basic principles that are equity, justice and good conscience which are enshrined in the common law system in British. It was first introduced in India in between the period of 17<sup>th</sup> -18<sup>th</sup> century. That was time when judicial reforms were done by the Britishers. There are contradictions between personal laws. It is quite difficult for the Englishmen to serve justice, with such variations in the law. The principle of natural justice is based on the common sense, where the judges had to give the decision on their own discretions.

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<sup>8</sup> Dr.N.V.Paranjapee, Indian legal and constitutional history, 7<sup>th</sup> edition, central law agency , 2015

Before the establishment of British Empire, every cases dealt by the king was also based on this principles. But after the reforms done by the Britishers in the judicial concept, this principle started flourishing more. In most of the cases, when both personal law was lacking in some provision then the judges delivered their decision on the basis of equity, justice and good conscience. The concept of common law helps in reducing the conflicts between two. When the companies were not having any proper law then their decision must confirmed the general principle of equity, justice, and good conscience.<sup>9</sup>

## INFLUENCE OF BRITISH POLICIES ON INDIAN FRAMEWORK

- **Civil procedure of court**

After appointed as the Chief Justice of Supreme Court, Sir Impey had done the remarkable reforms. He drafted a code consisting of 95 clauses which includes the procedure for the court like, sadar diwani adalat and mofussil diwani adalat. Prior to this drafting, no such provision were exists in India.<sup>10</sup>

After the independence, this provision helped the drafting committee to make laws related to the court procedure. Now, in the current scenario, India has its own drafted procedure for court, that is, CIVIL PROCEDURE OF COURT, 1908.

- **Penal code**

As increasing in the criminal activities, to abolish the mohammedan law in the field of criminal matters, he proposed to make a uniform code or the procedure for the trial of the accused. Main aim behind setting up such provision was to bring uniformity between the procedures of court in every criminal matter.

On 1934, first law commission was set up under the guidance of Lord Macaulay for making an official procedure for dealing with the criminal matters. After the careful review and examination, on 1860 first drafted penal code came into existence known as INDIAN PENAL CODE, 1860.<sup>11</sup>

- **Under Indian constitution**

After independence there is a need to frame the constitution for framing the government. Constitution is a parent act from where every authority get their powers and came to know about their liabilities. But, at the time of framing the constitution, the drafting committee got the idea to draft it. So, they firstly examine the system of British government that is the reason that Indian Constitution is similar to the British constitution.

- ✓ British constitution had a great emphasis on Indian Constitution. For instance, the system of government is divided into three parts, i.e. executive,

<sup>9</sup> [https://prezi.com/j4m\\_7rduqxcv/the-doctrine-of-justice-equity-and-good-conscience/?webgl=0](https://prezi.com/j4m_7rduqxcv/the-doctrine-of-justice-equity-and-good-conscience/?webgl=0) Varden seth ram .v. luckpathy

<sup>10</sup> <https://www.realityviews.in/2010/05/part-13-indian-legal-history-judicial.html>

<sup>11</sup> <http://www.lex-warrier.in/2015/06/growth-of-criminal-law-in-india/>

legislative and judiciary. British government is also based in these three pillars.

- ✓ Concept of rule law was also came into existence in India through the Britishers . Rule of law means no one is above the law. This also gave birth to the other most important feature of Indian Constitution which is given under the Article 14- equality before law. Everyone is equal in the eyes of law.
- ✓ Parliamentary form of government in India is also followed by the British Government. This form of includes the supremacy of the parliament in making the laws. India has adopted this feature from the British constitution.
- ✓ The provision given under the Article 5 of Indian Constitution, provision for single citizenship is also taken from the British constitution.
- ✓ The procedure established by law and the law making procedure are also adopted from their only.

Mostly part of the Indian constitution belongs to the British system. That's why it is said that the British system had influence over the Indian Constitution.

### **COURT STRUCTURE IN THE CURRENT PERIOD**

In the current time, the court structure of India is the result of the efforts done by the Britishers. After the independence, there was a need of a proper system for judiciary. So, the Indian government adopted the system which was established by the East India Company.

Today, the Supreme Court is the superior authority, whose decision and order are enforceable in every sub ordinate court. Supreme Court derives its power from the Constitution under Part 5<sup>th</sup>, chapter 4.

Supreme Court enjoys the original jurisdiction, appellate jurisdiction including writs. The person can file the writ to get the remedy against the infringement of fundamental rights under Article 32.

High court is the subordinate court of Supreme Court. The powers of high court are given under the Part 6<sup>th</sup>, chapter 5 in Indian Constitution. It also has the appellate jurisdiction with the jurisdiction of writ petition. Under Article 226, the aggrieved party can claim for the remedy.

The lower court is the district court, where the cases are filed for the first time, and then through appeal it reaches to the high court. It deals with the both civil and criminal matters. There is a different court system for the family disputes.

Today, India has its own codified law for the court system. Through which uniformity in the decision is established in the society.

## **CONCLUSION**

Prior to the independence, many courts were formed and abolished. But today India is having a strong judiciary system because of those experiments. Britishers established the system which helps the Indian to make their own judicial administration. Today's judiciary system is a growth of those experiments which were done by them.

The administration of the British company had a great emphasis on our current system. Present court structure is only the modifications of prior established courts. The adalat system created by the East India Company is still working here but in the new form. Now, India has its own provision for tackling the current problems with an effective judicial system.

Thus, it concluded that the current court structure has positive effects of British policies and had developed in such a manner that it provides the justice to every citizen.