



Administration of Justice in Madras before 1726

(Insight into Advent of Judiciary of British Raj)

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Abstract: Judiciary is one among the three main organs of the Government. The administration of Justice is the process by which the legal system of the government is executed. During the ancient period, the administration of Justice was carried forward by King and Council. The mode of justice had deficiency of uniformity, conformity and lack of precise justice delivery system and the system of justice also extensively varied from one part to another. The legal system under the Delhi Sultans and Mughals was administered through Islamic law. British East India Company founded in 1600 laid their foundation for trade in India. It founded first Presidency town, Madras in India followed by Bombay and Calcutta. The English East India Company constructed a Factory in Madras called Fort St. George in 1640. This Fort was known as White Town. While the nearby village inhabited by local population was called Black Town. By 1652, Fort St. George became the Headquarters of the eastern possessions of the English East India Company. With the advent of British, the administration of justice and development of Courts began from 1639 to 1726 in the Presidency towns of Madras, Bombay and Calcutta. This paper highlights the development of judiciary and different phases of judicial administration in Madras presidency.

Keywords: *Presidency, Charter, Judiciary, Administration*

I. INTRODUCTION:

Justice, in the Indian context, is a human expression of a wider universal principle of nature and if man was entirely true to nature; his actions would be spontaneously just. Men in three major guises experience Justice, in the sense of a distributive equity, as moral justice, social justice, and legal justice. From the Vedic period onwards, the perennial attitude of Indian culture has been justice and righteousness. With the advance of times and social consciousness amongst the people, the Hindu society witnessed the progress towards civilization. Hindu Law propounded by the *Smritis* was more systematic and comprehensive in nature and laid down principles to be followed by the people and the King. The judicial structure which existed in Medieval India was highly dominated by the Islamic law both in civil and criminal disputes. The Sultans and Mughals dispersed justice in accordance with the regulations issued by the Emperor with the support of the officials of hierarchy of court. However, only with the advent of British, the systematic administration of justice began in India and development of Courts originated from 1639 in the Presidency towns of Madras, Bombay and Calcutta.

STAGES OF JUDICIAL ADMINISTRATION:

The categorization of the annals of the administration of justice in Madras Presidency consists of three stages, 1st stage extends from 1639 till 1665, 2nd stage from 1665 to 1686 and the 3rd stage existed from 1686 to 1726.

II. FIRST STAGE - 1639 to 1665

The Judicial system was designed primarily to administer justice to the Englishmen in all the three presidencies in India. But with the passage of time, the Indian population of these settlements increased and therefore there was a necessity to change the judicial system. Francis Day, the Administrator of East India Company, purchased a piece of land from a Hindu Raja for the East India Company in 1639 which was named as Madraspatnam and the seed for establishment of the Company's rule over Madras was sowed. Madraspatnam had a Fort which was named as "White Town" where the Company dealt with the civil and criminal cases of English people residing at Fort St. George. The East India Company had to change the administrative process especially in Judiciary to satisfy the people of Madraspatnam.

Agent and Council:

Very meagre information is available regarding the early judicial system in the settlement. Justice was dispensed to the inhabitants of the White Town by the Agent and Council. When Madras was given the status of an agency its administrative head was called the 'Agent'. He was assisted by a Council. The Agent and Council were subordinate to Surat, which was the only Presidency in India at the time. The scope of their judicial power was very vague and indefinite and, therefore, they hesitated in handling serious criminal cases and very often referred such cases to the Company's authorities in England for advice. As communication between India and England in those days took a long time, administration of justice became very dilatory and unsatisfactory. The only available account of a case disposed of during this period is that of two Englishmen who were found guilty of sedition and were punished with the lash. In the beginning, affairs of the settlement were mostly commercial in nature and did not raise any complicated administrative problems. With the passage of time, these functions grew and became diversified.

These two main Agencies, i.e. "Agent" and "Council", were authorized as ultimate authorities to decide dispute, issues and matters of both the civil and criminal cases in respect of the people in White Town. These two systems were headed only by merchants for the purpose of administration of justice. Being merchants, the delivery of justice was cumbersome for them as they did not have any knowledge of Law, of both civil and criminal. So they disposed most of the cases only with their limited conscience, knowledge and common sense.

Choultry court:

The place where the people other than English resided, i.e., Black Town, a Judicial Officer was appointed, who was always a native of such town and he was known as "Adhikari". Adhikaris dealt with only cases of small causes, but were not entitled to deal with complicated civil matters or serious offences like murder. So, the consequential appeal arising out of such simple matters were taken before the Appellate forum, viz. "Agent" and "Council", who were vested with powers of appellate jurisdiction. There were instances of removal of service of such Adhikaris, when they misused their power for personal gain. One such native Adhikari was "Kanappa" who was removed from service for misusing his power and he was replaced by an Englishman in a Choultry Court.

Governor and Council:

The Company was conferred with powers to appoint "Governor" and "Council" who were dealing with civil and criminal matters on their respective jurisdiction, which was bestowed by the Charter of 1661. The contra of Law is that the cases pertaining to Englishmen were transferred and referred to England; the cases of East India Company were decided only by English Law. Under the Charter of 1661, the cases of Indians inhabiting in the settlement of the company were to be decided according to English law. The powers conferred on the company could only be exercised by the Governor and Council. The Company was empowered to send offenders for punishment either to a place where there was a Governor and Council or to England. Justice did not gain much by the establishment of the Court of the Governor and Council as it did not function regularly or efficiently or earnestly. In criminal cases, the accused persons had to wait for long before they were put on trial. The main reason for the delay was that the Governor and Council, like their predecessors, the Agent and Council, being conscious of their lack of legal knowledge, hesitated to decide criminal cases without consulting the Company's authorities in England, and in those days consultation between Fort St. George and London involved inordinate delay. There is a case on record, dated January 31, 1678, in which an Englishman, charged with the murder of another Englishman, had been rotting in the prison for 31 months in a pitiable condition without trial as his case had been referred to London. In yet another case, a Portuguese inhabitant charged with the murder of his servant, 'a black christian', was confined to prison and consultations were going on between the Company and the Madras Council which had asked the Company "to send out a sufficient power to proceed against him". These cases reveal very deplorable state of affairs in the area of law and justice. "Want of a due course for the administration of justice" gave rise to many complaints and reform of the judicature thus became a great public necessity. A reference to the Charter of 1661 would show that it was not the lack of adequate judicial power, but hesitation bordering on apathy to use that power, which was responsible for this sorry state of affairs.

III. SECOND STAGE – 1665 to 1686

The Charter of 1661 which had conferred extensive judicial power on the Governor and Council of a settlement did not become immediately operative in Madras. Thus, there occurred no change in the judicial set up and status quo was maintained in this place for some time. A criminal case in 1665, however, proved to be turning point in this respect. One Mrs. Ascentia Dawes was brought for trial before the Agent and Council on a charge of murdering her slave girl. As was their usual practice, the Agent and Council, being uncertain of their powers in such cases, referred the matter for advice to the Company's authorities in England. The Company decided to make the Charter of 1661 effective in Madras, and, to this end, raised the Agent to the status of Governor. This step was necessary because the Charter vested judicial power in the Governor, and not in the Agent, and the Council. One of the effects of applying the Charter of 1661 was that the judicial power of the Governor and Council became extended not only to the Englishmen but to all living in the settlement. The Agency of Madras thus became the Presidency in 1665. Soon, thereafter, the Governor and Council tried Mrs. Dawes with the help of jury. Both grand and petty juries were used. The petty jury consisted of six Englishmen and six Portuguese. This was the first jury trial held in Madras.

High Court of Judicature:

The Governor and Council Court was declared to be the High Court of Judicature. Thus, the High Court of Judicature came into effect in 1665, which was shuffled with twelve number of judicial presiding officers. The Presiding Officers had sitting for hearing of the cases twice per week in respect of both civil and criminal matters, which includes the cases arising out of appeals from the Choultry Courts. It was to hear all cases of the inhabitation of both towns with the help of jury and also hear the appeals from the Choultry Court. The decisions of the cases were in accordance with English Law.

Choultry Court:

By this stage, the old system of Choultry Court was reorganized and three Presiding Officers, only with Englishmen, were conferred in the place of Adhikaris to decide the cases. This system had hearing of the cases and sitting twice a week. They were empowered only in respect of civil matters with the pecuniary jurisdiction limit in respect of value upto 50 pagodas. The Governor and Council, being appellate forum was empowered to hear the appeals from the cases of Choultry Court. This court functioned till 1704.

IV. THIRD STAGE – 1686 to 1726

During this stage two important courts were established i.e., in 1686, Admiralty Court was established with the headship of judge advocate under the Charter of 1683 and Mayors Court under the Charter of 1687 which was established by East India company.

Admiralty Court

In Asia, Africa and America, the East India Company had created monopoly in respect of trade and if any British subjects wanted to do trading, they had to get license from the Company. But this right of the company was being infringed by other British traders, thus necessity arose to constitute a Court which would have jurisdiction to punish such offending traders. Further, in order to deal with the increasing piracy on high seas, they require the Court of “Admiralty”.

The monopoly of trade granted to the Company by the Charter of 1600 was being infringed on a large scale by ‘interlopers’ – independent merchants indulging in unauthorized trade and traffic against the tenor of the grant, and thus, the Company was being put to great loss. Further, the crime of piracy was also rampant on the high seas. To deal effectively with these evils, need was felt to establish courts having jurisdiction to try maritime cases. Consequently, on 9th August 1683, Charles II granted a Charter to the Company authorizing it to establish one or more courts at such place or places as it might direct. The court was to consist of a person ‘learned in the civil law’ and two merchants appointed by the Company. It was to have power to hear and determine all cases, mercantile and maritime in nature, concerning persons within the charter limits of the Company; all cases of trespasses, injuries and wrongs, done or committed on the high seas, or within the charter limits; cases of forfeitures and seizures of ships or goods which came for the purpose of trade within the Company’s monopoly area against the tenor of the Charter of 1600. The Court was to decide cases according to the rules of equity and good conscience and the laws and customs of merchants. It could settle its own procedure subject to the directions of the Crown, if any.

The same provisions were repeated in a fresh Charter issued by James II on 12th April 1686. The reason for the Charter to prescribe a ‘civil’ rather than a ‘common’ lawyer as the head of the Admiralty Court was that the Admiralty law was of an international character as it was founded on the Civil law and law of nations rather than the Common law of England, “for ships are no respecter of frontiers.” Further, in 1683, the English Common law was practically devoid of rules governing mercantile cases. Lord Mansfield worked the subject out a century later. The mercantile law in 1683 could be regarded as an amalgam of mercantile customs, the base of which was Roman Law. Similarly, maritime law was based on admiralty principles which involved knowledge of Roman Law. The Charter desired the appointment of a civil lawyer as Roman Law formed the basis of mercantile as well as maritime law. The Chief Judge of the Admiralty Court was known as the Judge-Advocate.

Functions of the Admiralty Court:

The Admiralty Court which was constituted in Madras in the year 1686 by the Charter of 1683 was headed by an Advocate-Judge. For dealing with Civil Law, one Judge and two merchants were appointed by the company. The nature and jurisdiction of these Courts extends to

- (i) Cases pertaining to mercantile or maritime nature.
- (ii) Offences committed on high seas, like trespass, injuries and other miscellaneous offences
- (iii) Seizure of ships or goods and forfeiture

Admiralty Court dealt with rules of equity, good conscience and issues pertaining to customs of merchants. The first judge appointed for this Court was John Grey. A professional Lawyer by name John Biggs was appointed as Judge –Advocate (Chief Justice) of Admiralty Court in the year 1687. In the course of time, the jurisdiction of this Court became a General Court in the City dealing with the matters of both Civil and Criminal. The Admiralty also functioned as an Appellate forum in certain cases for the appeals arising from Mayor’s Court. This Court was functioning till the year 1704.

In Admiralty Courts, executive functions and enforcement of orders were governed by Governor in the Council and Judicial functions were carried out by the Court of Admiralty. Therefore, the distinction between the executive and the judiciary was well established and maintained. The post establishment of this Court saw a professional highness. Pre-establishment era had the judges whom were mostly laymen and merchants, and the decisions of the cases only based on their limited knowledge and their common sense. But, after the establishment of Admiralty Court, the judiciary functions and the justice delivery system had an advanced jurisprudence as the Presiding Officers and Judges were mostly proficient professionals of Law. After the death of Sir John Biggs, the above features of Admiralty Court did not continue for long time.

Mayor's Court:

Under the Charter of 1687, the English East India Company constituted Mayor's Court in Madras. The year 1688 saw the establishment of the Mayor's Court in Madras as a part of the Madras Corporation, which came into existence on 29th September 1688. Under this system, Alderman and Burgesses were conferred with powers to terminate the Mayor if he is found negligent of his duties. Englishmen were the only people empowered to become the Mayor. The Alderman held the office as long as they stayed in Madras City, indirectly they held the office for life. Mayor and Burgesses held the power to remove the Alderman from office also if he did not perform well.

Hierarchy:

- The Mayor's court was constituted with the Presiding Officer called "Mayor", under him there were 12 Alderman and sixty and more Burgesses.
- The Mayor held the office for one year and was elected by Aldermen every year. The First Mayor and Aldermen were appointed by the Charter of 1687.
- The maximum Burgesses will be not more than 120, who were appointed by Mayor and Aldermen.
- The Mayor and 3 Aldermen were chosen by Company who are only English servants and others being native of the land.
- The First time Judge Advocate of Admiralty Court became Recorder of this Court. A professionalist who learnt law was appointed as the recorder and he was attached to Mayor's Court, which is known as "Court of Record".
- The Mayor's Court tried all the cases pertaining to civil matters and had pecuniary jurisdiction up to 3 pagodas.
- The Mayor's court also tried all criminal cases with the help of judges and were conferred with powers of imposing fine as well as imprisonment.

Appeals:

The appeals arising out of Mayor's Court were heard and decided by the Court of Admiralty.

- In respect of civil matters the Admiralty Court was conferred power to decide the matters which had pecuniary jurisdiction of more than 3 pagodas
- In respect of Criminal cases, Admiralty Court heard the appeals only in respect of punishment for death and loss of limbs.
- The appeals arising out of both Mayor's Court and Admiralty Court were heard and dealt by Governor in Council

Disadvantages of Mayor's Court:

- (i) There is no clear distinction between the powers of both executive and judiciary which had always perplexed the system of functioning of this Court.
- (ii) Since the Judges of Mayor's Court were only laymen and merchants, they had dearth of knowledge in English Law, which posed as a threat to justice delivery. There were also instances of impartial and dishonest practices by the Presiding judges.
- (iii) The consistency and unanimity in the decisions of the Court was not well maintained and the contradictory decisions of the Court did not draw confidence of the litigants.
- (iv) The opinion of the Recorder, who were proficient in English Law were not given much importance and their service was not drawn in the justice delivery system.

Choultry Court:

After the Mayor's Court came on the scene, the Choultry Court an important institution earlier lost its importance and functioned as a Court of petty jurisdiction trying only small offences and civil dispute upto two pagodas. In criminal cases, it inflicted punishment of fine, imprisonment, pillory, whipping and even slavery. A native merchant found guilty of carrying on the trade of stealing children was given the alternative of paying fine of 200 pagodas or staying in the pillory and paying a fine of 80 pagodas. His two lieutenants became slaves to the Company.

The quantity of Judges was expanded to three – Two Judges were required to direct the trial of both civil and criminal cases. Two Aldermen were first assigned to sit at the Choultry to deliver justice, but their duties in the Mayor's Court became so cumbersome, that it became difficult for them to sit in the Choultry Court. Consequently, special Choultry justices were once more nominated. Thus during 1686 to 1726, there functioned in Madras the Choultry Court, the Mayor's Court and for some time, the Admiralty Court. The Mayor's court was merely a Company's Court having been established by the Company's Charter. So long as the Admiralty Court functioned, the Governor and Council as such exercised no judicial powers. Subsequently, the power of Choultry Court declined by the end of 1800.

V. Conclusion

The history of the world time and again has proved that if any nation had conquered another nation, they enforced the administration and justice delivery system of their own country. Similarly, the British East India Company rulers changed the whole administration of our Land, especially in the system of law and justice in Madras Presidency. Though the British Government did not give free governance to India, it was trying to give a good governance by consolidation of judicial reforms and codification of laws by means of step-by-step transformations to some extent which happened between 1639 to 1726 in Madras, as discussed and detailed supra. Even though, the Courts, the system of justice delivery and execution of laws did not live up to the expectations and necessities and rarely won the gratification of the native people, it has laid a great platform for the post-1726 reforms which extended and established a great Judiciary System in India, which have its prevalence and impact on judiciary system in India.

NOTES AND REFERENCES

1. A Century Completed, Edited by V.C. Gopalrathnam, Madras Law Journal Office 1962
2. Ahmad M.B., "*Administration of Justice in Medieval India*", The Aligarh Historical Research Institute, Aligarh, 1941.
3. Centenary of the High Court of Calcutta Madras and Bombay by Prof. S.Venkatraman, 1962 MLJ P.18
4. Dubey H.A., "*A Short History of judicial System of India and some foreign countries*", 1968.
5. Henry Davison Love, "*Vestiges of Old Madras 1640-1800*", Vol.I, London 1913.
6. Jain M.P., "*Outlines of Indian Legal and Constitutional History*", Lexis Nexis Publication, Gurgaon, Haryana 1952.
7. Madras Judicial Proceedings Vol. 402 , G.O.No.82 dated 9th May 1874
8. Morelay W.H., "*The Administration of Justice in British India: In the past History and present State*", New Delhi, 1858.
9. Mrinmaya Choudhury & Mina Choudhury, "Glimpses of the justice system of Presidency towns", 1687-1973.
10. Narasaiah K, "*Madras Tracing the Growth of the city since 1639*", Oxygen Books 2008.
11. Rajah N.L., "*The Madras High Court – A 150 Year Journey from a Crown Court to a People's Court*".
12. Reports on Administration of Civil Justice in the Madras Presidency (Madras 1880 to 1920)
13. The 121st Report of Law Commission of India
14. The Madras Law Journal 1962 Journal Section
15. Verma S.P., "*Indian Judicial System need and Directions of the Reforms*", Kanishka Publishers, Distributors, New Delhi, 2004.