

A HISTORICAL JURISPRUDENTIAL PERSPECTIVE ON THE EAST INDIA COMPANY'S IMPACT ON THE SUB-CONTINENTAL JUDICIAL SYSTEM AND ITS PERSISTENCE IN MODERN PAKISTANI LAW

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ABSTRACT

This study will investigate on the development of judicial system under East India Company (EIC) in the Indian Sub-continent. The Foundation of the Muslim rule in sub-continent was laid down by Qutb al-Din in 1206AD; it lasted until 1857AD and ended with the demise of Mughal Empire. Since the dawn of EIC in the Sub-continent started with a charter in 1600 AD issued by Queen Elizabeth, this research uncovers judicial powers of EIC, till Warren Hasting's judicial plan 1780 by analyzing its development over the course of history.

This study will also give a brief account of how recording of evidence was started. The taking over of the sub-continent by British Government in 1857AD saw significant changes in the judicial system. Pakistan obtains its independence in 1947 and inherited British judicial system established in pre-independence era. We will examine and analyze whether the development made throughout the history brings any changes to our present legal system in Pakistan.

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INTRODUCTION

Muslim rule in Indian sub-continent started to take its roots when Muizz al-Din Muhammad Ghuri, also known as Shihab al-Din Ghuri, began his conquests in 1175AD by capturing Multan and expanding his conquests till 1192 AD. Ghuri while returning back entrusted the areas of Kuhram and Samnah to his most trusted commander Qutb al-Din Aibak as a ruler. Qutb al-Din Aibak further extended the territories by conquering Meerut, Delhi, and Koil in 1193 AD. He kept these conquered territories under the name of Shahab al-Din Ghuri. However, after the assassination of Ghuri in 1206AD, Qutb al-Din became the first Sultan of Delhi and laid the foundation of Delhi Sultanate. He remained sultan until his death in 1210 (Wink 2002). Shams al-Din Iltutmish rise to the throne of Delhi and remained Sultan till

1210–36 AD followed by Nasir al-Din (1246–66) and Ghiyath al-Din 1266–87 AD of slave dynasty. Khalji dynasty started with Jalal al-Din Khalj 1290–6 AD and Ala al- Dīn Khalji (1296–1316), followed by Tugluq dynasty which lasted from 1320–1412 AD. The Sayyids 1414–51 and Lodis remained Sultans of Delhi from 1451–1526 AD (Islam & Bosworth, 1998). In 1526 AD Sultan Ibrahim Lodi was defeated and killed at the battle of Panipat by a Turkish Chaghtai ruler, Zahir-ud-din Muhammad Babar. He laid the foundation of Mughal Empire at Delhi. Babar died in 1530 AD. His empire included the territories of Central Asia, Kabul, Punjab, part of Bihar to the east and south of Gwalior. Babar's son Humayun becomes the emperor 1530-1556 AD. Mughal Empire lasted until 1857 AD with Bahadur Shah its last Sultan (Richards, 1993). Trade through ocean in sixteenth century became popular owing to its huge profits and navigational benefits, the Dutch and Portuguese were taking precedence in this area from the English. English merchants were obsessed with profits gained by Dutch and Portuguese Companies and wanted to dominate this trade opportunity (Brunton, 2013).

East India Company (EIC) was incorporated through a Charter issued by Queen Elizabeth I in 1600 AD under the title of “The Governor and Company of Merchants of London Trading into East Indies”. The first trading post of EIC was established in 1607 AD at Surat, India on the west coast. It was in the era of Emperor Jahangir that concur trade concessions and protections to EIC (Brunton, 2013). This article will deliberate upon the development of Judicial System under the East India Company (EIC). How different types of courts were established for the purpose of administration of justice? What effects does it have on the judicial system of Pakistan?

BRITISH CHARTERS GRANTING EIC JUDICIAL POWERS 1600-1726 AD

The beginning of the EIC in 1600 AD was relatively insignificant. As soon as the charter was issued, company took measures and start preparing fleet and building its management system, at first company had seventeen, and later twenty-four directors called committees, chosen from the total members of the company. These directors would then select one member to work as a Governor for a period of one year. Sir Thomas Smith was selected as the first Governor of the company (Kaye, 1853). Charter of 1600 authorized the company to make laws not inconsistent with the laws of England for the members of the company to promote trade and good governance and can revoke and amend the same as and when required. In case of violation of these laws, the company was authorized to inflict pain and punishment, imprisonment, and fine upon its servants (Shaw, 1887).

In 1601 AD the company through a Royal prerogative authorized commander in chief of the voyage to award death punishment to the mutineers and the offense of murder. The 1600 AD charter marks an opening to long and daunting colonial rule. East India Company was granted judicial powers. Company courts were biased and mostly served the interest of company. Charter of 1609 AD was granted by King James I extending the previous charter of 1600 AD granted by Queen Elizabeth and expanded the judicial powers of EIC. The Charter permits EIC to establish courts, factories along with trading posts in the said territories of the Indian sub-continent. Under the charter “Mayor’s Courts” were established. The court

assumes jurisdiction over civil and criminal matters pertaining to company employees, and its agents or between the company and other individual or entities within its territory. Mayor's court operated based on English Law and the charter expressly mentioned that laws, statutes, and customs of England would be followed and applied in these courts. Mayor court could also hear appeals from company's subordinated factories or other courts within its territories (Shaw, 1887).

The company and the Portuguese fought a war for dominance in trade and especially for a port in Surat. The Portuguese were defeated and the company established a factory after taking approval from the Mughal Governor. Sir Thomas Roe was sent in 1615 AD from England as an ambassador to Emperor Jahangir for trading facilities. The emperor allowed permanent trading facilities to the company. Disputes between Englishmen to be settled by the company and disputes between Englishmen and natives were resolved and solved by the local native courts (Foster, 1990).

In December 1615 the Company was authorized to punish any captain of the offenses committed on land, however, capital punishment can only be awarded after the verdict of the 12 jurymen, who shall be servants of the company. In 1623AD the power was further extended to any of the chief officer in its settlements (Foster, 1990).

Company wanted to establish a new factory and obtained a small village Madaspatnam from Hindu Raja in 1639AD and builds a factory of Fort St George. The company was authorized to govern the village containing a small population. The population increased over time due to work opportunities. Disputes were decided between the villager's court called Choultry court by the village head called Adigar. He was fired by the company on corruption and two English servants were appointed for deciding all criminal and civil cases all civil and criminal cases as per conventional English law. Provided non-English would be referred to Raja who inflict punishment as per English law. Madraspatnam was later known as Madras (Foster, 1990; Kanwel et al., 2020).

On 9th of August 1683 AD, King Charles II granted another charter establishing Courts of Admiralty. These courts had the powers to adjudicate upon maritime disputes, maritime crimes, salvage claims, and matters related to navigation and maritime commerce. The establishment of these Admiralty Courts played a vital role in developing maritime laws and regulation of maritime activities during that period (Shaw, 1887). The Charter of 1687 constituted not only a mayor court but also municipal cooperation. The municipal cooperation consisted of a mayor and 12 aldermen and sixty or more natives called burgesses. The mayor court consisted of mayor and three aldermen were appointed as justices of peace. Appeals from the decisions of the mayor court in civil and criminal cases lies before the admiralty court (Malabari, 1910).

Sir John Biggs a seasoned lawyer was sent to perform duties as a Judge in 1687 AD. After his appointment, the Governor and the relevant council give up their judicial authority and rarely attend the court. The Admiralty courts in Madras were established as the General Court. Sir, John Biggs died in 1689 AD. A new Judge John Dolbon was appointed in 1693 AD, however, dismissed shortly on the charges of corruption, and William Frascr, a civil servant was appointed as a new Judge (Munir, 2011).

Charles II granted another charter on 27th March 1669, relating to the grant of Island of Bombay to EIC on yearly rent of £10. The Island was gifted to King Charles II by the King of Portugal in 1661 AD. It granted full sovereignty to the EIC with all rights, profits, and full and direct control over the properties and territories. The company was not allowed to sell any part of the land. The company was allowed to make laws and implement it. Governor and officer of the company were authorized to exercise judicial powers (Shaw, 1887; Khan et al., 2020).

Admiralty courts were also established in Bombay 1684 and Dr. St. John, an experienced and professional lawyer was appointed to work as a Judge. After dealing diligently with the mutineers of the company and especially with Captain Keigwin, Dr. John finally opens Admiralty court in Bombay. However, president of Sir John Child restricted his judicial powers to try only maritime cases, arguing that his commission and provisions of the charter gave him no authority over civil actions. The president formed another court for civil and criminal cases and Mr. John Vaux was appointed as a judge who was not trained in law. Both the judge and president held their own opinion which further aggravated the situation. The matter further came to light when Robert Clark was tried for murder on ship and tried by Sir John Vaux. This case actually falls under maritime criminal jurisdiction and under Dr. St. John's jurisdiction. Later Dr. John St. John was dismissed by the Governor (Malabari, 1910; Khan et al., 2020). Although, it was specifically provided in the charter that justice should be administered and a seasoned and experienced lawyer should be appointed to work as a judge advocate. The company did not want independent judiciary under its controlled territories meddling into their affairs. Apart from Sir, John Biggs and Dr. St John, most of the judges were not professional and did not even have a basic knowledge about law. Consequently, we saw in the worst form of judges.

Vaux was considered to be the worst and most inefficient and an utter disgrace to the Bench in Bombay's judicial history. After the death of Sir John Child in 1690 AD Vaux became Deputy Governor of Bombay. Two years later he was suspended on charges of treason. He accidentally died by drowning in the river Tapti. According to Hamilton Vaux; "He was but few degrees wiser than an idiot." (Malabari, 1910; Khan et al., 2020).

Calcutta became presidency in 1699 and the company obtained zamindari rights over three villages on annual revenue of rupees 1195 from governor of Bengal. It established legal and constitutional status over these territories within the Mughal administrative system. Collector an English officer was appointed to oversee Zemindari. The collector had judicial powers related to revenue matters including criminal and civil matters. Death punishment needed confirmation from Nawab and civil appeal lies to him as well. This arrangement remained until 1726 AD (Munir, 2011).

BRITISH CHARTERS GRANTING EIC JUDICIAL POWERS 1726-1772 AD

On 24th September 1726 AD, King George I issued charter to the EIC creating municipalities and mayor's courts at Madras, Bombay, and Calcutta. In Madras, a group comprising a mayor and nine Aldermen was organized and established to be known as court of record or Mayor's Court. Out of nine members seven of the Aldermen, including the mayor must be citizens of British monarchy, appointed for a period of one

year and Aldermen for a lifetime. Richard Higginson was named first mayor of Madras. Aldermen were also named in the charter for Madras (Shaw, 1887; Khan, & Jiliani, 2023).

Mayor Court at Madras had both civil and criminal authority. A summon would be issued on the complaint filed by a person or persons against a person or persons. The court would summon the person or persons to appear before the court and to submit reply to a complaint filed against them. If he refused, he would be arrested through sheriff and taken security for appearance. After appearing both parties before the court, evidence would be recorded and proof would be given. The court, upon recorded evidence or confession would announce a judgment or decree. Appeal would also lie before Governor and council within fourteen days from the decision of the mayor court. Further appeal will also before king in council if the decreed sum exceeds 1000 pagodas. In Bombay William Henry Draper and in Calcutta John Sainsbury Lloyd, were appointed as the first mayor. The constitution, powers and functions, and procedure mentioned for Madras was also made applicable for Bombay and Calcutta (Shaw, 1887)

WARREN HASTING'S JUDICIAL PLAN 1772, 1773

For the purposes of restructuring the administration, Warren Hasting was deputed to India. He formulated a judicial plan of 1772 by dividing Bihar, Orissa, and Bengal into Thirty-Six districts. In every district, a collector, an Englishman was appointed for collection of revenue. Mofussil Diwani Adalat was established in every district with the collector its only judge, to adjudicate upon civil and revenue matters. Matters and issues arising out of Property, Contracts, and succession of natives, a Shastrik law was applied for Hindus and for Muslims an Islamic law was made applicable, and British law was applicable for others. Pundats and Qazis were assigned to the Diwani Adalats to avoid any errors in application and interpretation of these laws (Prakash, 2019).

Warren Hasting did not realize the immense powers granted to collector under previous plan therefore, he immediately abolished collector position in the new plan. A new Plan was devised and put to field 1774. Changes were made in revenue, civil justice system, and criminal justice system.

1774 AD judicial plan established six Provincial Councils in presidency to run Diwans and Amils to collect revenue. Appeal would lie to Sadar Diwani Adalat. The main idea was to put checks on the working of Mofussil Adalat. A Mofussil Adalat a criminal court was established in each nizamat an Englishmen be a judge assisted by Qazi and Mufti. Sadar Nizamat Adalat was also established and Headquarters was shifted from Calcutta to Murshidabad. However, these courts did not achieve its target as desired and consequently, we faced three infamous cases. The case of Nand Kumar 1775AD, Patna Case 1777-79AD, and the most conflicting Cossijurah Case 1779AD. These cases show irrefutable evidence of conflicts that existed in between executive and judiciary (Prakash, 2019; Faisal, Usman, & Khan, 2023).

The above-noted cases are evident enough that, Warren Hasting's 1772 AD plan was crumbling due to multiple reasons like lack in knowledge of native laws; corruption could not be stopped despite measures, lack of professional judges, and weak administration of East India Company. Therefore, Warren Hasting without wastage of any time made another plan in 1773.

WARREN HASTING'S JUDICIAL PLAN 1780

The Supreme Court while deliberating upon Patna case realized that Mofussil court does not follow a prescribed procedure for recording evidence. Mulvi's and Qazi's while disposing matters in hand did not follow the procedure. The Supreme Court passed a judgment in this regard and put the culprits in jail. Warren Hasting for the smooth running of Judiciary and revenue devised 1780 judicial plan, whereby he separated judiciary from revenue. Provincial council was authorized to decide revenue matters. Provincial court of Diwani Adalat was established. The chief merit of this plan was separation of powers between judiciary and executive. Appellate jurisdiction was given to Sadar Diwani Adalat and the power to supervise the lower courts (Gohar et al., 2020; AMJAD et al., 2022).

INDIAN INDEPENDENCE WAR 1857 AD

The Indian Independence War of 1857AD changed the course of legal history of India, a desperate attempt to free themselves from the clutches of East India Company. Although the attempt was not successful, it did, however, brought a significant change. The parliament British government passed the Bill in 1858 AD conferring all the territories under the rule of East India Company (EIC) to the crown. The Judicature Act 1861AD establishes High Courts in Bombay, Madras, and Calcutta. Allahabad High Court was established in 1866 AD. In 1937 Indian Federal Court was established. The same Federal Court continued to work in Pakistan and was substituted with the Supreme Court of Pakistan on March 24th, 1956, and in India on January 26th, 1950(Munir, 2011; Javed et al., 2021).

HISTORY OF RECORDING PRECEDENTS IN BRITISH INDIA

In its early stage in the year 1813 AD precedents in the Indian Sub-continent were highlighted in the underline paragraph:

“It should be enacted by a Regulation that from a given period, the judgments of the court shall be considered as precedents binding upon itself and on the inferior courts in similar cases which may arise thereafter. This will have the effect of making the superior courts more cautious (Mittal).”

Other presidencies law reporting started in 1876 AD. The High Court decided in number of cases that lower court has to follow the decision of the High Court duly reported even if the lower court doubted its correctness. However, the Privy Council refrains itself to be bound by its own decision (Munir, 2011; Usman et al., 2021).

THE INDIAN INDEPENDENCE ACT, 1947

Two independent dominions came into existence under the 1947 Indian Independence Act, passed by the Britin Parliament to be declared Pakistan and India with effect from 15 August 1947. The Act provided that pre-independence British laws were to be extended under clause 18(3) and shall remain applicable and shall remain law of Pakistan and India. (Munir, 2011; KHAN et al., 2021).

Pakistan undertook and acquires the same laws under (1947 Adaptation of Existing Laws order) and adapted all main Acts and Ordinances under order 1949. The previous constitutions of Pakistan 1956,

1962 and interim constitution, and the current 1973 Constitution gave protections to the said laws. The Constitution of 1956 incorporated article 224(a), 1962 Constitution incorporated article 225(1) and the Constitution of 1972 (interim Constitution) incorporated article 280(1) for continuation of pre-independence laws (Munir, 2011).

Article 268(1) Of The 1973 Constitution Provides That

“Except as provided by this Article.” Constitution of the Islamic Republic of Pakistan, Article 268-1) Martial laws administrators with the continuance in force one or another form kept the required provision of Continuation of existing laws. Laws, incorporated in 1958, 1969, 1977, and 1999, contain similar provisions for the continuation of law during the Martial Law period.

CONCLUSION

The main purpose of East India Company was to obtain as much profit as they can and gave little or no attention to do justice. Charters granted by England created such a monopoly which could not be competed. Such an example is unprecedented in the history. The unfettered power and extreme wealth brought by the company made its way. The company at first did not want to acquire land. Therefore, they pay little attention to install a permanent and reliable structure to the territories. Even after acquisition of certain territories, their focus was still trade. The company did not want to interfere with native laws; however, it was inevitable, and finally English Common Law and Statutes, doctrines found its way gradually to native laws. The company did not have professional judges for the court throughout its legal history; however, with John Biggs and Dr. John St. John being an exception the company did not bring seasoned and professional judges in order to avoid confrontation with the Independence of Judiciary. Nepotism, ill-treatment, and corruption surged at every level in the company and especially in Judiciary during the advent of 18th Century.

One serious effort was made by Warren Hasting by bringing up his judicial plan of 1772, 1773, 1780 to curb with the problems of corruption and to improve the performance of Judiciary. However, after careful examination, we found that despite his extreme efforts, he did not achieve the desired results. We still find traces of judicial reforms made by the Warren Hastings in Pakistani and Indian legal systems.

The Indian war of Independence in 1857 AD was a result of ill-treatment, malpractices, and corruption made by the company. The Indian people wanted to free themselves from the clutches of the East India Company (EIC). Indian Sub-continent once called a golden sparrow by the West, were left with its wings cut off, the company have deprived, devastated, morally and socially corrupted the people.

Finally, a broken nation, looming with poverty, unskilled, uneducated, and poorly fed with no clothes was further divided. With this division, both India and Pakistan had to take the burden and legacy of the previously undigested laws. The laws which do not suit well to the Muslim Nation. Although Pakistan gave protection under their 1956, 1962, 1972, and 1973 constitutions. Half a century later, we are still amending the old-fashioned laws. Unfortunately, Pakistan is a mixture of Common law, Islamic Law fashioned and structured in federalism, making it difficult to find its way out and forward.

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