

Administrations of Legal History in British Periods

Muneer Najid Toma

College of Arts, Humanities & Social Sciences

University of Sharjah

Email: najidmuneer08@gmail.com (Author of Correspondence)

United Arab Emirates

Abstract

The Law School is home to one of the world's great programs in the study of legal history. The history of law offers indispensable insights into the character of our legal systems. Historical materials appear throughout the Law School's curriculum with specialized courses addressing topics in the history of legal systems around the world.

Keywords: Company; British; Court; Bombay.

1. Introduction

Legal history or the history of law is the study of how law has evolved and why it changed. Legal history is closely connected to the development of civilizations and is set in the wider context of social history. Among certain jurists and historians of legal process, it has been seen as the recording of the evolution of laws and the technical explanation of how these laws have evolved with the view of better understanding the origins of various legal concepts; some consider it a branch of intellectual history. Twentieth century historians have viewed legal history in a more contextualized manner more in line with the thinking of social historians. They have looked at legal institutions as complex systems of rules, players and symbols and have seen these elements interact with society to change, adapt, resist or promote certain aspects of civil society. Such legal historians have tended to analyze case histories from the parameters of social science inquiry, using statistical methods, analyzing class distinctions among litigants, petitioners and other players in various legal processes. By analyzing case outcomes, transaction costs, number of settled cases they have begun an analysis of legal institutions, practices, procedures and briefs that give us a more complex picture of law and society than the study of jurisprudence, case law and civil codes can achieve.

2. East India Company

The East India Company had the unusual distinction of ruling an entire country. Its origins were much humbler. On 31 December 1600, a group of merchants who had incorporated themselves into the East India Company were given monopoly privileges on all trade with the East Indies. The Company's ships first arrived in India, at the port of Surat, in 1608. British East India Company and informally as John Company, was an English and later British joint-stock company.

3. Founding of the Company

The British East India Company was formed to claim their share in the East Indian spice trade. The British were motivated by the immense wealth of the ships that made the trip there, and back from the East. The East India Company was granted the Royal Charter on 31 December, 1600 by Queen Elizabeth I. The charter conceded the Company monopoly of all English trade in lands washed by the Indian Ocean (from the southern African peninsula, to Indonesian islands in South East Asia). British corporations unauthorized by the company trading the sea in these areas were termed interlopers and upon identification, they were liable to forfeiture of ships and cargo. The company was owned entirely by the stockholders and managed by a governor with a board of 24 directors.

4. Early Voyages

The first voyage of the company left in February 1601, under the commandship of Sir James Lancaster, and headed for Indonesia to bring back pepper and fine spices the second voyage was commandeered by Sir Henry Middleton. The third voyage was undertaken between 1607 and 1610, with General William Keeling aboard the Red Dragon, Captain William Hawkins aboard the Hector and the Captain David Middleton directing the Consent.

5. Establishment of Foothold in India

The Company's ships first arrived in India, at the port of Surat, in 1608. In 1615, Sir Thomas Roe reached the court of the Mughal Emperor, Nuruddin Salim Jahangir (1605–1627) as the emissary of King James I, to arrange for a commercial treaty and gained for the British the right to establish a factory at Surat. A treaty was signed with the British promising the Mughal emperor "all sorts of rarities and rich goods fit for my palace" in return of his generous patronage.

6. Expansion

Trading interest soon collided with establishments from other European countries like Spain, Portugal, France and Netherlands. The British East India Company soon found itself engaged in constant conflicts over trading monopoly in India, China and South East Asia with its European counterparts.

7. Administration of Justice in Madras

The early centers of British power in India were the three presidency towns. The Madras, the Bombay and the Calcutta which were founded by the British. The year 1726 constitutes a landmark in the Indians legal history as it gave a new orientation to the judicial system in the three presidency towns. Madras was the first presidency town established by the British in India. Here the judicial system grew in three stages before 1726.

Madras

It was developed in three stages. They are:

7.1. 1639-1665

In 1639, an Englishman, Francis Day acquired a piece of land from Hindu Raja of Chandragiri, for the East India Company. It was known as Madraspatnam. The company constructed a factory on this land called FORT ST. GEORGE in 1640. This Fort was known as WHITE TOWN. While the nearby villages inhabited by local population was called BLACK TOWN.

7.1.1. Agent and Council

In the White Town, the agent and council were authorized to decide both civil and criminal cases of English people residing at Fort St. George. Judiciary was vague. So they referred the cases to England.

7.1.2. Choultry Court

The primitive and native Choultry Court functioned there. This court was presided with a native judicial officer called ADIKARI. It have not tried serious offences like murder but tried other cases only.

7.1.3. Governor and Council

By the Charter of 1661, the company was empowered to appoint Governor and Council to decide civil and criminal cases of all persons of the company. English rule was followed.

7.2. 1665 – 1686

7.2.1. High Court of Judicature

The Governor reorganized the whole judicial system in 1678. They sat twice a week and tried civil and criminal cases with the help of 12 juries. They tried appeals from the Choultry Court.

7.2.2. Choultry Court

Old Choultry Court was reconstituted. Adikari was replaced by three English Officers. They sat twice a week and tried all civil cases up to the value of 50 pagodas. Their decision was appealable to the GOVERNOR IN COUNCIL.

7.3. 1686– 1726

7.3.1. Admiralty Court

This court was established in Madras in 1686 by the Charter of 1683 headed by JUDGE ADVOCATE. It consisted of one person learned in civil law and two merchants appointed by the company. The court decided, all cases of mercantile or maritime nature, trespass, injuries and wrongs committed on high seas, forfeiture and seizure of ships or goods. This court applied the rules of equity, good conscience and the laws and customs of merchants. This court becomes the general court of the city for all practical purposes in setting all civil and criminal cases. This court functioned till 1704.

7.3.2. Mayor's Court

The Company's Charter of 1687 established a Mayor's Court at Madras. It consisted of a Mayor, twelve Aldermen and sixty or more Burgesses. The first 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 was not to exceed 120. The Mayor and three Aldermen were to be English servants

Administrations of Legal History in British Periods

of the company and others were to be from any nation. A man learned law called Recorder was attached to Mayor's Court. (Court of reward). All criminal cases with the help of jury and punished the offenders by fine or imprisonment. Appeals were allowed to the Admiralty Court. In civil matters, the Admiralty Court had decided more than the value of 3 pagodas. In criminal cases, it had decided when the punishment was to lose life or limbs. Appeals from the Mayor's Court and Admiralty Court were heard by Governor and Council. The Charter of 1726 established Mayor's Court at Madras, Bombay and Calcutta consisted of a Mayor and 9 Aldermen. Mayor and 7 Aldermen were to be English and the rest were subjects of princely Indian States friendly with Britain. The Mayor holds office for one year. The Aldermen hold office for lifelong. Every year the outgoing Mayor and Aldermen elected a new Mayor out of the Aldermen. The Mayor and Aldermen filled up the vacancy of Aldermen from among the inhabitants of the Presidency Town. The Governor in Council could dismiss the Aldermen on reasonable ground. This court tried only civil matters. Sheriff was appointed by Governor and Council. It is his duty to produce the defendant in the court if a written complaint was filed by an aggrieved party. He executed judgments as in English Law. Governor in Council heard appeals from the Mayor's Courts up to the value of 1000 pagodas.

7.3.3. Privy Council

If the value of the suit was more than 1000 pagodas a second appeal was permitted to this court.

8. Administration of Justice in Presidencies

Justice of Peace

The Governor and 5 senior members of the Council would have criminal jurisdiction and would be justice of peace.

9. Administration of Justice in Bombay

It was under the control of the Portuguese from 1534 onwards. Portuguese King gave it as a dowry to Charles II of England when he married the former's sister in 1661. King leased it to the company. The Judicial Administration developed in three stages.

They are:

9.1. 1668 – 1683

9.1.1. Judicial Reforms of 1670

Gerald Aungier reorganized the old judicial setup of Bombay and all laws were classified into six sections. They are: related to the freedom of worship and religious beliefs impartial administration of justice establishment of a court of Judicature to decide all criminal cases and for the appointment of justice of peace

and order, to arrest criminals registration of transactions concerning sale of land and houses contained miscellaneous provisions dealt with penalties for different crimes military discipline and prevention of disorder and revolt. Bombay was divided into two divisions. Each division had a court of five Judges. The customs officer of each division, an Englishman presided this court.

9.1.2. Quorum of this Court

Three Judges they sat once a week and tried petty civil and criminal cases up to the value of two xerophins (A Portuguese coin equal to nearly Rs. 7.50).

9.1.3. New Judicial Plan of 1672

All cases were tried according to English Law. Central Court of Judicature was established and presided by a single Judge – sat once a week and tried all civil, criminal and testamentary cases. Justice of Peace – Bombay was divided into four divisions. Each headed by an Englishman called Justice of Peace. He acted as committing magistrate, recorded the necessary proceedings and sent the accused to the Court of Judicature for trial. The appellate authority was Deputy Governor and Council. Court of Conscience was established. It sat once a week. It decided petty cases summarily without charging fees from the litigants.

1684 – 1690: Admiralty Court was established which was similar to that of Madras.

9.2. 1718 – 1726

9.2.1. Court of Judicature

It consisted of a Chief Justice and nine Judges. The Chief Justice and five Judges were to be English. Others were to be of any other nation. The quorum was three English Judges. This court sat once a week and tried all civil, criminal, testamentary cases as per law, equity, good conscience and rules and ordinance of the company from time to time.

9.2.2. Working of the court

The court sat once a week and decided all sorts of cases. It was at once a civil, criminal, military and prerogative court. It was not bound by any technical rules. There were no lawyers to argue the case. The major work of the court lay in the area of criminal justice. In some cases, it awarded imprisonment “during pleasure” which meant an indefinite period of incarceration.

10. Administration of Justice in Calcutta

In 1690, the English Merchants founded a settlement at Sutanati, a site where future Calcutta developed. In 1698, they secured Zamindari rights over Sutanati, Calcutta and Gobindpur. The company established Fort

William at Calcutta in 1700. Calcutta became a Presidency with the Governor and Council to manage its affairs. A member of the Council was appointed as Collector to act as Zamindar on behalf of the company in 1700.

10.1. Faujdari Court

The Collector decided criminal cases of the natives of three villages – Sutanati, Gobindpur and Calcutta. The criminals were punished by whipping, imposing fines, imprisonment, banishment or work on roads. Capital punishment was given only after confirmation by the Governor in Council.

11. Justice administered by Local Zamindars

Each Zamindar (Collectors) held a cutcherry or Adalat and decided all civil cases according to the customs of the country. Appeals from this Court lay to the Nawab's Court at Murshidabad. Death sentences had to be confirmed by the Nawab who is a native governor during the time of the Mughal Empire.

12. Lord Cornwallis

Lord Cornwallis succeeded Warren Hastings as the Governor General of India. He put forward certain conditions before The Crown before accepting the post of Governor-General. They were:

- a) The office of Governor General and the commander-in-chief would be united under one person i.e. the Governor General.
- b) The Governor General-in-council will have veto over the council on all decisions made concerning administration and military.
- c) His aims as Governor General were to:
- d) Uproot corruption from the present judiciary and administration system.
- e) Tackle the problem of land revenue.
- f) Develop a proper system of administration of justice.

Lord Cornwallis was Governor General from the year 1786 to 1793 and his most noted work was in the field of criminal judicature. He introduced changes in the judicial system in three years – 1787, 1790 and 1793. These were known as Judicial Plan of 1787, 1790 and 1793 respectively.

13. Judicial Plan of 1787

13.1. Reorganization of Districts

The number of districts in Calcutta were reduced from 36 to 23.

13.2. Appointment of Collector

A collector was appointed in each district. He was an Englishman. Collector was assigned with two tasks – to collect revenue and to decide cases arising out of revenue matter.

He also presided over the mofussil diwani adalat (district level civil court) as a judge. In mofussil diwani adalat, he would decide civil cases and cases of zamindars. Appeals from the mofussil diwani adalat lay to the Sadr Diwani Adalat when the matters exceeded Rs.1000/-. The Sadr Diwani Adalat was presided was the Governor General.

He also presided over the Magistrate's Court as a Magistrate, where he was empowered to try and punish cases of petty crimes and offence up to Rs. 200. Offences having value of more than Rs.200 would be sent to the Sadr Nizamat Adalat by the Magistrate.

13.3. Establishment of Mal Adalats

- a) Mal Adalats were revenue courts in each district which exclusively dealt with revenue matters.
- b) This court was presided by the Collector who decided cases related to revenue as he was an in charge of revenue matters.
- c) Appeal from the Mal adalat lay to the Board of Revenue in Calcutta and then to the Governor General-in-council.

13.4. Establishment of Registrar Courts

An assistant officer of the collector was appointed who was known as the Registrar. He was appointed in each district who presided over the Registrar's court which decided civil cases upto the value of Rs.200/-

But the decree passed by the Registrar was not final until it was signed by the Mofussil Diwani Adalat i.e. the Collector.

14. Judicial Plan of 1793

14.1. Separation of Executive and the Judiciary

The powers vested in the collector were administrative and judicial as he was also in charge of collection of revenue and for deciding cases arising out of revenue matter. Now, the collector was only responsible for the collection of revenue.

14.2. Mal Adalats were abolished

Revenue courts which exclusively tried cases arising out of revenue matters and presided by the Collector as Judge, was now abolished.

All powers and pending suits of the Revenue courts were now transferred to Mofussil Diwani Adalats and thus not tried by the collector.

14.3. Executive Subjected Judicial Control

The Governor General and his council were now subject to judicial control. Any wrong acts committed by them while carrying out their functions and outside of it could be heard or tried and punished by the Diwani Adalats. Suits against the Government by private individuals could be brought forward and were tried by the Diwani Courts.

14.4. Indian natives had to sign a bond with the British Subjects agreeing to go to court

British could recover claims from Indian natives and vice versa by signing a bond with each other agreeing to go to court.

14.5. Establishment of Provincial Courts of Appeal at the Four Divisions

Earlier the appeal from the Mofussil Diwani Adalats lay to the Sadr Diwani Adalat situated at Calcutta. But this process for time consuming and expensive so provincial courts of appeal were established at each division i.e. Patna, Calcutta Murshidabad and Dacca. Appeals from the Mofussil Adalat now lay to the provincial court of appeal which were to be heard within three months of filing them. These courts were presided by three covenant English servants of the company. Quorum was of two servants. It was an open court and could try revenue, civil and criminal cases. They could also try cases referred to them by the Sadr Diwani Adalats.

Cases valued more than Rs. 5000 were referred to the King-in-council.

14.6. Native Officers Given Important Posts

Native officers were appointed by the Governor General-in-council. Native Officers were made Munsiffs of the Munsiff courts at district level. This court could try cases upto Rs.50. Zamindars, Tehsildars, etc appointed as Munsiffs.

Personal Laws of Hindus and Muslims were applicable in cases relating to marriage, inheritance, caste, religious usages and institutions. These personal laws were interpreted by the native officers who were appointed to assist the court to expound the personal law.

15. Sadr Diwani Adalat

It was highest court of appeal in India. It was presided over by the Governor General and the Council who were the Judges of the Sadr Diwani Adalat. Their function was to supervise the lower courts and to hear appeals from the provincial courts of appeal when the sum of the matter of the case was more than Rs.1000.

Further an appeal from the Sadr Diwani Adalat lay to the King-in-council, when the sum of the matter of the case was more than Rs.5000.

15.1. Reforms in criminal judiciary

The court of circuit was merged with the provincial court of appeal. The power of the collector as a magistrate was taken away and was vested in the judges of the diwani adalats instead.

15.2. Uniform pattern of Regulations

Until now, any new regulation that was issued did not follow a uniform pattern. This was changed by making it a rule that any new regulation that would be made would have a title to explain the nature of the subject matter and contain a preamble which would state the purpose for enacting the regulation.

15.3. Reforms in Muslim Personal Law

The Sadr Nizamat Adalat was directed to follow the Muslim personal law to try and punish criminal cases, but with some modifications. The relatives of murder victims did not have a provision to pardon the murderer. The cruel and inhuman punishments such as cutting off limbs of the offender were replaced with punishment of imprisonment and hard labor for 14 years.

15.4. Court Fees abolished

Court fees which was imposed in the judicial plan of 1787 was abolished. The court fee was abolished so that the people could easily reach to the court for securing justice.

15.5. Legal Profession recognized for the first time in India

The legal profession was recognized in India for the first time. The pleaders of the case had to have prior legal knowledge to be eligible to be a pleader of the court.

16. Conclusion

Thus we can discuss about some parts of legal history. The Law School hosts an exceptional range of curricular offerings in legal history and a special forum that brings legal history scholars from around the world to Yale to present on cutting-edge work in the field in a collegial setting suited to searching dialogue and debate.

References

1. Farah, Paolo (August 2006). "Five Years of China WTO Membership. EU and US Perspectives about China's Compliance with Transparency Commitments and the Transitional Review Mechanism". *Legal Issues of Economic Integration*. 33 (3): 263–304. SSRN 916768.
2. Barretto, Vicente (2006). *Dicionário de Filosofia do Direito*. Unisinos Editora. ISBN 85-7431-266-5. Glenn, H. Patrick (2000). *Legal Traditions of the World*. Oxford University Press. ISBN 0-19-876575-4.
3. Sadakat Kadri, *The Trial: A History from Socrates to O.J. Simpson*, HarperCollins 2005. ISBN 0-00-711121-5
4. Kelly, J.M. (1992). *A Short History of Western Legal Theory*. Oxford University Press. ISBN 0-19-876244-5.
5. Gordley, James R.; von Mehren; Arthur Taylor (2006). *An Introduction to the Comparative Study of Private Law*. ISBN 978-0-521-68185-8.
6. Otto, Martin (2011). "Law". *European History Online*. Retrieved November 11, 2011.
7. <https://law.yale.edu/studying-law-yale/areas-interest/legal-history>