

**JURISPRUDENCE OF ADALATS IN INDIAN SUBCONTINENT AND
INDEPENDENCE OF JUDGES IN LIGHT OF OOMAN DUTT v.
KUNHIA SINGH &
GOVERNMENT v. PURTAB CASES**

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Abstract

History is the compilation of the past episodes that help in the rectification of the mistakes committed in the past and refinement of the current events of today and of the future. Every act of present and future has its traces in history. This compilation includes everything from human evolution to his actions. With each individual beginning to interact, they started involving in different work together with a common purpose and objective. This leads to the formation of the society. In the course of work and with changing times, people started having their own perspective and view-point in matters which headed towards the conflict between people. Then originated the requirement to settle conflicts and need for someone who could settle the clashes between the parties. Here comes the idea to approach an unbiased third-party member who could act as a Judge to the parties. Soon this became an integral part of society and courts were officially set to take up cases of conflicts and it became the Judge's responsibility to resolve them. Judges when started acting as per codified order, there were instances reported where Judges were expected to take decisions by going out of their discretion because of new kinds of cases coming in. Gradually it became the convention and it was left upon the Judges to decide on certain acts and they could act independently. To give these judges a prominent position in the society and their profession a respectable recognition Adalats which are presently known as Courts, were established. These courts were established at a small scale but the success rate of justice and smoothness in the judicial system flourished it further. This research paper extensively studies the Jurisprudence of Adalats in India and independence of Judges as a plenary power from the sight of the case of OomanDutt v. Kunhia Singh and Government v. Purbtab cases. The Researcher through this academic paper attempts to compile the important judicial reforms that were engaged in setting up an established Unified Judicial System in India and how one court evolved after the other. Through this paper it is identified that Independence of Judges is not one day process and it involves years to overcome the defects and present a perfect system to achieve an objective.

History is partial science that lacks any distinctive field unlike sociology which is the science of society¹ or political science which is the science of polity. History is the subject that provides historical perspective and that historical perspective helps in enlightening the actions of the present.² It studies the action with the attitude of improving the societal context under certain conventions that governs the society. The Indian History is divided into three parts – the ancient, medieval and modern history. Indian modern history refers to the colonial subjugation of the country in the terms of robust process of ideological pervasion and osmotic take-over.³ The present Indian Legal system is an influence of the Legal System introduced during the British colonial rule in India and the Judicial Administration structure prevalent during the eighteenth century under the emerging British power on the Indian sub-continent.⁴ Judiciary is one such separate body that checks social harmony as coded in the law of that nation.⁵

The Judiciary at that time was single handily controlled by the Collector (the executive authority) who was responsible for administering the civil as well as criminal justice along with the task of collecting revenue. It was done as per the Warren Hasting's plan of 1772 which is known as Judicial Reforms Plan of 1772 that laid the foundation of concrete Adalat System in India.⁶ Warren Hasting was the first governor general of India who wanted to formulate the Hindu polity by deriving universally unified regulative system from the Brahmanic code of Law to rule India by keeping Indian principles as the basis.⁷ Personal laws were applied for solving the cases under the assistance of the Pandits and Qazis for the Hindu and Muslim Laws respectively, different courts known as Adalats were setup where their jurisdiction was decided, depending on the sum of money the cases involved in.⁸ India previously had no uniform Judicial System where the cases can be heard in hierarchy. During the Mughal Empire, the religious heads of the respective religion decided upon the matters and the king was the final head of the justice. With the rule of Mughal dynasty fading away from the Indian subcontinent during 18th century when very fewer areas were under their

¹ J.W. Swain, *Theory of History*, 20, J. PHIL., 281, 281-283 (1923).

² Barbara S. Lawrence, *Historical Perspective: Using the Past to Study the Present*, 9, ACAD. MGMT REV, 307, 307 (1984).

³ B. SurendraRao, *The 'Modern' in Modern Indian History*, 29, SOC. SCI., 3, 4 (2001).

⁴ Jon E Wilson, *Early Colonial India Beyond Empire*, 50, HIST. J., 951, 957 (2007).

⁵ M. P. Singh, *Securing the Independence of the Judiciary- The Indian Experience*, 10:2, IND. INT'L & COMP. L.REV., 245, 245-246 (2000).

⁶ H.V. SREENIVASA MURTHY & DR. V.S. ELIZABETH, *HISTORY OF INDIA PART – II*, 151, EBC Publishing (P) Ltd., Lucknow.

⁷ Gloria Goodwin Raheja, *India: Caste, Kingship, and Dominance Reconsidered*, 17, ANN. REV. ANTHROPOLOGY, 497, 498 (1988).

⁸ *Supra note 6* at 152.

control and the British East India Company started taking over⁹, the subcontinent first experienced established courts that arose out of the necessity in the disputes related to trade. To regulate the disputes in trade, the Royal Charter Act of 1726 was introduced by George I, on the demand from East India Company so that a proper and competent authority is in power for delivering speedy justice in regard to Civil Cases.¹⁰

This Charter Act also replaced the old practice of using reasonableness to decide upon cases with placement of legal experts in Admiralty Court and Mayor's Court.¹¹ The Admiralty Courts had its core jurisdiction over the global trade through waterways and deal with piracy in the maritime region.¹² The East India Company firstly acquired Madras from Raja of Madras, Bengal was extracted from the local rulers and Bombay had come in as a part of the dowry from the Portuguese. The Charter Act of 1726 made an attempt to bring in a uniform legal system to these provinces in India under the demands of East India Company traders. The Mayor's Court also known as Court of Records was presided over by the Mayor and nine Aldermen as the bench of judges¹³. Alderman assisted the Mayor to carry out the judicial function effectively. These courts were responsible for trying civil suits¹⁴ of the previously acquired towns or any of the factories subject. The Mayor's court was not free from the influence of the executives and the Aldermen. Hence there was lack of Independence in the then judicial system. Judiciary was not separately recognised as an organ in India but it was the basic of the Uniform judicial machinery for justice that was ensured at all the presidencies of Madras, Bombay and Calcutta. With complete disintegration of the Mughal Empire, in 1750, a second phase of Adalat system in a more improvised form was introduced at central level in the city of Calcutta in Bengal province.

Robert Clive was the first Governor of the Bengal Presidency. He administered the entire machinery of the province between the time period of 1750 and 1772. He introduced the Policy of Diarchy which is also known by the name of Dual Government. Under this policy an office of Nawab was established and the appointed person would deal with the Diwan (Revenue) as well as the Nizam (Administration). This was done with the intention of taking

⁹ L. S. Sutherland, *The East India Company in Eighteenth- Century Politics*, 17, THE ECON. HIS.REV., 15, 19 (1947).

¹⁰ Atul Chandra Patra, Landmarks in the Constitutional History of India, 5, J. INDIAN L. INST., 81, 93 (1963).

¹¹ King George I, Charter of 1726.

¹² Shyam D. Nandan, *Admiralty Jurisdiction in India: Pre and Post Elizabeth*, 49, J. INDIAN L. INST., 81, 81 (2007).

¹³ *Supra note 10*.

¹⁴ C. J. B. Larby, *The Centenary of the High Court of Calcutta, Bombay and Madras*, 12, INT'L COMP. L. Q., 1044, 1045 (1963).

over of the Bengal Administration by the method of camouflage. But the System was not a success because of the overburdening of a single authority by various roles and responsibility. The Police and the judicial powers of the Bengal province were also vested with the Nawab himself. This was because all the limbs of governance were not given distinctive recognition and they had the influence of one upon the other. This led to the lack of check and balance and increase of corruption in the administration. To restore the entire governance back to position Warren Hasting succeeded Clive with his Judicial Reforms of 1772. Under this reform, the office of collector was responsible for collecting revenue and adjudicating over civil as well as criminal cases. Earlier where the Nawab was over burdened with the administrative, judicial and revenue departments, Hasting's plan of 1772 overcame this drawback and appointed a separate office for administration. This reduced the influence of executive in the judicial precedents. The courts established under this plan had a fixed judge's bench at each level of court. A Mofussil Diwani Adalat was established in each district where the collector was assisted by the Qazis and Pandits in matters of Muslims and Hindus respectively. The appeals of this court were heard in Sadar Diwani Adalat where the bench comprised of the Governor and his council. This was in regard with the civil justice. The lower court of criminal justice was the Mofussil Faujdari Adalat which had the same composition as of Mofussil Diwani Adalat and its appeals were heard in Sadar Nizamat Adalat¹⁵ which was headed by the Daroga as the chief officer appointed by the Nawab himself and in the course of discharging his duties, he was assisted by three other Important officials – Qazi chief, chief mufti and three Maulvies. All these officials were involved in the revenue administration which again influences the working of the smooth and impartial judiciary as these officials were unable to work efficiently at both the aspect at one single time. To cover the defects of the previous plan Hasting brought in a new plan in 1774. Although this plan was an improvised version of 1772 reforms with minor changes in the hierarchy of appeal in the court of justice, still there were no satisfactory results as the new office of Provincial Council appointed took charge of the revenues as well as to decide upon the appeals for the lower courts.

In the 1780 plan of Hasting, a final need of the separation of executive and Judiciary was acknowledged and was called upon accordingly. The introduction of the Provincial Court of Diwani Adalat was assigned to take up cases related to revenue only and settle the disputes. It

¹⁵ C. J. B. Larby, *The Centenary of the High Court of Calcutta, Bombay and Madras*, 12 INT'L COMP. L. Q., 1044, 1045 (1963).

was a welcoming change in the Indian history where for the first time Judiciary was given importance and distinctive appreciation. All measures were taken in terms of honorary basis to deliver impartial justice but the defect of lack of Covenant officers was identified. This drawback was modified by Sir Elijah Impey¹⁶ and he clearly stated that personal laws of the native place shall be dealt by the native people themselves and the interference of any Englishman was forbidden. Gradually, number of courts was increased and maintenance of the court proceedings and cases taken up on daily basis was mandated for all courts. He also compiled the Civil Procedure Code for the first time in the country. His appointment as the only judge of the Sadar Diwani Adalat in 1780 gave the existing judicial reforms a better face.

Judicial Reforms of Lord Cornwallis and William Bentinck from 1786-1793 ensured the inclusion of covenanted servants with proper training and translation of the indigenous laws to English. During this time the Law commission was setup which codified the Indian Laws and it is a remarkable step towards improvement of the judicial administration and is followed till date. This separate representation of Judiciary was appreciated. Under Cornwallis' Judicial Reform, authority of Nawab in criminal cases was abolished and he shifted **Sadar Nizamat Adalat** to Calcutta and put it under the supervision of **Governor-General and the members of Council** who were assisted by **Chief Qazi and Chief Mufti**. The Circuit Court that moved and visited each district twice a year was presided over by two of the company servants, Qazi, Mufti and Hindu pandits. Slowly with Cornwallis' plan of 1793, Judiciary got control over the executives where the collectors and executive officers were responsible to the Diwani Adalat for their actions. Judiciary began receiving supremacy. Governmental Liabilities was ensured where person can file suit for damages against the government in civil cases before Diwani Adalat like one can do against private person. To simplify the working of the Judges, the English laws were codified to the regulations and indigenous laws of India were also translated. Also earlier cases against English subjects were taken only by the Supreme Court in Calcutta but at this point of time, it was ensured that Diwani Adalat presided over by any native person can try English man whose cases have to be within ten miles of the Calcutta city. Independence of the Judges of these courts was progressing. Previously the Judges were laden with other administrative task but now they were only responsible for judicial actions. Also the independency of the Judges was a convivial concept that came along with Cornwallis' reforms. Each bench of Judges was well

¹⁶ C. J. B. Larby, *The Centenary of the High Court of Calcutta*, Bombay and Madras, 12, INT'L COMP. L. Q., 1044, 1046 (1963).

independent to take and try cases under their jurisdiction. He also reorganised the hierarchy of all the Courts. The lowest court in the hierarchy was the Ameen's court that was only allowed to try cases referred by the Diwani Adalat. Munsif's Court was the second lowest court where Tehsildar and Zamindar were appointed as Munsif. These were only the native people. Both Ameen's and Munsif's court was newly introduced in 1793. Above them was the Registrar Court consisting of the company servants can deal with cases referred by the Diwani Adalat up to the sum of ₹2000. This was also first introduced in 1793. Registrar Court was headed by the Diwani Adalat and the appeal against whom was heard by the Provincial Courts of Appeal. Its jurisdiction was limited to civil cases directed by the government or by the Sadar Diwani Adalat. The highest of all courts in the hierarchy was the Sadar Diwani Adalat that consisted of Governor General and the council members. They could hear cases against the Provincial Courts of Appeal whose amount exceeded ₹1000. Also it had original jurisdiction over the cases not entertained in Provincial Courts of Appeal and also had the power to decide charges of corruption and incompetency of Judges in Provincial Courts. This was evident of the fact that judicial activity was the only concern that the judges had to look into and they were independent from the liability in any other part of governance. The sole duty of the Judges was to try cases and settle disputes.

Now after having slight independence from the duties of the other limbs of governance, independence of the judges within the court was taken care of. To constitute a court presence of two judges was mandatory and if upon a case both the Judges differed in opinion on a case, they postponed the hearing to the next date where a third judge could attend.¹⁷ Also the court was supposed to administrate the law as given in the regulations but if any such rule that was not specified in the codified laws, the Judges were expected to act as per the justice, equity and good conscience.¹⁸ Such instance where judges mostly had to act independently was in the matters of religious engagements. It was not possible to predict all situations that would come up in future and codify them into laws and regulations. The same was observed in the case of *Ooman Dutt v. Kunhia Singh*.¹⁹

This was the case of Bengal province that was in relation to the child inheritance. The plaintiff was follower of Islamic religion before being an adopted child of a Hindu family. The issue that was raised by the plaintiff was regarding the share of property he is entitled to

¹⁷ ORBY MOOTHAM, THE EAST INDIA COMPANY'S SADAR COURTS 1801-1834, 20, INDIAN INST L., New Delhi.

¹⁸ *Id* at 21.

¹⁹ *OomanDutt v. Kunhia Singh* (1822), 3 S.D.A.R. 144.

which he wanted to get sorted from the Sadar Diwani Adalat. He filed a case in 1809 in the Zila court where the judge dismissed his plea. Following which the appeal was made in the provincial court in 1816 against the judgement of Zila court. Here also the appeal was dismissed. In the same year the plaintiff moved on to the Sadar Diwani Adalat under the special appeal where in 1820 it was admitted and came up for hearing before the third Judge. The validity in the form of the adoption was questioned by the three all English men judges bench and the same was referred to the court's pundits as it was a case of Hindu family. After a month the Pandits reverted back to the bench to check whether Kritima form of adoption was implemented in this case or not. In this form of adoption, the consent of the child has to be given during the lifetime of the father who is adopting the child. On this basis the case was directed to the trial Court to take further evidence of local custom. At this stage of proceeding it was four judge benches which consisted of the previous three judges and one pandit. As per the Mithila Law prevalent in the Bengal province in December 1821, the judges upheld the legality of adoption of the plaintiff but the application of inheriting the property was finally dismissed and stated invalid.

In another case of *Govt. v. Purtab*²⁰, belonging to the same time frame in the year of 1816 where in the course of a robbery four villagers were murdered. They were asked to surrender by the Nizamat Adalat under Regulation 9 of 1808, within a fixed timespan but the defendants did not appear. Years later in 1821 when this timespan expired they were arrested and tried in Circuit court for murder with sentence to death. As per regulation 9 it was recommended that the offenders could only be tried for not obeying the orders of the court i.e. for Contumacy only if he were clear of all previous charges for which he was proclaimed. But the chief judge directed the defendants to be put on trial for contumacy and not having complied with the standings of proclamation. Out of the five judges, only two of them agreed that the original offence was outside the ambit of the said regulation. The chief judge held the conviction legal while the fifth judge held that the charge as proved but gave no opinion on legality of the proclamation. The fourth judge held the proclamation legal and the conviction proper. Courtney smith managed to show the recorded minutes to the chief Judge before the charge was prepared for signature. However the chief Judge declared the proclamation to be legal but the fifth judge thought it to be illegal and to this the second judge re-joined. Now it could be pointed out that the three out of five majorities was present where the contumacy trial must be quashed. The chief and the fourth judge however adhered to their opinions and

²⁰*Govt. v. Purtab and ors.*, 1832, 2 N.A.R. 248.

Courtney Smith recorded yet a further minute remarking that as all the judges had now expressed their opinions on the legality of the proclamation so no further delay shall be entertained in issuing a sentence. The prisoners were accordingly acquitted in the contumacy charge because the court proceeded to consider the conviction on the murder charge before it. The Judge Smith was with the opinion that a new trial on that charge was unnecessary and this was supported by the entire bench. Conviction was therefore affirmed but the death sentence was replaced by the imprisonment for lifetime.

To have independence of Judges, it is very important to have independence of Judiciary to be recognised as a separate organ of governance. In the Indian subcontinent, earlier the judiciary was not identified distinctively but with rising population, increased the number of disputes. This resulted in the introduction of different judicial reforms at hit and trial method. Defect in one reform led the requirement of a more improvised new reform policy. Certainly after a long span of time, it identified judiciary as a distinctive institution was acknowledged. This sowed the seed of Independence of Judiciary. The Judiciary coming up as an independent fragment was an entire process of trials and failures in the judicial reforms. The underlying reason of the independence of the judiciary is that the judges need to be capable of determining a dispute in front of them as per the law, uninfluenced by any other factor. For that cause, the independence of the Judiciary is the Independence of each and every Judges.²¹ It nearly took an entire century for the proper establishment of Adalat System to the securing the independence of the judges to try cases in a sovereign manner. In the case of OomanDutt v. Kunhia Singh and Government v. Purtab, it is seen that at that point of time the Judges had the liberty to decide upon the cases without any undue influence of the executive or the society. The judges are independent to present their point of view and give a dissenting opinion on matters they don't agree upon.

²¹ M. P. Singh, *Securing the Independence of the Judiciary- The Indian Experience*, 10, IND. INT'L & COMP. L. REV, 245, 246 (2000).