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A Shift from Tradition to Modernity: The Transformation of India's Traditional Judiciary under the British Rule in the Subcontinent

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ABSTRACT

This research paper analyzes the evolution and transformation of India's traditional judicial system into a modern legal framework during British rule. It explores the modifications in the established judiciary's structure and procedure, tracing the shift from local *panchayats* to the contemporary court hierarchy and from the customary laws to the Indian Penal Code. The study examines the historical background, emphasizing how the British pursued to strengthen their control in India by centralizing judicial authority through significant reforms. This paper highlights the framework and essential characteristics of native judicial systems, such as the Hindu period, the Delhi Sultanate, and the Mughals, which addressed local issues under customary laws. It also details the initial British endeavors to govern and codify laws, establish district courts, and increasingly implement British legal principles, such as English Common Law and statutory regulations. It will conclude by reflecting on the legacy of these transformations in today's Indian legal systems and their continued application in modern legal discussions.

Key Words: Traditional Judiciary, Modern Legal Framework, English Common Law, British Rule, Structural Change

Introduction

India had the world's oldest legal system, originating from the Vedic period. It was deeply rooted in its cultural and religious traditions, as Hindu law was derived from Dharma Shastra, and

Islamic laws were based on *Shariah*. The system of justice in Hindu and Islamic traditions in the subcontinent was entangled with religious and moral values, and thus, justice administration was considered a spiritual and moral obligation, and it primarily revolved around the duties of the citizen instead of their rights. (Tripathi, 2018) Panchayat, the local village assembly, *Qazis*, and *Pandits* administered the Judicial system of ancient and Medieval India. At the apex, the king or raja had the central position. Customary laws and traditions governed civil matters, and criminal disputes were resolved through religious laws. (Ahmad, 1978) Notwithstanding, after the arrival of the British Colonial Government, systematic efforts were made to replace the traditional judicial system and primitive institutions with a modern judicial system. As a result, the Indian legal system gradually transformed into a modern English-style legal framework still operating in India and Pakistan.

Traditional Judicial System of India

The traditional judicial system was considered the Hindu and Muslim Judicial systems before the arrival of British Colonial power in the subcontinent.

The Hindu Judicial System: The Hindu legal system was based on laws derived from religious texts such as *Dharma Shastra* and *Manusmriti*. Local rulers and kingdoms developed their judicial systems, establishing a hierarchy of courts to settle disputes according to customary laws. In ancient Hindu society, laws primarily stemmed from religious texts alongside local customs, traditions, and practices that directed civil and criminal adjudication. The Raja was considered the source of all justice, presiding over the highest court known as the Raja's Court, while the village Assembly, called the panchayat, served as the lowest court. (Bhat, Bhatia, Bobde & et al, 2016). Hindu Law, which was unwritten, is based on four fundamental pillars. In the ancient judicial system, the King was not an independent authority. He had to follow the basic principles of Dharma when delivering justice. (Bhat, Bhatia, Bobde & et al, 2016).

Muslim Judicial System: The Muslim judicial system was primarily based on *Shariah*. The primary sources of *Shariah* are the *Quran*, *Sunnah*, and *Hadith*. The latter two are the practices and traditions of the Prophet(PBUH), which are considered to be the interpretation of the *Quran*. (Tripathi, 2018)

The other sources are *Ijma*- the consensus of learned men in the *Quran*, and *Qiyas*-analogical reasoning to the teachings of the Prophet(PBUH). Due to the progression of society, four new schools of thought emerged, known as *Hanafi*, the *Maliki*, the *Shafi*, and the *Hanbali* school. These schools of knowledge had expressively influenced the Muslim judicial system. (Hussain, 2009) The king occupied a key position in the medieval judicial administration besides the general administration. With the advent of Islam in the Subcontinent, Muslim Rule was established, leading the Sultans of Delhi to implement the Muslim judicial system in India. (Ahmad, 1978) The Hindu and Muslim judicial systems shared similarities; it can be said that Muslim rulers integrated the local judicial framework with minor adjustments. The King served as the head of all judicial, executive, and legislative powers, presiding over the highest court of the sultanate. The medieval judicial structure was organized hierarchically, with the King's court at the top, having appellate jurisdiction. Below it was the provincial Governor's court, while the Panchayat at the lowest level dealt with minor local and criminal disputes. (Ahmad, 1978) Islamic law prevailed as the law of the land, with the primary sources rooted in the Quran and the Sunnah of the Prophet (PBUH). The Sultans of Delhi followed the *Hanafi* School as the legal system. Criminal matters were adjudicated according to *Shariah*, whereas personal laws and local customs and traditions of both Hindus and Muslims regulated civil issues. (Ahmad, 1978)

Local customs gained legal authority and were observed in specific civil matters. The Sultans of Delhi, such as Feroz Shah Tughliq, Muhammad Shah Tughliq, and Nasir Uddin Mahmud, were pivotal in dispensing justice and implementing reforms within the judicial system. During the Sultanate period in Delhi, the court hierarchy featured the Sultan's court at the top as the highest appellate authority, followed by the central *Qazi* court overseen by the *Qazi ul Qazat*. (Tripathi, 2018)

A distinct court known as *Diwan e Muzalim* was formed to manage criminal cases. *Diwan e Risalat* was established for civil cases, serving as the highest court of appeal led by *Sadar e Jehan*. (Tripathi, 2018)

Additionally, courts were established at the provincial, district, tehsil, and *Parganah* levels to ensure justice was accessible to the public doorsteps. Administrative and executive officials, including the *Subahadar* (Governor), *Faujdar*, *Shiqdar*, and *Kotwal*, were given judicial

authority, managing their courts similarly to the Governor's court at the provincial level. (Ahmad, 1978) Additionally, a distinct Revenue system was established in the district under the supervision of the *Amil*, referred to as the *Amil* court, which handled land revenue disputes and directed appeals to the *Diwan e Subah*, the highest revenue court within the province. The *Panchayat*, a village assembly based on ancient Hindu traditions, was the lowest judicial unit, addressing local civil matters and disputes through arbitration. (Ahmad, 1978)

After the *Salateen e Delhi* Rule, the Mughal Sultanate was established in the Subcontinent in 1526 when Zahir Uddin Babar defeated Ibrahim Lodhi, the last Sultan of Delhi, thereby founding Mughal Rule in India. The Mughal Rule became a mighty empire, emerging as the most potent territorial governance. The Law Department stood out as a key administrative body in this era. During the Sultanate period, the department of law was called “ *Mehmakah e Qaza* ” whereas, under the Mughal rule, it was renamed “ *Mahakama e Adalat* ”. (Tripathi, 2018) The Emperor served as the supreme judge, overseeing the Royal Court, which acted as the highest court of appeal. Typically, he convened the court weekly on Wednesdays in his *Diwan e Khas* (private hall). (Sarkar, 1935)

Mughal Emperors Akbar and Jahangir implemented significant reforms in the judicial system. Akbar established a uniform citizenship and legal system for all empire citizens. Jahangir instituted a justice chain outside his palace to speedily address his subjects' grievances. Shah Jahan set up a standardized appeals process, while Aurangzeb Alamgir, aided by his key theologians, compiled a thorough code of Muslim Law known as the ‘*Fatawa e Alamgiri*.’ (Tripathi, 2018) The Mughal era also saw the formation of a structured court hierarchy, reflecting the judicial framework of the *Salateen e Delhi* period. The Mughal emperors reorganized the entire empire similarly to the Sultanate of Delhi. They adopted Sher Shah Suri's political framework to ensure effective justice administration across all levels, from central governance to subdivisions and villages. Courts were set up to address both civil and criminal matters. At the top of this hierarchy was the Emperor, who held significant discretionary powers in matters of justice and extensive executive and legislative authority. (Saran, 1988)

At the top was the Royal Court, which stood as the highest appellate court at the center and had the original jurisdiction to trial all civil and criminal cases. Next was the Chief Court, presided

over by the Chief Justice (*Qazi ui Qazat*). (Saran, 1988) This court was the second highest in the empire, with the Chief Justice playing a crucial role in judicial and political affairs. Additionally, separate revenue courts were set up in all administrative units to address land revenue issues. (Saran, 1988) The *Adalat e Nazim e Subah* was the highest provincial court during the Mughal period. The Nazim, or Governor, represented the Emperor at this level and possessed identical discretionary powers over judicial and executive affairs. In addition to the knowledgeable Muslim *Qazis* and Hindu Pundits, the Executive officers also managed their courts: The *Faujdari Adalat*, *Kotwali Adalat*, and *Amalguzari Kachehri*. (Ahmad, 1978) They held specific extra judicial responsibilities alongside their administrative roles. Here, there was a centralization of powers and, secondly, no concept of separation of jurisdiction between the executive and judicial authorities. The executive generally conducted the court proceedings and dispensed justice during the traditional justice system.

During Muslim rule, Islamic procedural codes were applied to deliver justice, which were generally derived from two primary sources: *Fiqah e Firoz Shahi* and *Fatawa e Alamgiri*. The *Salateen e Delhi* and Mughal Rulers adopted the Islamic penal code, and penalties like *Hadd*, *Tazir*, *Qasis*, and *Diyat* were applied for certain offenses. (Sarkar, 1935)

Establishment of East India Company

In 1600, during the reign of Mughal Emperor Jahangir, the English entered the Subcontinent for trade. Before the English, other European nations, such as the French, Dutch, and Portuguese, had already established trade relations with the subcontinent. The Portuguese were the pioneers who discovered the sea routes to India in 1498 and established their robust existence there. In 1600, the English traders sought permission from the British Queen Elizabeth I and, through the Charter of 1600, set up the East India Company in the Subcontinent to form trade relations with the East Indies for fifteen years. It was also called "John's Company." Initially, it was a joint stock company; however, later, it was granted judicial powers through various charters to administer and resolve the matters of its employees. It was organized under the supervision of a Governor and a Board of Directors consisting of 24 members to manage the company's business.

Early judicial reforms (1600-1773)

In 1609, a Charter was issued to govern the company's operations, and in 1613, Royal consent was granted to establish its first factory in Surat. During Jahangir's reign, the company dispatched its ambassador, Sir Thomas Roy, to seek trade privileges at the emperor's court. Through a royal decree, the Mughal Emperor permitted the company to set up factories (trading posts) throughout India, especially in Surat, a central trading hub on the Western coasts. Through this approach, the EIC quickly set up numerous factories and fortifications in key locations such as Calcutta, Bombay, Madras, Hugli, Agra, and other strategically significant areas. These factories became the center of the EIC's trading operations. The company evolved from a trading agent into a territorial power, gaining authority through various charters between 1661 and 1683. These charters allowed it to coin money, acquire territories, build fortifications, and exercise civil and criminal jurisdiction over English subjects. Additionally, the company was authorized to negotiate war and peace treaties with other nations. The charters granted the Company the power to create laws, orders, and constitutions for managing its operations and enhancing its trade. It could also impose penalties and fines as necessary. In the beginning, the company exercised its judicial powers to administer the affairs of its employees, but over time, its influence expanded, and it meddled in the local judicial system. Under the auspices of various charters, the company established different courts in Bombay, Madras, and Calcutta. These were the Admiralty Courts, Recorder Courts, and the Mayor's Courts alongside the Mughal traditional court system.

In Madras, the Mayor's Court was established in 1688 under the Charter of 1687 to handle civil and criminal cases. The court comprised an English Mayor, twelve Aldermen, and more than sixty Burgesses. As the court judges lacked the legal knowledge and professional expertise, its decisions were primarily rooted in the principles of natural justice, encompassing equity, fairness, and good conscience. Gradually, the company's settlements increased along with the increase in trade activities, and thereby, the Mayor's Courts were established at other presidencies- Bombay and Calcutta under the Charter of 1726. This charter introduced new concepts of judicial administration and bifurcated civil and criminal adjudication. The Mayor administered the civil matters with the help of nine Aldermen, and the Governor in Council dealt with the criminal cases with the assistance of a grand jury. (Nagar, 2018)

Under the Charter of 1683, the first Admiralty Court was set up at Madras in 1686, and in the next year, a professional lawyer named Sir John Biggs, an expert in civil law was appointed as the court judge. This court's jurisdiction was not limited only to the admiralty cases but also dealt with all the civil and criminal cases with the aid of a jury. (Nagar, 2018)

In 1757, after the defeat of Nawab Siraj Ud-doula in the famous battle of Plassey, the company obtained control of Bengal province and installed Mir Jaffar as the new Nawab of Bengal. In 1765, the nominal Mughal emperor Shah Alam II handed over the control of Bengal, Bihar, and Orissa to the company in lieu of twenty-six lacs rupees. (Firminger, 1984) The Nawab was divested from all his powers except he could hold criminal adjudication. The company took charge of revenue collection and civil administration, effectively becoming the sovereign power in the Bengal province. (Firminger, 1984)

Reforms of Warren Hastings 1772-1774 and Supreme Court of Adjudicator at Calcutta

Warren Hastings, the first Governor General of Bengal, introduced a dual justice system in 1772. From 1600 to 1772, the company retained the Mughal court system and established its parallel courts while applying English Common Law to adjudicate its employees. It was Hastings who, for the first time, incorporated certain reforms in the existing judicial administration. This system established two types of courts in each district: The *Mofussil Diwani Adalat* (civil court). It was presided over by an English company servant called a collector to decide civil cases, as he was also responsible for collecting land revenue from his district. (Mehra, n. d) The *Mofussil Faujdari Adalat* (criminal court)- the local law officers (*Qazis* or *Mufties*)- acted as judges and were assisted by two *maulvies* to trial criminal cases. As the Mughal nomenclature was preserved, the Quran was applied by Muslim law officers and the Shaster by Hindus in the courts. (Mehra, n. d) In 1774, Warren Hastings revised the plan of 1772 and separated the revenue and judicial matters. Under his first plan, he had combined the revenue and judicial powers in the same head, and the concentration of powers in the single entity led to discrepancies. He withdrew the powers of collectors and appointed Indian officers known as *Diwan* or *Amil*, who were replaced with former collectors responsible for collecting revenue. The duality of the plan continued till 1780 and was again modified by Warren Hastings. (Mehra, n. d) The Regulating Act of 1773 set up a Supreme Court at Calcutta, consisting of a Chief Judge and

three judges. The court was authorized to enjoy vast jurisdiction to decide civil cases and could administer justice in criminal cases. The regulation designated the Governor General and the Council as the holders of executive powers (Jain, 1952). The establishment of the Supreme Court led the hierarchy of the court system in India on the hand and also introduced the concept of the independence of the judiciary. Under the Regulation of 1773, the Superior Court had an exclusive prerogative on certain issues. (Jain, 1952). In 1780, another reform was implemented, and the judges of the Mofussil Diwani Adalat were given the responsibilities of magistrates with limited jurisdiction. This means that the judges of the Civil Court were performing dual roles, the judicial and executive. This experiment continued till 1790. The Reforms of 1787 again combined the judicial, revenue, and executive powers while designating a single person as a collector of the revenue, a magistrate, and a judge simultaneously. These reforms significantly minimized the participation of indigenous law officers from the justice boulevards.

Reforms of Cornwallis 1790 and 1793

The successor of Warren Hastings, Lord Cornwallis, introduced a new reform scheme in 1790 to administer criminal justice. According to this scheme, the *Sadar Diwani Adalat* consisted of the Governor General and members of the Council as judges. The Nawab was deprived of his powers to be head of the *Sadar Nizamat Adalat*, and the court was transferred to Calcutta from Murshidabad. To discharge the functions of Sadar Nizamat Adalat, the Governor General was assisted by Chief Qazi and two *Mufties*. (Jain, 1952). As the criminal justice was administered by the Indians, according to the Regulation of 1790, it was taken from them and handed over to the Company's English servants who were unaware of the local laws as they were the traders, not the law experts, so depended on their whims and common sense in making decisions. (Jain, 1952).

According to the reforms in 1790, Mofussil Faujdari Courts were abolished, and four circuit courts, consisting of two English judges, were established. Lord Cornwallis also established a court hierarchy that included Zillah (District) Courts, City Courts, four provincial Courts, and the *Sadar Diwani Adalat*, which had appellate jurisdiction. (Jain, 1952) However, after trial and error, in 1793, the new Regulations implemented by Lord Cornwallis, under which the plans of 1787 and 1790 were modified, and the existing judicial system was transformed. Firstly, the

executive and judicial powers were separated while departing the collectors from their judicial powers. The revenue department was effectively separated from civil justice to safeguard property rights against potential misuse by revenue officers. According to the scheme of 1790, the collectors were to act as magistrates. In contrast, the collectors were to perform only executive functions under the new reforms, and their judicial powers were taken back. In this way, Cornwallis incorporated the concept of separation of power between the executive and judiciary on the one hand and the independence of the judiciary on the other through these reforms. (Jain, 1952) Furthermore, these reforms modified the Muslim laws related to penalties, such as the mutilation of limbs and stoning to death. They replaced them with penalties according to natural justice, such as fines, imprisonment, etc. Thus, the introduction of English common law and statutory laws replaced the traditional Indian laws. A remarkable feature of the scheme of 1793 was the introduction of the legal profession and the induction of law expert professionals in the modern judicial setup. (Jain, 1952)

The reformation process continued gradually, and Western-styled courts replaced the Indian traditional and informal court system. In 1801, the Supreme Court was constituted at Madras under the Later Patent issued by King George III, and in 1823, it was established in Bombay under the act passed by King George IV (Jain, 1952).

Charter Act of 1833 and Codification of Laws

The ancient Indian legal system and the Muslim rulers governed their justice administration primarily through Indigenous customs and informal, unwritten laws, which lacked uniformity, universality, and proper application. To address this situation, in 1833, the British Parliament passed the Act of 1833, under which a law commission was appointed to codify the Indian Laws into written and systematic order. Resultantly, the first law commission was appointed in 1834 under the chairmanship of Lord Macaulay. The commission codified the Indian laws and drafted the Indian Penal and Civil Procedure codes. (Jain, 1952) The second law commission was appointed in 1853, and it recommended the establishment of High Courts instead of Supreme Courts of judicature and drafted the Criminal Procedure Code. Thus, the Indian Penal Code 1859, The Civil Procedure Code 1860, and the Criminal Procedure Code 1861 unified the

traditional Indian Laws into written and proper codified forms equally applicable to all communities irrespective of caste, color, creed, or any other discrimination. (Rao, n. d).

The Government India Act 1858

After the War of Independence of 1857, the East India Company was dismantled, and the control of Indian territories was directly handed over to the British Crown. Under the Indian Act of 1858, India's control was transferred from the Company to the Crown. (Ali, Kahn & Rehman, 2018). The act allowed for the appointment of a Governor General to serve as the Crown's viceroy, overseeing Indian affairs in its name. (Ali, 1992).

High Courts Act of 1861

The second law commission recommended establishing high courts; therefore, in 1861, the British Parliament enacted the Indian High Courts Act of 1861, under which the Supreme Court was abolished from Calcutta and the High Court was established instead. The newly established High Court exercised the same procedure as the Supreme Court (Watti, 2018).

Subsequently, the High Courts in Madras and Bombay were created to replace the Supreme Courts there. These High Courts served as the highest judicial authority in India until the Federal Court was set up. Meanwhile, the Privy Council was the highest court of appeals for India (Jain, 1952). The establishment of High Courts completed the task of transforming the judiciary from its traditional and informal phase to a modern one and also completely excluding Indians from the system. Here is one important point: The British did not abruptly replace or modify the existing legal system; initially, they adopted the Mughal Court system for many years and gradually reformed and shifted towards the Westminster Common Law-based legal system.

The Government of India Act of 1935 provided a Federal Court at the Central level, with the prerogative to adjudicate disputes between the Central Government and the Federating Units (Provinces) arising from the division of powers, as the 1935 Act introduced the Federal system in India. A federal court of India was established in 1937 to resolve disputes between the center and the Federating units while applying its original jurisdiction. (Jain, 1952) After independence and the culmination of the British domination over India, the Federal Court was renamed the

Supreme Court of India and the Supreme Court of Pakistan, which still exists at the center and high courts at provincial levels in both countries as the colonial legacy.

Impact of the Transformation Process

The British transformation policy impacted not just the Indian judiciary, shifting it from a traditional to a modern, Western-style system. It also significantly influenced political, social, and nearly every facet of Indian society. Its impact is still present as the colonial legacy. Old informal laws were replaced with codified laws. A well-structured and centralized court hierarchy was introduced in the Indian system, which still persists. This research paper highlighted key striking points from this paradigm shift from tradition to modernity.

The advancement and modernization of the Indian judiciary popularized the concept of the judiciary's independence from the interference of the executive and legislative. In fact, prior to British rule, the judiciary was subservient to the executive. This modern idea was propagated in India with the arrival of Western legal thoughts.

The medieval judicial system revolved around the king, who was the source of all the powers and performed as an executive, a judge, and a legislature. British rule defined the jurisdictions of all three organs while introducing reforms and the concept of the separation of power of all three branches of government. After the transformation, the judiciary developed itself as a powerful institution through the tool of checks and balances.

The modern judiciary emphasizes the concept of 'the rule of law, ' in which it will play its due role to uphold the law and dispense justice. Before that, the monarch used discretionary powers.

The independence of the judiciary and the rule of law gave birth to another allied but most important concept of fundamental human rights. Gradually, the judiciary was regarded as the custodian of the fundamental rights.

With the passage of time, another important concept related to human rights and liberties emerged: personal autonomy, which means an individual's personal dignity, self-respect, and personal life should be respected and protected. In medieval India, there was no concept of freedom of speech; the transformation process gave awareness and political consciousness to speak about their rights and to share their grievances.

Conclusion

The above discussion manifestly demonstrates that the British Government deliberately and gradually reformed the primitive judicial system into a modern legal framework, and this reformation process reached its climax after the enactment of the Act of 1858 and the complete transfer of power from East India Company to the British crown. The transformation of the traditional judiciary into a modern adjudicator under British Rule in India was a multifaceted process that altered the structure and functions of local legal institutions and redefined the concept of justice. This change occurred on three levels, starting with the structural aspect. Previously, the traditional judiciary consisted of an informal, non-systematic hierarchy of courts, with the highest court of the king and the lowest Panchayat. Both judicial units lacked formality. The British Government established a formal court hierarchy modeled on English Common Law, introducing the Supreme Court at the apex, followed by high courts at the provincial level and subordinate lower courts, complete with clear procedures for judicial appointments and service matters.

Primitive times mainly followed unwritten laws, with different communities adhering to their own rules, leading to a lack of uniformity. To address this issue, the British Government established a Law Commission in 1833, led by Lord Macaulay, to codify Indian laws. This initiative represented a crucial shift by the British Government to replace the varied customary laws with standardized legal statutes applicable to all communities. The Indian Penal Code of 1859, the Civil Procedure Code of 1860, and the Criminal Procedure Code of 1861 created a consistent legal framework that transcended religious divisions. The British government transformed the Indian judiciary from a decentralized and tradition-based to a modern, codified legal framework. This shift of transformation led to uniformed legal structure. On the one hand, the traditional judiciary underwent transformation and modernization, and on the other, it bolstered British control and dominance over the Subcontinent for another hundred years.

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