

## THE EARLY JUDICIAL SYSTEM IN MADRAS UNDER BRITISH EAST INDIA COMPANY

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### Abstract

*The early settlements of the company in India had very poor administrative set up and till 1726, the judicial system therein was even poorer. However, in course of time, for the administration of their factories and settlements, as of necessity, some legal and judicial system had to be developed. But the growth of justice system in each of the three presidency towns followed altogether different course and there was no uniformity whatsoever in its growth among these centers. The Englishmen, realizing the importance of having a sound judicial system in the territories falling under their sway, started the task of evolving a judicial system from the beginning of their administrative career. The proper study of their judicial institutions from the days of the East India Company would reveal the problems and the pitfalls which the administrators had to face in the past and the measures of correction which they took to develop the judiciary.*

*Keywords: judiciary, privileges, First Jury Trial, equity and good conscience*

### Beginning of British Justice in Madras

Francis Day was regarded the founder of the city of Madras. He built fort St. George in 1640 on the site given to him by the local Naik Venkatadri, whose territory lay between Pulicat and Santhome.<sup>1</sup> The English East India Company which gradually became a territorial power exterminated the hold which the Portuguese, the Dutch, the Danes and the French had over India and established its hegemony. The administration of the territory which came under the British became their responsibility. The administration of justice was a part of the administrative duty of the company. It was remarkable that from the infancy of the settlement at Madras the British Government paid due attention to the administration of justice.<sup>2</sup>

To begin with Madras was given the status of an agency. Its administrative head was called the agent. He administered the settlement with the help of a council.<sup>3</sup> The English factors in Madras, in the initial period, derived authority over the area under their control from two sources: (1) the charter of the company under which they carried on their operations in India and (2) the grants from the country powers which conferred on them lands and privileges from time to time. But neither of these sources gave any definite guidance to the factors as to how they were to deal with crimes or dispense justice. The earlier charters of 31 December 1600, 31 May 1609 and 4 February 1622 gave the company

power only to make reasonable laws for its own government and to “chastise and correct all Englishmen committing any misdemeanour in the East Indies”.<sup>4</sup>

#### **The charter Act of 1661 and the First Jury Trial**

In order to ensure justice and maintain law and order King Charles II issued a charter on 3 April 1661. The charter specifically authorized the Agent or Governor and council to judge all persons including natives under their power in civil and criminal cases according to the law of England. The Charter had an important bearing on the evolution of judicial system in India. It brought, for the first time, all the people both natives and foreign under the company’s control.<sup>5</sup>

This step was important because the Charter vested judicial power in the Governor and not in the agent and the council. Also, the first authority however, for the introduction of British law in India was granted by this Charter. Now the Governor and council were armed with power to decide cases of all nature.<sup>6</sup> The first trial by jury in Madras was the trial of Mrs. Ascentia Zawes, when foxcraft was made the first governor of Fort St. George. The jury consisted of six Englishmen and six Portuguese.

Thus, from 1639 to 1661, two separate bodies were administering justice at Madras. The agent and council were the judicial authority for the English people residing in Madras and the indigenous people were under the jurisdiction of the Choultry court. In March 1678 governor Streyنشam Master Council resolved to establish a court of judicature for the trial of civil and criminal cases by jury deriving authority from the charter of 1661. It was decided that the Governor and Council were to sit as a court of judicature in the chapel in the Fort St. George every Wenesday and Saturday. They had to try and determine all civil and criminal cases according to the law of England with the help of a jury of twelve men. This court was formally inaugurated on 22 March 1678.<sup>7</sup>

Along with this, the Choultry court was also reorganized. It was decided to replace the native ‘Adigars’ as they had involved in corruptive practices. Henceforth the Choultry court consisted of the company’s servants (mint master, customer, paymaster or any two of them) sat twice a week on Tuesdays and Fridays. It tried petty cases and civil actions upto fifty pagodas (a gold coin valuing Rs.3). All other cases and appeals from the Choultry court were heard by the Court of the Governor and Council with the help of Jury. Thus a hierarchy of courts was established in Madras with their respective jurisdictions specified.<sup>8</sup>

King Charles II, on request from the company granted a new charter on 9 August 1683 empowering the Governor and council to establish a court of judicature to deal with these interlopers. The court consisted of one person learned in the civil laws and two merchants. The person learned in the law was to preside over the court and he was called as the judge advocate.<sup>9</sup> The court had to try and determine all cases of mercantile and

maritime character according to “equity and good conscience” and to the laws and customs of merchants.

Under the provisions of the Charter of 1683 a new court was established in Madras on 10 July 1686. It was called the admiralty court. The company sent the qualified lawyer in July 1687.<sup>10</sup> Till then the Governor was appointed to be the judge advocate. Sir John Biggs, a professional lawyer was sworn in as judge-advocate on 28 July 1687. The admiralty court in practice came to function as a general court of the land. It was not confined merely to maritime and admiralty cases proper as was envisaged by the charter. It exercised a much wider jurisdiction and dispensed justice in all cases-civil, criminal, maritime and mercantile. The governor and council thereafter relinquished the judicial functions which they had been exercising hitherto under the charter of 1661 and ceased to sit as a court. The year 1687 was thus considered to be important for two reasons. Firstly, a professional lawyer came on the scene to administer justice. Secondly, the executive gave up judicial functions in favour of the admiralty court. The court was assisted by a jury in criminal cases, but not in civil cases.<sup>11</sup> The admiralty court was to be regarded as the forerunner of the high court of judicature of Madras.

#### **Mayor's Court**

In 1688 yet another court was set up in Madras. The town of Fort St. George and the surrounding territories within the radius of ten miles were made to be a corporation by the company's charter of 30 July 1687.<sup>12</sup> It was customary in England in those days to confer judicial power on municipal corporations. The mayor and three senior Aldermen of the corporation formed themselves as court of record known as the Mayor's court. This court started functioning in 1688.<sup>13</sup> The Mayor and Aldermen were called as justices of peace. They tried all civil and criminal cases arising within the corporation limit according to equity and good conscience. The Mayor's court punished offenders with fine, amercement, imprisonment and corporal punishment. In civil cases valuing over three pagodas and in criminal cases when the offender was sentenced to loss of life or limb, appeals from the Mayor's court were to lay to the admiralty court. In all the other cases the decision of the Mayor's court was final.<sup>14</sup>

The year 1726 is a landmark in the judicial history of the presidency town of Madras as well as of Calcutta and Bombay. About forty years after the company's charter of 1687 the crown attempted to re-model the corporation and Mayor's court. King George I granted a charter on 24 September 1726 which gave a new life to the evolution of judicial institutions in the three presidency towns. Prior to 1726 the judiciary in each of the presidencies followed a course of its own without any uniformity. The judicial system thus grown was hardly satisfactory. The charter of 1726 provided for the establishment of

uniform judicial institutions for the first time in the three presidencies. The charter established similar civil and criminal courts in all the three presidency towns. They derived their authority not from the company but from the king, the fountain of English justice.<sup>15</sup> In Madras the charter of 1726 was put into operation on 17 August 1727. In terms of the charter, the Mayor's court was re-constituted. The Mayor and nine Aldermen were to be a court of record by the name of the Mayor's court of Madraspatnam. or within any of the factories subject or subordinate into Fort St. George.<sup>16</sup> The charter of 1753 also created a new court called the court of requests, at each presidency town. It was to decide cheaply, summarily and quickly the claims of value less than five pagodas (Rs.15) to help the poor litigants who were mostly Indians. The charters of 1726 and 1753 introduced technicalities of English law and procedure and forms of English judicature in the presidency towns. But the system of 1753 was not without defects.<sup>17</sup>

#### **Recorder's Court at Madras**

In an attempt to remedy this defect, atleast partially, the British parliament enacted an Act in 1797. It authorized the crown to issue charters to establish a recorder's court at Madras and Bombay. King George III issued a charter on 20 February 1798 authorizing the company to establish recorder's court at Madras. The recorder's court at Madras started functioning in November 1798. It consisted of the Mayor, three Aldermen and a recorder. The recorder was to be appointed by the king. He was required to be a Barrister of England or Ireland of not less than five years standing. He was to be the president of the court. The jurisdiction of the court extended to civil, criminal, ecclesiastical and admiralty cases. All British subjects-resident within the British territories as well as those residing in the territories of native princes in alliance with the government were brought under the jurisdiction of the court.<sup>18</sup> The recorder's court absorbed into itself the Mayor's court existing under the charter of 1753. The first recorder at Madras was Thomas Andrew Strange. The position of the recorder was next to the governor. The British parliament entertained a view that the judiciary should be separated from the executive in India. It also wanted to extend the judicial system of Bengal to Madras and Bombay with the Supreme court as the central court. The parliament still held the view that judicial administration in India should be served for the British crown.<sup>19</sup>

#### **The Supreme Court at Madras**

Under these circumstances, the Recorder's court had a very brief period of existence. The British Parliament passed the Government of India Act (39 and 40 Geo III 79) in 1800 empowering the King to establish, by the issue of a charter, a supreme court at Fort St. George. The king, by letters patent issued on the 26<sup>th</sup> December 1800, abolished the recorder's court and authorized the erection of the supreme court at Madras. It came into

being on the 4<sup>th</sup> September 1801. Sir Thomas Andre Strange, who was already working previously as the recorder, was appointed its first Chief Justice. The two other puisne judges were Sir Henry Gwillim and Benjamin Sullivan.<sup>20</sup>

The Indian judiciary was the creation of the British as they had not inherited any such institution from the rulers of pre-British India. The English administrators had realized the importance of having a sound judiciary to better consolidate political and administrative measures. Hence they had started their task of evolving a judicial system from the beginning of their administrative career. Thus the responsibility of dispensing justice fall on the Englishmen simultaneous with the acquisition and administration of territories by the East India Company. The administration of justice did not seem very intricate. But with the growth of the settlement and the expansion of the presidency, the suits multiplied in number and diversity. New legal issues sprung up and the inability of the existing courts to deal with them hampered the administration of justice. In consequence parliament enacted fresh legislation from time to time either for establishing the new courts or improving the existing ones. These trends in the judicial organization of Madras were particularly conspicuous in 1798-1802.

The early courts were manned by non-lawyers who were mainly traders and merchants. They did not have any judicial training. They were too much under the control of the executive. They had followed the Hindu and Muhammedan laws and customs to deal with the Hindu and Muhammedan litigants and English law towards the British. As the judicial officers did not know the intricacies of laws which they were supposed to follow, justice came largely under their discretion. They had depended on the doctrine of equity and good conscience, which led to vast degree of inconsistency in the decisions. The situations had slowly started changing from 1687. The first professional lawyer Sir John Biggs came to administer justice in that year in the admiralty court of Madras. The judiciary began to be freed from the executive control. But the establishment of Mayor's court in 1688 and its re-constitution in 1727 once again drove the judiciary under the control of the executive. The establishment of supreme court at Madras in 1802 had set the judicial system of the presidency in a firm footing. All the judges of the court were barristers appointed by the crown. They had followed English law and procedure and with this the executive control over the judiciary came to an end.

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