

Raja Haid Kumar Case

Also known as Judicial Murder Case

Facts — Raja Haid Kumar (RHK), who held a good position under the Hawab and Co. Company, made an allegation to the Governor General and Council some time in March 1775 that Warren Hastings had received in 1772 from one Munny Begun a sum of Rs 104,105 and from Haid Kumar a sum of Rs 250,000 for appointing Haid Kumar's son and Munny Begun to be Gewan and guardian of Masad.

The majority of the Council held that Warren Hastings had received money and he should pay it to company. In April 1775 Hastings approached S.C. to prosecute Haid Kumar and two others for conspiracy. The allegation was that Haid Kumar and two others had forced one Karnal to make false accusations against Hastings. The case was fixed for trial hearing in first week of

June.

But before the trial of this conspiracy case another case of forgery was started against Haid Kumar. For forgery case, prosecution was moved by one Mahar Band who alleged that to defraud the executors of an Bukhari he Haid Kumar had forged a bond in his name in 1770.

Trial started on 8th June 1775 and lasted until the morning of 1st June 1775 and Court awarded him from death sentence. He was hanged on 5th Aug 1775.

Two broad legal issues arose

- ① Whether Haid Kumar was under the jurisdiction of S.C.
- ② Whether Act of 1729 of British Parliament made forgery a capital offence and under which Haid Kumar

The first issue was based on the plea that Nand Kumar was not resident of Calcutta in 1720 and that before the advent of P. & A. T. India, was tried by the Faujdari Adalats. Accordingly he should be tried by a competent court.

Secondly Act of 1729 was designed to deal with the peculiar crimes committed in England and was not intended to be applied to India.

- Sec rejected both the pleas -

- ① Statute of 1729 was introduced in India by the Charter of 1753 which had replaced Charter 1726
- ② The statute of 1729 had been applied in 1765 in case of Radhicharan who was also sentenced to death. He however got a pardon
- ③ Judges had no option to try forgery under any other law.

During the course of trial defence witnesses were severely examined by judges, uncommon in law courts.

Sec concluded that the witnesses had been thoroughly prepared to state a cooked up story.

The jury gave the verdict 'guilty'.

~~After verdict NK's counsel moved.~~

In the next step a petition for appeal to King in Council was presented to the ~~House~~ that Nand Kumar being a Hindu of Bengal was ignorant of English law. This petition was rejected on the ground of generality.

The only course left was mercy petition which was rejected by.

Thus it started but court worked with ~~predefined~~ predefinition as Chief Justice Sec was friend of Hastings.

Patna Case

Example of conflict b/w company's court and S.C.
and finally b/w S.C. and Governor-General and Council

Facts → one ^{By} Sahbaz Khan who had come from Kabul served the company for sometime. After retirement from company he settled down in Patna ~~and~~ and married Maderah Begum from whom he had no child. After sometime his nephew Behdar Beg came from Kabul and stayed with him till his death in 1726. On Sahbaz Beg's death dispute for inheritance arose b/w Maderah and Behdar, each claiming the whole property. Maderah under a gift alleged to have been executed by her husband and nephew as adopted son.

On 2nd Jan 1777 Behdar Beg filed a suit in Patna Council alleging that being adopted son he is entitled for entire property. The same day Patna Council ordered the Qazi and two mufti to take an inventory of the property of Sahbaz and also the share of each claimant according to Mohammedan law. After taking evidences from both sides Qazi and Mufti reported to Patna Council on 20th Jan 1770 that the gift deed was forged and that the property of the deceased be divided into 4 shares, whereof three should be given to Behdar Beg and fourth should be given to ~~Behdar~~ Maderah. Accepting the decision of the law officers Patna Council ordered its execution. Maderah felt humiliated and took refuge in a Dargah. After some time Maderah came to Calcutta and filed a case for trespass and assault in the S.C. against Behdar Beg, Qazi and Mufti. The Governor-General and Council resolved to defend the case on behalf of the defendant because they were being prosecuted in the exercise of the Judicial authority.

Legal issues raised in trial

- ① Whether Behdar Beg, who lived outside Calcutta, was subject to the jurisdiction of the S.C.
- ② Whether the law officers could be prosecuted for acts done in judicial capacity.

1st issue - Behdar was in the service of the Company.

Secondly - S.C. held that though Patna Council legally constituted Court having jurisdiction to decide the civil disputes b/w the Indians, it had no jurisdiction to delegate its functions to the law officers - the Qazi and the Muffis

The only question which the S.C. had to decide whether trespass & assault was admitted.

The Court found that ~~Madarat~~ Madarat was in possession of the property at the time the defendant proceeded against her. Her guilt was established. S.C. awarded Rs 30,000 damages & 9,208 annas as cost to Madarat.

The defendants were brought to Calcutta. Qazi died a ~~case~~ way and rest of them were put in the jail as they failed to pay the damage awarded.

They remained in jail till 12 Aug 1782 till the Company executed a bond in their favour according to Aug settlement 1781.

An appeal was filed in the Privy Council in 1781 which was dismissed.

~~But~~ Later in March 1777 Madarat filed a similar case against the members of the Patna Council. S.C. ^{rejected} ~~refused~~ the plea on the ground that they worked under their judicial capacity. and held that their entire proceeding was illegal and awarded 15,000 Rs damages.

This case exposes the irregularities committed by the Provincial Council in leaving their function to the law officers. Ultimately entire loss borne by Company.

Karjora Case

In this case one Kashinath filed a debt suit in the S.C. against Sundernath. H. Raja of Karjora, the Zamindar Raja used to pay annual revenue to the Company.

In this suit it was alleged that he was indirectly in the service of the Company and therefore the S.C. had jurisdiction over him. The Court issued a warrant of arrest against Raja and authorized (Sheriff) to accept bail in the sum of Rs 3,000,00.

At this stage Governor General and his Council sought the advice of the Advocate General who advised against the Raja's appearing in the Court and doing any act which might amount to a recognition of the S.C. authority. He also advised that in all similar cases as well as in the present case

dated on 17th Dec 1779 Governor General and Council gave a general notice to all zamindars that as they were not subject to the jurisdiction of S.C. they shall not appear and be recognized S.C.

Following this advice the Governor General and Council directed the Collector of Midnapore not to offer any help to Court's Sheriff in this regard. Since the Raja was hiding and the warrant could not be served on him

the S.C. ordered to confiscate his property. This time Governor General and his Council ordered the Commander of the Midnapore Cantonment to intercept the Sheriff's men.

The Commander accordingly dispatched the necessary force to arrest Sheriff's men. They were arrested and imprisoned at Calcutta.

There then moved to S.C. for suit against the guilty officers including Warren Hastings and Councillor Barwick for contempt of Court.

Court issued writs against all except Hastings and Barwell, but writs could not be enforced against any one except the lawyer of Calcutta, who he could not get executed.

Hastings filed another plaint against the President General and his councillors for assaulting himself him and rescued his seized property with an intention to deprive him of the recovery of ^{his} debts.

The councillors initially appeared through their ~~councillors~~ councillors but later they decided to withdraw their appearance.

Thus a deadlock was created. The councillors will not appear before the court and court could not enforce its order against them. Suddenly on 12th March 1780 Keshavn withdrew his suit against Raj's councillors.

This case adversely affected the dignity of the SC.

In 1781 — Act of Settlement was passed.

occurrence of 1

① ⑧

The Island of B'bay was under the occupation of Portuguese since 1534. In 1661, the Portuguese king gave this Island to King Charles II of England as a dowry in the marriage of his sister. The king (Charles II) gave island to East India Company in 1668 at an annual rent of £10. In the ^{same} year, Charles II issued a charter which conferred requisite authority on the company for the general administration including the administration of justice and making of laws. Company could make laws, ordinances, regulations etc. for its good governance and could impose fines and penalties including death sentence. For the ~~company~~ administration of justice, company could establish courts which had to follow the procedure of English courts.

In the beginning B'bay was put under the authority of a Deputy Governor and Council who were subject to the presidency of Surat.

First Stage (1668-1683) → B'bay was divided into two ~~systems~~ divisions. Each division had a court consisting of five judges. The Custom officer of the division was the President of the court. Some of the judges in these courts were Indians. The jurisdiction of the court was extended to petty criminal and civil cases.

Appeals against the judgement of this court (Provisional court) could be filed in the court of the Deputy Governor and Council, which worked as a superior court having both appellate and original jurisdiction. These cases were tried with the help of a jury.

Dowryback - ① No distinction b/w the executive and the judiciary.

② There was no any provision for a lawyer's remuneration in the Courts.

In Aug 1772 1672 governmental proclamation was made to replace ~~port~~ Portuguese law from English law.

Under this Proclamation a new judicial system was established under which three types of Courts were established —

- ① Court of Judicature → Including civil matters these courts also had jurisdiction over probate and testamentary matters. These cases were decided with the help of a jury. For civil matters court used to sit once in a week while for criminal matters it used to ~~not~~ sit once in a month. A court ~~for~~ ^{let} at a rate of 50. was also imposed in civil cases.
- ② Court of Conscience — It used to provide quick and summary Justice. It entertained only petty cases. There was no provision of court fee and jury.
- ③ Court of appeals → Deputy Governor and Council functioned as Court of Appeal. They heard appeals against the judgements of the Courts of Judicature in all matters.

The judicial plan of 1672 was quick, inexpensive and efficient.

Drawbacks — ① judges did not enjoy independence for good justice

② Were not paid properly and were under the subjection of Executive

Second stage — (1684-1693) → Court of Admiralty was established in 1683. They also had jurisdiction over civil and criminal matters.

But, due to the dispute b/w Governor and Council and Judge - Advocate of the Court a separate Court was established to decide civil and criminal

Third Stage (1718 - 1726) → In 1718 a court with Chief Justice and 9 judges was established. Out of 9, 5 were English and 4 were Indians. Who were the 'Black Justices'.

The Court had jurisdiction in all civil and criminal matters & and they applied the principle of equity, justice and good conscience and rules made by the Company from time to time. but the law can't be contrary to the laws of England.

They also had jurisdiction on probates and testaments. The court used to sit once a week but then were no rules of procedure or evidence were prescribed for the court.

The court could punish in every minor and major offence.

Drawback — ① A little bit separation of executive from the judiciary had been introduced by the Court executive interference with the independence of judiciary.

② Some judges were also the members of Governors Council.

③ Natural law and principles of law were violated.

Settlement in Calcutta

Job Charnock, a servant of the Company, laid the foundation of British Settlement in Calcutta in 1690. In 1698 the Company secured Zamindari in three villages.

Zamindar's Court → Company as Zamindar

appointed an officer with the designation Collector to collect the land revenue from the tenants. He was also given civil, criminal and revenue powers to decide arising from the jurisdiction. There was no specific direction to the collector about how the law was to be applied in deciding disputes.

Appeals against the judgement of the collector went to the Governor and his Council. If the collector gave death sentence it was to be confirmed by the Governor and Council but the cases related to Englishmen can't be decided by the collector but by the Governor and his Council.

Then there were two courts < Zamindar's Court
Collector's Court
While he appeals against the judgement of Zamindar went to the Court of Nawab, the appeals from the Collector went to the Governor and his Council. In case of Zamindar the death sentence was confirmed by the Nawab while in case of Company it was done by Governor and his Council without the reference of Nawab.

Drawback — ① Very elementary form of judicial system
② No specific provision about the courts to follow.

ADALAT SYSTEM

WARREN HASTINGS

After the battle of Plassey in 1757, the Company became an accepted political power in Bengal. Company did not declare itself a de jure political power and continued to recognise the nominal Nawabs as political heads. In 1765 the Company obtained the Diwani of Bengal, Bihar and Orissa.

For administrative purposes Mughal empire was divided into Subahs or provinces. Each Subah was ruled by a Subahdar or Nawab who commanded a body of troops and was responsible for law, order and security. Next to him but equally important was Diwan, who was responsible for collecting the revenue and paying for troops. The Diwan used to decide civil and ~~criminal~~ revenue disputes while the Subahdar or Nizam was responsible for the administering criminal justice.

The Company as Diwan did not take any responsibility for the administration of justice and collection of Land Revenue.

Zamindars and collectors were committing all kinds of atrocities upon the ryots and there was no effective ~~proper~~ judicial machinery to check them. The famine of 1769-70 sapped the economic life of Bengal, ruined the ryots and forced them to lead a life of crime or Sanyasi or Fakir. A kind of lawlessness prevailed in the province.

The company authorised the then Governor ~~General~~ Warren Hastings to adopt such regulations which ~~could~~ ~~ensured~~ shall ~~also~~ ensure every possible advantage to the ryots. It chalked out a plan of Judicial Administration in 1772, which could facilitate the collection of Land Revenue also.

Judicial Plan 1772

Three provinces Bengal, Bihar and Orissa were divided into districts, which were under the control of Collector who was responsible for collection of Revenue. In the presidency towns Mayor's Court established under the 1726 charter continued to function as usual. The judicial plan of 1772 covered the natives living in the Mofussil area (the area under the company outside the Presidency limits of Calcutta, Madras and B'bay; Com to be K/a Mofussil.)

(a) Courts of Original jurisdiction:-

(i) Mofussil Faujdari ~~Court~~ Adalat → Court of Criminal jurisdiction established in each district; presided over by a Qazi and Mufti and assisted by two Maulvis. Collector had general supervision over the court. The court had full power to decide and punish all criminal cases - however in case of Capital punishment, Confirmation from Sadar Nizamat Adalat and finally from the Mauwat was required.

(ii) Mofussil Diwani Adalat → Court of civil jurisdiction established in each ~~court~~ district. headed by the Collector. The court used to apply Quran muhammadian and Shastras on matters

Separate authorities were established to deal with the collection of land revenue and to decide the disputes arising from it and for the purpose of deciding other disputes.

A Diwani Adalat was established in each of the six divisions of the province, presided over by an English judge who was a servant of the company.

The judge called ~~Superintendent~~ Superintendent was assisted by native law officers in a dispute related to a Hindu or a Muslim.

Cases upto the value of Rs 100 could be referred to the local zamindar or any other local public officer so as to avoid inconvenience to the parties of coming to the court.

1780 plan allowed courts to work more independently but system suffered from the following defects -

- ① Diwani Adalats were a very few in the entire area and work.
- ② Local zamindars or public officers were also not of much help because the parties had to go at least once to Diwani Adalat.
- ③ ~~Sometimes~~ Sometimes Local zamindars and public officers were corrupt.
- ④ Superintendent of the Diwani Adalat was not a legally qualified person.
- ⑤ Provincial Council which was given revenue functions worked as a ~~court~~ court in its own cause which was against the principle of natural justice.

Appointment of Sir Impey → Sadr-Diwani
Adalat was a court of Governor and Council
who had little time to sit as a judge.

Hastings appointed Impey as its sole judge in
1780. He introduced following changes -

- ① The Diwani Adalat at the Divisions were
directed to hear all the cases in the open
court after administering proper oath to the
witnesses. The law officers should be used
only for the purposes of expounding the law
and had no power to decide the facts or
hear the witnesses.
- ② The number of Diwani Adalats was increased
from 6 to 18 so as to reduce the inconvenience
of traveling.
- ③ Most distinguished work was the compilation
and introduction of Cr.P.C. 1781. It helped
the people know as to what procedures
courts follow. The code contained provisions like
separation of judicial and Revenue functions,
authorizing the courts to summon the zamindars
and talukedars like any other person before it,
provisions for the observance of Hindu and
Mohammedan law in disputes arising between
and introduction of the provision of "justice
equity and just conscience" in matters
which were not covered by the existing
law. Sadr Diwani Adalats were also given
the supervisory power of maintaining control
over all the lower courts.

But after the Recall of Impey the Sadr Diwani Adalat
went back into its previous form.

(iii) Small Cause Adalat → It was a civil court of the head farmer of the Parganah to decide finally the disputes upto Rs 10.

(b) Appellate Courts -

(1) Sadar Hizamat Adalat → Criminal court of appeal presided over by Daroga-i-Adalat assisted by the Chief Kazi, Chief Mulla and three Maulana. The Governor and Council exercised a general supervision over the court.

(2) Sadar Diwani Adalat → The court was composed of the Governor and Council and heard appeals from the Mofussil Diwani Adalat. Where the suit value exceeded Rs 500.

With a view to maintain the impartiality of the Courts and to keep proper supervision the Adalats were required to give judgement in open Court and maintain proper register and records. Some rules of procedure and limitations were also laid down to introduce efficiency and avoid delay in legal proceedings.

The reform of Hastings was a first serious attempt on the part of the British to organise judicial administration in the mofussil area on a firm footing. Foundational Anglo-Indian judicial system was laid down by Hastings.

Merits → (1) Recognition of Personal Laws of natives and attempt to codify Hindu/Muslim

Laws

(2) Judicial process streamlined →

- Court fee was introduced.

- to keep record of fixed time delay to decide case

Demerits - ① The court for small ~~case~~ cases were very few and they had jurisdiction only upto Rs 10 which was too small.

② Collector was given too much authority which he could easily misuse

③ There was no provision whereby guilty Company officials could be brought to book because Company's servants were outside the purview of adalats

Judicial Plan 1774

Collectors were recalled from the districts and in their place an Indian officer called Diwan or Amil was appointed. He acted as a judge of the Muztassil Diwani Adalat and collected the Land Revenue. Each province had a Provincial Council consisting of four or five British servants of the Company. The Council supervised the collection of Land revenue, heard appeals against the decision of Muztassil Diwani Adalat and administered original civil jurisdiction at the place of its seat. An appeal against the decision of the Council was allowed to the Sadar Diwani Adalat, if the suit was valued at more than Rs 1000. However the Council took the place of the collector in creating the difficulties, monopolised the trade and did not care for the judicial work.

Judicial Plan 1780 →

Basic feature of this plan was separation of revenue matters from judicial matters.