



RESEARCH PAPER

Judicial System in Pre-Partition Balochistan (1947): A Critical Appraisal

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ABSTRACT

This study aims to critically examine the historical development of the judicial system in pre-partition Balochistan. It focuses on the social and political aspects that shaped the evolution of the judicial system in the region. Through an extensive review of historical records and secondary sources, the paper provides an in-depth analysis of the various factors that influenced the establishment and functioning of the courts and legal systems. During the pre-partition, Balochistan's judicial system evolved very slowly and encountered several obstacles to advancement. The findings of this study reveal that a few social values, a feeble central government, a Balochistan administrative split, a lack of external and internal autonomy, and the nomadic lifestyle of the Baloch people all contributed to the stalling of judicial progress. A new study can be conducted to investigate elements that impact the Balochistan judicial system as it currently exists.

KEYWORDS Balochistan, Judicial System, Khanate-e-Kalat, Pre-Partition Social-Political Impacts, Theory of Legal Evolution

Introduction

Balochistan is one of the four Provinces of the Federation of Pakistan. Balochistan's largest province is known for its arid landscape, mountain ranges, and deserts. It is situated in the southwest of the country. The Baloch people are indigenous to the area, and renowned for their strong sense of identity and rich cultural history (Khan, 2014; Khan & Faiz, 2021). Balochistan province has subsequently encountered multiple challenges, including poverty, violence, and underdevelopment, despite its rich history and natural resources (Swidler, 1992; Breseeg, 2004; Harrison, 1981; Muzaffar, et. al., 2018). Balochistan Insurgency: Causes and Prospects,

Orient Research Journal of Social Sciences, 3 (I), 112-128 and Wirsing, 2008). With an emphasis on the time leading up to the partition of India in 1947, this study will examine the historical development and social-political effects of the judicial system in pre-partition Balochistan.

Due to its advantageous location at the crossroads of important trade routes connecting the East and West, Balochistan has historically been a hub of commerce and trade. The Indus Valley Civilization, the Achaemenid Empire, and the British Empire were just a few of the significant empires and civilizations that formerly called this region home. From antiquity to the present time, the Balochistan province has flourished among great civilizations that not only make it one of the unique areas from

the ancient world's cultural, geographical, historical, and archaeological zone but also exhibit its potential to be used for various purposes. Until the end of the last century, different Pre-Historic archaeological sites in Balochistan were excavated and extensively studied by eminent archaeologists, historians, and anthropologists. Their published results revealed that Pre-Historic Balochistan is rich in chronological periods, human settlements, and cultures that started from the pre-Harappan era and ended in the Islamic period, followed by the present Balochistan. For instance, the recent excavations at Miri Qalat, Turbat; Mehrgarh, Kachi plain; Lasbela and different prehistoric mounds scattered around in various parts of Balochistan provide a wealth of data concerning the pre-historic period of proto inhabitants of this region.

One of the historical factors for the British Empire's breakup of the now Balochistan territory was before 1947 (Azad, 2009). According to Zaidi (1993: 288), the first British encounter with Kalat State was in 1838 in connection with an expeditionary army that the British Government deployed to Afghanistan via Baluchistan. The British eventually became the conquerors of the Kalat State. Instead of just controlling Khanate Kalat or integrating it into British India, they possessed it to create a buffer zone that would protect their hold on India at the expense of Russia (Harrison, 1981). The British negotiated agreements with local chieftains and the Khan of Kalat, the ruler of the Baloch confederacy, to control India. Khan of Kalat and the Indian emissary, Lytton, signed the final agreement in 1876. According to this claim, British Balochistan and Kalat State were autonomous or semi-independent from 1666 until 1839, when the British took control of Balochistan. Many historians, including Harrison (1981) and Redaell (1997) contend that Britain did not take control of the Kalat State because it desired it; rather, it stationed troops there to establish a buffer zone to prevent Russia from carrying on with its colonial legacy in United India.

These territories of Balochistan were governed by many regimes, each of which had its own peculiar judicial systems and set of laws. The British Balochistan had direct control over British Balochistan. In 1896, a Judicial Commissioner was appointed to resolve disputes. "Before that, the Chief Commissioner performed the functions of the High Court in respect of British Balochistan territories in certain matters and the Chief Court of Punjab concerning certain other matters" argued by (Azad, 2009). The further writer mentions, "r administrative purposes, the Tribal and Leased Areas together were called Agency Areas being governed by the Agent to the Governor-general in Balochistan as distinct from the British Balochistan" (Azad, 2009). The Kalat States were governed by Ahmedzai tribe, the Khan of Kalat. With a few limitations, Islamic Shariat law was implemented as state law. Islamic Shariat Law was used to resolve every legal issue (Naseer, 2016), and the Qadis controlled the Department of Justice (judges). According to *Sharia* and *Rawaj*, the Sardars were given judicial authority in tribal areas, but they were also required to follow the guidance of the Qadis and Jirgas (Baloch, 1987).

Theoretical Framework

The influential theory of legal evolution can be related to the conceptual framework of the study. One of the components of legal theories that explains how laws change in response to external influences like nature is called "legal evolution." "Theories of legal evolution attempt to explain the ways law changes about wider factors outside the legal system" (Legal evolution, n.d.). Evolutionary theories have influenced the development of law. When a study lasts for a long time, evolutionary theories, such as the idea of legal evolution, are helpful. When the theorist is unaware of the causes of the changes, it becomes much more advantageous. When Darwin first

introduced the theory of evolution, he had no knowledge of genes or the hereditary characteristics of living things. The same is true of proponents of legal evolution. Positive law, sometimes known as positivism, is criticised by the idea of legal evolution. While evolutionists contend that law is the outcome of gradual development or evolution, positivists claim that law is a product of sovereign creation.

The four categories Elliot (1985) used to categorise the ideas of legal evolution are sociological, doctrinal, economic, and sociobiological perspectives. Only sociological and doctrinal perspectives on legal evolution are pertinent for the current study; as a result, they are examined here. The oldest theories of legal evolution are social theories, according to which society and social activity influence the law through changes in law. Language, culture, political systems, and economic structures are a few examples of social developments that have an impact on laws. One of the pioneers of the notion of legal evolution in the 19th century was Friedrich Savigny, a professor of Roman law at the University of Berlin and a 19th-century German historian. He was opposed to Germany establishing a single body of codified laws. His reasoning was based on the notion that a legal system must pass through a number of phases before it can be codified. He stated that Germany was not at the point where its laws needed to be codified in the 19th century. He asserted that when defining the stages of evolution, jurisprudence comes after custom as the first step. His theory lacked data, though, and it didn't follow the scientific approach (Elliot, 1985).

Ancient Law was penned by Sir Henry James Sumner Maine in 1861. He outlined stages that every culture goes through and how one stage leads to the next. The early phase of the legal organisation is based on Monarchs judgments. The second is that of aristocratic rule, in which a council of chiefs governs society. The aristocratic class would control the laws and manipulate them to their advantage. Customary law is the third level, and codification is the final one. Sir Henry Maine outlined the four stages of legal reform, but he did not explain why or how they took place (Elliot, 1985).

The basis for Wigmore's legal philosophy was the Evolutionary Theory of Jurisprudence. A three-volume set of readings titled *Evolution of Law* was published between 1915 and 1918 by Wigmore and his collaborator Albert Kocounck. They listed a number of environmental aspects that affect law, including geoscience, economics, and racial, religious, and political aspects. Although Wigmore disagrees with former social evolutionists like Maine, she believes that environmental variables like poverty are to blame for the change from polygamy to monogamy in marriage laws (Elliot, 1985). When Holmes Jr. claimed that evolution occurred in legal doctrine as well as at the level of society, the social method to study was altered. The doctrinal approach to studying legal evolution is a cutting-edge method that was developed. The life of the law, according to Holmes, is determined by experience, the need for time, public policy, judicial decisions, and judges' decisions and opinions, as described in his book *Common Law*. He argued that legal doctrine evolves in the same way as biological structure does by drawing a parallel to Darwin's theory (Elliot, 1985). He studied the relationship between law and science. According to Holmes, there are two stages in the development of the law: "integration" and "survival or victory of the stronger law." First, all rules grow and develop, and second, only the strongest and fittest individuals survive (Elliot, 1985).

The Law and the Judges was written and published in 1914 by author Linton Corbin, who is well known for his treatises on contract law. He claimed that the evolution of the law is a process. The laws established by superior court judgements are then amended by subsequent higher court rulings; nevertheless, only the finest and fittest laws endure, with the rest being swept away by evolution. The community's

acceptance helps these common-law standards to become more consolidated; the evolution, he continued, happened through social norms as well as precedent and legislation.

Literature Review

Given the recent documentation of Balochistan's historical records, the genesis and growth of its judicial system may appear to be untraceable. However, this area has seen human settlement for a considerably longer period of time. In his book *Baloch: Mehrgarh se Tesehkel Reyasat Tak* (2010), Shah Muhammad Marri discusses the history of the Baloch people and argues that it is clear from the archaeological findings at Mehrgarh, a site on the bank of the Bolan River, that the Baloch are neither new immigrants to Balochistan from another region nor a new race or ethnic group. They represent one of the earliest civilizations in history, Mehrgarh, which flourished around 9000 BC. In his 1957 book *Baloch Qoom: Naasalaur Tarek*, author Muhammad Sardar Khan Baloch notes that Baloch grandeur received as little attention. Marri (2014) also provided a description of the Baloch social system. According to his book, "Sardar" had a crucial role in Baloch society. He was elected by the people based on his qualities, but with the entrance of the British, *Sardar's* status became hereditary. Sardar was not only respected but also followed in his judgements. Shah went into further detail regarding the Baloch society laws. There were laws governing warfare, taxation, land allocation, and the use of irrigation water, all of which served to warn the adversary before an ambush.

The majority of the significant historical and cultural occurrences in Balochistan are mentioned in an essay by Khan (2015) that covers Balochistan history from the Paleolithic period to the present. It takes into consideration the Mehrgarh era, when Islam first spread along Mekran coast during the Caliphate of Usman. It also considers Balochistan in the fifteenth century, the time of Chackar Rind and Mir Gawhar Lashari, the rise and fall of Kalat, and the British empire annexation of the region. It might be presumed that the Baloch race legal and judicial system has been quite weak because the article makes no mention of any significant legal or judicial events that have taken place in Balochistan.

It is also untrue that Balochistan history contains no reference to legal or judicial issues. In *Tareek-e-Balochistan*, Mir Gul Khan Naseer reports that during the Nasir Khan I era, Qazi were appointed by the Khan in the Khanate of Kalat for the judicial resolution of tribal disputes; however, because *Sardars* had autonomy over internal affairs, they also nominated Qazi as judicial officers. Tribal *Sardars*, made up of the chiefs of a tribe clans and subclans, resolved minor issues on their own during later eras with the arrival of British overlords and sent bigger issues to *Jirga*. Later, with the advent of 1882 government regulations and FCR 1901, the British amended and altered the *Jirga's* nature and its authority to settle disputes in their favour (see Khan & Kasi, 2015; Kasi, *et all.*, 2015; and Baloch, 2018).

Significance of Judicial System: An Overview

When a large number of people live on a particular area of land, a society is formed. They would interact, and as a result of that engagement, each individual would have obligations and liabilities to the other. They can make agreements to buy things and property from one another, or they can formally bind their union through the social contract of marriage. They could also build a defence force to protect themselves from outside threats, cultivate land for farming, build schools and hospitals, enact laws to

govern their interactions with one another, and create all the other institutions and necessities needed for society to function, with the exception of judicial systems for resolving disputes.

Will such society survive in such a situation? Hardly, since human societies are not free from conflicts and disputes, for instance: a person may believe that he is not treated properly when dealing with another, a person may be deceived by another in a transaction of goods or property. Who would solve every issue here? If not, the society will fall apart, and its members may either migrate to another community where their issues are addressed, or they may choose to live in seclusion. However, the institution of dispute resolutions exists in the majority of civilizations, so instead of disintegrating, conflicts are settled and people's faith in cooperative living is reestablished. Consequently, a legal system prevents social deterioration and maintains social cohesion. The Makran Confederacy dissolution and the migration of Rinds and Lashars into India due to their ongoing disagreement over the distribution of fertile lands in the modern area of Kachhi and Sibi in Balochistan serve as its best illustration.

A state legal system has also demonstrated itself to be its cornerstone. Most societies possess all the elements necessary to form a state, including territory, people, and occasionally sovereignty, but they do not have a functioning government. The legislative, executive and judicial branches make up the government. In a primitive society, moral laws and standards serve as lawmakers, and the tension created by members of the society interacting acts as the executive. However, the judicial organ was duly chosen by the society and is made up of either a single individual or a committee. The establishment of this process for resolving disputes caused society to advance, necessitating the need for a legislative body and an executive body. Society will acquire a government as part of this evolutionary process and develop into a state. The judiciary is the first stage in transforming society into a state.

The legal system became more crucial as states were formed. By restricting governmental power, it defends individual rights, such as life, security, property, and privacy. Individual rights protection is crucial for keeping peace and stability and increasing the likelihood that a state will create new technologies and abilities. In addition, open and democratic institutions foster innovation and creativity. "The protection of personal and economic freedom would change the local culture, making it more susceptible to innovative new ideas" (Serafinelli & Tabellini, 2018).

Impact of the Judicial System: a critical appraisal from the dependence of Khanate-e-Kalat till Colonial Imperialism

Pre-partition Balochistan judicial system had a significant sociopolitical impact on the region. On the one hand, it aided in upholding social order and resolving conflicts according to the people's cultural and social values. However, colonial influence and the establishment of a formal legal system undermined traditional behaviours and social structures, which resulted in the demise of traditional institutions and social norms. The replacement of the ancient judicial system with a more formal, centralised, and frequently unpopular system significantly impacted the cultural identity of the people and the entire region.

A formal, institutionalised state with a government that is autonomous both domestically and externally fosters the development of the judiciary. The periods of internal and exterior independence for the Baloch States were quite brief. A civil war broke out between Rinds and Lashars in the Makran Confederacy and lasted for two to

three decades. The confederacy broke up as a result, and the main tribes of the Rind and Lashar migrated to Punjab and Sindh, respectively. The Khanate of Kalat, the second Baloch state, was nominally founded in 1666 but remained reliant on Iranian ruler Nadir Shah and then Afghan ruler Ahmed Shah. After signing a non-interference agreement with Ahmed Shah, Mir Naseer Khan I proclaimed the Khanate of Kalat to be an autonomous state in 1758. Following resistance from the then-Khan Mir Mehrab Khan, the British Empire invaded the Khanate of Kalat in 1839. The Khanate eventually became dependent on foreigners and acceded to Pakistan. Under the control of the Political Agent to Kalat and Agent to Governor General (AGG) Balochistan, the Khanate of Kalat was officially administered by them from 1839 to 1948. By appointing a judicial commissioner in Quetta (the capital of Balochistan province in Pakistan) and a Jirga as the judicial bodies in all other areas, they manipulated the administration of the whole Balochistan region in their favour, including Kalat State. The British officers presided over the judicial commissioner, while the tribal chiefs (sardars) held the Jirga after consulting with the elders. Therefore, the Baloch States had little access to the favourable atmosphere of independence in which the judicial system for resolving disputes might emerge and flourish.

The time of Mir Naseer Khan I marked the beginning of Baloch state independence. The Khanate of Kalat experienced these developments and institutionalisation throughout this time. The most significant legal advancements in Kalat also occurred during this time. With a few exceptions, Naseer Khan I established Islamic Shariat law as the supreme rule of the realm and appointed judges known as Qazis. To resolve conflicts, each tribal Sardar also selected a separate judge; however, there was always the option of appealing to the Khan. After Naseer Khan I, authority ended; the British Administration amended the judiciary until Mir Ahmed Yar Khan, the Last Khan, and his transitory reforms.

The British administration created a new Balochistan, distinct from the previous Balochistan, known as "British Balochistan" in 1887 by combining the leased areas of Quetta, Nushki, and Bolan from Kalat with the territories gained by the Gandamak Treaty from Afghanistan. It also included the lands of Marri, Bughti, and Chaghi. Due to this, two separate Balochistan were created: the new British Balochistan and the old Kalat State, also known as Khanate-e-Kalat (Bughti, 2009). In addition to establishing British Balochistan, the British administrators divided Balochistan into several administrative zones and territories per their interests. Muhammad Akbar Azad in his book, *Special Civil Laws in Balochistan*, writes that Balochistan was divided into the following areas during the British rule, namely: (i) British Balochistan or The Chief Commissioner's Province, (ii) Tribal areas of Balochistan, (iii) Leased areas of Balochistan and lastly, (iv) Kalat States. He further mentions the administration of these territories:

In British Balochistan's case, certain British India laws were extended to British Balochistan under the Schedule Districts Act 1874 with necessary modifications. In 1890 special enactments were passed for British Balochistan. The Tribal areas of Balochistan were independent areas ruled by Tribal Sardars...for administrative purposes, the Tribal and Leased Areas together were called Agency Areas being governed by the Agent of Governor General in Balochistan as distinct from British Balochistan, which the same person governed his capacity as the Chief Commissioner of British Balochistan...the State of Kalat was the only independent state, after the Treaty of Mastung of 1876 the British Government gained political control over these state, gradually the British Government interfered in the internal affairs of these states till the rulers of these (Kalat)

states were turned into a nominal sovereign, and the Administration was taken over by officers appointed by the Government of India (Azad, 2009).

Because of the administration division, Balochistan has adopted a unique set of judicial procedures. Each of these territories had its unique judicial system. A judicial commissioner handled most issues in British Baloch, including Jirga for natives. Jirga replaced official institutions of conflict settlement in tribal areas due to British policies. Finally, Qazi courts were formed in the Khanate. Overall, it became impossible for the judiciary to expand and evolve consistently. No Balochi jurisprudence that should have developed from informal Balochi rules or norms has been able to do so. In the Baloch community, many customs and laws were strong enough to become legislation and disappear under the burden of British control.

Like the laws governing the selection of the tribe head (Sardar), the law protects war (humanitarian laws), the laws regulating taxation, the laws regarding the division of land (land laws), so on and so forth, also the split administration prompted the development of "administrative adjudication". Administrative adjudication is essential in complex administrations where judicial mechanisms would bog down the process and stall state management. However, neither the administrative adjudication on the administrative matter nor the administration was as complicated in Balochistan. The Balochistan Judicial system's overall judicial development and growth were hampered by the administrative handling of routine criminal and civil cases.

On the occasion of the partition of India, this region (Balochistan) was controlled and governed by a single person, a British stationed in Lytton Road at Quetta, with four different portfolios. He acted as Agent to the Governor General (AGG) for Tribal areas, Chief Commissioner as well as Revenue Commissioner in revenue matters, and Judicial Commissioner in judicial cases relating to British Balochistan, Resident for Leased Areas, and in the capacity of 'Lord' concerning princely Kalat States (Azad, 2009).

Due to administrative adjudication being a significant source of law, Balochistan never developed precedents or established clear-cut laws. Furthermore, legal counsel was infrequent, and the choices were not comprehensive nor well-reasoned. As a result, the judicial system continued to exist as an administrative function within the executive branch rather than emerging as an organ of the State.

The judicial system in Balochistan before partition was significantly divided by colonialism's presence. Traditional customs and institutions were upended when the British imposed a formal legal system based on British rules and processes. As a result, traditional norms and values were lost, and the population's cultural identity was also lost. In addition, the formal legal system was frequently perceived as biased and unfair, which caused a general lack of confidence and discontent among the people. During this time, the system was in flux due to the region's social, political, and cultural change, which was carried out through parallel setups according to their interests. Given the challenges brought by colonialism, a hybrid was developed. This system was distinguished by its informal and adaptable nature, and disagreements were settled using official and informal procedures.

Conclusion

This study focuses on the relatively weak and dwarfed judicial development in Balochistan prior to 1947. It identifies the root causes of underdeveloped and weak judicial systems and their evolution and historical development. It is impossible to

completely dismiss the significance of the judicial system. In addition to assisting in a current societal existence, it also supports the upkeep of peace and the defence of each individual human rights. The assessment of the Balochi judicial and legal literature led to the conclusion that the most significant contributing factors were the administrative division of Balochistan prior to 1947. Several rulers ruled and dominated it under their particular legal and judicial systems. Additionally, the structure of the States that were present in prehistoric Balochistan was unstable, and the rulers had minimal influence over the central government. The right to retaliation has also been ingrained in Baloch's social life, which has hampered the advancement of justice. The nomadic lifestyle of the Baloch was also detrimental to the development of Balochistan's legal and judicial systems. Revising secondary sources allowed for a thorough examination of much of the history that had been recorded and the identification of all possible causes. This method allowed for the legibility of an analytical picture of the Balochistan judicial system before the inception of Pakistan as a separate country.

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