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# LEGAL DUALISM AND THE MADRAS PRESIDENCY: A STUDY IN COLONIAL JURISPRUDENCE AND SPATIAL CONTROL

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## ABSTRACT

The research paper examines the phenomenon of legal dualism in the Madras Presidency during the British colonial era, focusing on the intersection of spatial segregation of (white town and black town) and the dual administration of justice. Legal dualism articulated through three interconnected dimensions: spatial division of European and indigenous population, establishment of parallel court system with distinct jurisdictional boundaries, and application of different substantive legal system which was based on race and region. Through the analysis of historical records, legislative charters, and landmark judgement for instance *Madura v. Mootoo Ramalinga Sethupathy* (1868) and *Abraham v. Abraham* (1863), the study demonstrate that the legal dualism was not merely an administrative arrangement but a fundamental instrument of the colonial British government that reinforced racial hierarchies, regional hierarchy, and the hierarchy on the basis of origin, and reshaped the development of Indian legal system. The research reveals how the spatial- legal system created a structured inequality, also contributed to codification and transformation of personal laws and established patterns of legal pluralism that persist in postcolonial India.

**Keywords:** Legal dualism, Madras Presidency, white town, black town, colonial justice, legal pluralism, spatial segregation, dual legal system.

## 1 Introduction

### 1.1 Background and context

The history of colonial India cannot be separated from the history of its legal system. In colonial era law served as both an instrument of governance and a tool of empowerment and domination. Among the British presidencies- Bengal, Bombay, madras the madras presidency shows a distinctive illustration of how colonial power was expressed spatially and legally. From the foundation of madras presidency in 1639, fort St. George divided madras into two distinct settlement one is white town which was inhabited primarily by Britishers and the company officials and on the other side black town which was inhabited by the Indian merchants, artisans and labored lives.<sup>1</sup> The spatial divide equated to a legal divide in which Europeans were governed by English or company law, while Indians were subjected to local customs, traditional tribunals or court system settled colonial rule: a hybrid colonial courts.

Later on, the historians called this structure “legal dualism”- the coexistence of two distinct legal system, orders within a single territory.<sup>2</sup> Legal dualism in madras presidency was not accidental, it was planned colonial policy that helped British to rule effectively without fully integrating the indigenous population of India into English legal framework. It also allowed the to impose a racial and social hierarchy through the law itself.

By the late seventeen century, the British east India company had established a complex network of court system in madras: the Choultry court (court for Indian residents), the high court of judicature (1678), and the mayor’s court (1687).<sup>3</sup> These courts reflected a hybrid legal system which were partly English, partly indigenous but always under the control of the British India company. the Europeans of company were subjected and enjoyed procedural safeguards and access to appeal, while the Indian native litigants often faced inconsistent and arbitrary justice. This legal system early institutionalized inequality reveals how colonial laws was not only about governance but also about racial control and ordering.

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<sup>1</sup> *Administration of Justice in Madras (1600–1726)*, Law Foyer (2022)

<sup>2</sup> Lauren Benton, *Law and Colonial Cultures: Legal Regimes in World History, 1400–1900* (Cambridge Univ. Press 2002)

<sup>3</sup> S.M. Neild, “Colonial Urbanism: The Development of Madras City,” *Modern Asian Studies*, Vol. 13, No. 2 (1979), at 213-215

## **1.2 Research questions**

This study is guided by the following questions:

1. How did legal dualism emerge and operate within the Madras Presidency?
2. In what ways did the spatial division between white town and black town shaped legal and judicial institution and system?
3. How did specific legal cases illustrate the coexistence and conflict between colonial and indigenous laws?
4. What are the continuing effects of this colonial legal dualism on modern Indian legal system?

## **1.3 Objectives:**

This paper aims to:

1. Trace the origin and developments of legal dualism in madras presidency.
2. Examine the interaction between and indigenous legal system.
3. Analyze case studies that exemplify the practice and consequences of legal dualism.
4. Assess how the colonial legal divide continues to shape the contemporary Indian law and access of justice.

## **2 Methodology**

This paper adopts a historical and analytical research design, combining descriptive historical inquiry with critical analysis. The aims are to reconstruct how legal dualism emerged and functioned in the madras presidency under the colonial rule.

### **2.1 Primary sources**

The study relies on a variety of primary historical sources

1. The charter of 1661 by king Charles II granting judicial authority to the east India company.<sup>4</sup>
2. Records of fort St. George congaing proceeding of the governor's council and early judicial activities of east India company. <sup>5</sup>
3. Reports of the mayor's court and the Choultry court records, which demonstrated how colonial officials managed separate jurisdictions for Europeans and natives Indians<sup>6</sup>.

## **2.2 Secondary sources**

1. Historians such as Satish Kumar on urban spatial and segregation in colonial madras.<sup>7</sup>
2. Legal scholar like M.P. Jain and k. Krishnaswamy on the evolution of British Indian judicial institutions.<sup>8</sup>
3. Theoretical work by Lauren Benton (law and colonial cultures) and Sally Engle Merry (legal pluralism), which provide framework for interpreting colonial legal orders.<sup>9</sup>

## **2.3 Analytical sources**

1. Historical institutional analysis examining the structure and evolution of dual legal system such as the Choultry court, mayor's court, and recorder's court.
2. Spatial legal analysis exploring how the physical segregation of white town and black town symbolized and reinforced jurisdictional separation.

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<sup>4</sup> Charter of Charles II (3 Apr. 1661), reprinted in Aitchison's Collection of Treaties, Engagements and Sanads, Vol. I (1892).

<sup>5</sup> Records of Fort St. George: Diary and Consultation Book (Madras Government Press 1911).

<sup>6</sup> K. Krishnaswamy, *History of the Madras High Court 1678–1862* (1956).

<sup>7</sup> M. Satish Kumar, "Idioms, Symbolism and Divisions Beyond the Black and White Towns in Madras, 1652–1790," *South Asia J.* (2013).

<sup>8</sup> M. P. Jain, *Outlines of Indian Legal History* (7th ed. 2017).

<sup>9</sup> Sally Engle Merry, "Legal Pluralism," 22 *Law & Soc. Rev.* 869 (1988).

These frameworks provide a comprehensive understanding of legal dualism as both a phenomenon and an ongoing legacy.

### **3 Literature review**

#### ***3.1 Overview of existing scholarship***

There is a long debate on how law functioned as both an administrative instrument and a cultural weapon between the scholars of colonial India. Early institutional histories such as J.D.M.

Derrett's introduction of modern Hindu law and M.P Jain's outline of Indian legal history describe the formation of colonial court in every presidency but treat madras as a peripheral example.<sup>10</sup> Later on the works shifted focus from formal institution to the social life of law, that show how colonia; rule reshaped everyday legal consciousness. Lauren Benton's law and colonial argues that European empires relied on overlapping jurisdiction rather than creating the uniform codes "jurisdictional pluralism."<sup>11</sup> Benton's framework clarifies how English and indigenous law of India coexisted in madras simultaneously in madras without merging into a single hierarchy.

Economics historian like Tirthankara Roy view colonial legal dualism as a rational compromise that reduced administrative costs by allowing the company to govern European under English law while native under the indigenous law and institution which was familiar to native people. However, the anthropologist such as Sally Engle Merry see the "legal pluralism as the colonial strategy" explain how empires legitimated control by claiming to preserve custom but actually they were redefining it.<sup>12</sup>

Urban historian like Satish Kumar's essay "beyond the black and white town madras" reveal how architecture and the urban planning reinforced social segregation.<sup>13</sup> Fort St. George (white

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<sup>10</sup> J. D. M. Darrett, introduction to modern Hindu law (1963)

<sup>11</sup> Lauren Benton, *Law and Colonial Cultures: Legal Regimes in World History 1400–1900* (Cambridge Univ. Press 2002) at 45–50.

<sup>12</sup> Sally Engle Merry, "Legal Pluralism," 22 *Law & Soc. Rev.* 869 (1988).

<sup>13</sup> M. Satish Kumar, "Idioms, Symbolism and Divisions Beyond the Black and White Towns in Madras, 1652-1790

town) housed the council, governor and courts applying English law, while black towns remained subjected to customary law.

### ***3.2 Legal history of madras presidency***

The earliest systematic story of Madras's courts in K. Krishnaswamy's history of Madras High Court which tells the evolution from the choultry court (1639) to the Supreme Court (1801).<sup>14</sup>

Historical material such as the royal charter (1661) of Charles II, Mayor's Charter (1687), and the proceeding of the Fort St. George Council demonstrates how the East India Company institutionalized separate jurisdiction.<sup>15</sup>

### ***3.3 Case studies in existing research***

Some specific incidents illustrate the tension of dual law. The Pagoda Oath case 1735 where Hindu merchants resisted a Christian oath has been examined by Benton and by Madhavi Menon as evidence of cultural collision court.<sup>16</sup> Studies of the choultry court by Radhika Singh show its transformation under Governor, Streyneham Master (1678) replaced native adjudicators with company officers, turned a community forum into a colonial tribunal.<sup>17</sup> Similar records of the Mayor's Court reveal frequent jurisdictional disputes between European merchants and Indian petitioners, confirms that legal dualism generated confusion as well as control.

## **4 Discussion:**

### ***4.1 Interpretation of legal dualism as a colonial strategy***

The legal structure of Madras Presidency reveals that dualism was not merely administrative but a strategic tool of colonial governance. The East India Company deliberately institutionalized two legal systems- English for Europeans and customary law for Indians, to maintain direct control while avoiding direct confrontation with native traditions.<sup>18</sup> This

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<sup>14</sup> K. Krishnaswamy, *History of the Madras High Court 1678–1862* (1956)

<sup>15</sup> Charter of Charles II (3 Apr. 1661) reproduced in *The Aitchison Collection of Treaties and Charters* Vol. I (1892). 11

<sup>16</sup> Lauren Benton, at 122; Madhavi Menon, *Indifference to Difference: On Queer Universalism* (Minnesota Press 2015) at 77–79.

<sup>17</sup> Radhika Singh, "Choultry Courts and Customary Justice in Early Madras," *Indian Hist. Rev.* 48 (2021).

<sup>18</sup> M. P. Jain, *Outlines of Indian Legal History* (7th ed. 2017) at 43.

arrangement was an excuse of cultural respect while embedding racial hierarchy into the legal system itself

Legal theorist like Sally Engle Merry defines such systems as strategies of accommodation where empires sustain power by codifying differences rather than erasing it.<sup>19</sup> In Madras this took the form of granting limited autonomy to Choultry court while reserving ultimate authority for the governor's council and mayor's court.<sup>20</sup> Dualism thus operated as a subtle instrument of domination that ensured native compliance through that illusion that natives also have judicial participation.

The pagoda oath case exemplifies this pattern. The company's willingness to recognize Hindu was not liberal tolerance but pragmatic governance. The Britishers' goal was the stability of the empire not the equality of the people.

#### ***4.2 Spatial segregation and jurisdictional control***

The division between the white town and black town was not only limited to the residential but it was jurisdictional also. Each town symbolized a separate legal world (white town symbolized the English law while black town symbolize the native and customary law of Indians.) white town housed the governor's house, mayor's court and the English chapels (symbols of English law and authority.) black town contained temple, bazaars, and the choultry court spaces governed by native customs but it was monitored by English officers.<sup>21</sup>

Lauren Benton's "jurisdictional mapping" theory explains this phenomenon that colonial cities were structured to reflect legal boundaries as spatial boundaries.<sup>22</sup> Thus Madras became the city of manifestation of legal hierarchy, where movement between town implied the movement between legal system.

The spatial legal duality also shaped the identity of the people. Resident of white town treated as elite class, classic class who enjoys legal privileges while the black town remained natives

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<sup>19</sup> Sally Engle Merry, "Legal Pluralism," 22 *Law & Soc. Rev.* 869, 879 (1988).

<sup>20</sup> K. Krishnaswamy, *History of the Madras High Court 1678–1862* (1956) at 22–23.

<sup>21</sup> S. M. Neild, "Colonial Urbanism: The Development of Madras City," 13 *Mod. Asian Stud.* 213, 217 (1979).

<sup>22</sup> Lauren Benton, at 122; Madhavi Menon, *Indifference to Difference: On Queer Universalism* (Minnesota Press 2015) at 77–79.

who were denied equal protection of law.<sup>23</sup> Therefore law became a mean of producing and policing racial and regional categories.

#### ***4.3 Cultural translation and hybrid law***

The hybrid procedure of the Choultry court where Tamil litigants swore Hindu oaths but followed English style written pleading illustrate the phenomenon of the cultural translation in law.<sup>24</sup> This hybrid for was not neutral and mutual procedure but instead imposed by the Europeans, English rationalities on to the indigenous native norms.

Historian such as Radhika Singh argues that such hybridization created and managed “legal pluralism” a system that appeared inclusively but subordinated local authority. For instance, although the native headmen continued to mediate and resolve the disputes, their decisions required rectification or validation by the company officers.<sup>25</sup> Thus the Britisher transformed customary law into a bureaucratic instrument which stripped of its community where was earlier legitimate.

This dynamic reflects what postcolonial scholar calls epistemic violence- the imposition of foreign categories of knowledge on to the local realities.<sup>26</sup> The company’s codification of Hindu and Muslim personal law later in 18<sup>th</sup> century continued this process, formalizing the concept of legal dualism that began in madras presidency. Now it was not just limited to the madras but it started spreading I the whole country.

#### ***4.4 Comparison with other presidencies***

When madras compared with Bengal, Bombay, Madras’s dualism appears both earlier and more spatially distinct. In the Bengal the warren hasting plan 1772 explicitly divided law by religion (Hindu and Muslim) rather than race and residence.<sup>27</sup> In madras by contrast the division was between the European and non-European, and between white town and black town.

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<sup>23</sup> M. Satish Kumar, “Idioms, Symbolism and Divisions Beyond the Black and White Towns in Madras, 1652–1790,” *South Asia J.* (2013)

<sup>24</sup> Radhika Singh, “Choultry Courts and Customary Justice in Early Madras,” *Indian Hist. Rev.* 48 (2021).

<sup>25</sup> Krishnaswamy, *supra* note 3, at 25.

<sup>26</sup> Gayatri Spivak, “Can the Subaltern Speak?” in *Marxism and the Interpretation of Culture* (1988) at 287–288.

<sup>27</sup> Regulation Plan, Warren Hastings, Bengal (1772), reproduced in Aitchison’s *Treaties and Engagements*, Vol. II (1892).

The difference highlights the experimental nature of early colonial jurisprudence where madras served as a laboratory of legal governance and the company tested the modes of controlling populations through law. the experience gained there later informed the Bengal and the Bombay system, which was institutionalized legal pluralism on a larger scale.

#### ***4.5 Continuity and transformation after 1801***

The former abolition of the mayor's court and the establishment of the supreme court of madras (1801) might suggest a uniform system but in practice the dualism of persisted. The supreme court exercised jurisdiction primarily over Europeans while native inhabitants remained under personal law which was administrated by the provincial and mofussil courts.<sup>28</sup>

The enduring separation reveals how colonial legal ideology outlived institutional reform. Even after 1861, when the Indian High court act unified the judicial system, procedural and substantive divisions persisted through and the Anglo- Hindu and Anglo- Mohammedi law.<sup>29</sup> the modern legal system where marriage, inheritance, and family matters still depend on the religious affiliation, thus it can be tracked back to this early colonial dualism.

In its current form legal pluralism represents the decolonized continuation of colonial dualism a system that celebrates diversity but often reproduces inequality.

#### ***4.6 Modern implication of legal dualism***

The legacy of Madras's dual system remain visible in several aspects of Indian law today: -

##### **4.6.1 Personal law system**

India's Hindu, Muslim, Christian, and Parsi personal laws reflects the colonial principle that different communities require distinct legal regimes.<sup>30</sup> Although now framed as cultural autonomy, this pluralism perpetuates uneven rights, particular for women, and minorities.

##### **4.6.2 Judicial access and class divide**

In modern India urban elite navigates the formal legal system more effectively than the rural

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<sup>28</sup> M. P. Jain, *Outlines of Indian Legal History* (7th ed. 2017) at 43.

<sup>29</sup> Pratap Bhanu Mehta, "Pluralism and the Indian Constitution," *Oxford Handbook of the Indian Constitution* (2016).

<sup>30</sup> Werner Menski, *Comparative Law in a Global Context: The Legal Systems of Asia and Africa* (2006) at 251.

and marginalized citizens same as white town residents used to do and used to enjoy privilege access of formal court in colonial India. This access dualism echoes the colonial pattern where law functioned defiantly for different classes of people be it English people the resident of white town or native Indian people resident of black town.

#### **4.6.3 Administrative mindset**

The colonial idea that natives must be governed differently persists in bureaucratic discretion and the uneven application of law. Contemporary debates over uniform civil code (UCC) highlights the ongoing tension between equality and the cultural pluralism which is an unresolved colonial inheritance.

### **5. Conclusion**

The study of legal dualism in madras presidency reveals how colonial law was not simply implemented from English to India but it was constructed here to serve and fulfil the imperial interests. Through institutions such as the Choultry court and mayor's court, and through spatial segregation between white town and black town the Britishers established a dual legal order.

This system had multiple purpose. Administratively it was simplified governance by allowing the east India company to rule without fully understanding indigenous norm and customs of here. Politically, it preserved racial, regional, economical hierarchies under the illusion of respecting local customs. Culturally, it produced what Lauren Benton calls a jurisdictional imagination, where law, race and geography came together to shape how the British control colonial space.

The analysis of the pagoda oath case 1735 illustrate thus dualism in action, the company's need for order forced it to accommodate Hindu religious practice within an English procedural framework. This was not just cultural tolerance but calculated pragmatism, a way to sustain the legitimacy while retaining authority.

Over the time legal dualism evolved into the codified pluralism oft the 19<sup>th</sup> century, where personal laws based on religion replaced spatial segregation as the primary mode of the differentiation. The continuity from the colonial to postcolonial India shows that legal decolonization has been partial, while institution changed, ruler changed, ruling system

changed but the plural and hierarchal remained same. Modern India's personal law system, uneven access to justice and bureaucratic system all keeps the imprint of this colonial heritage.

Thus, the case of the madras presidency demonstrates the colonial legal system were neither fully new nor fully indigenous, they were hybrid structure of domination built by the Britishers. Legal dualism served as the invisible constitution of empire, governing through difference. Its persistence in contemporary India challenges the nation's constitutional commitment to equality before the law and underscore the remained task of decolonizing the Indian legal mind.

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