

A BRIEF SURVEY OF THE ORGANIZATION AND STRUCTURE OF NEPALI LAW COURTS DURING THE THIRD QUARTER OF THE NINETEENTH CENTURY

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In my previous two articles published in the Contributions to Nepalese Studies (Vol. 3, No. 1, January, 1976) and the Foreign Affairs Journal (No. 1, April, 1977), I attempted to give some account of the reforms introduced by the Ain (Legal Code) of 1854 in the pre-Jang Bahadur civil and criminal cases and the impact of the Ain on the present Muluki Ain (Legal Code) of Nepal. This article analyses the organization and structure of Nepali law courts during the third quarter of the nineteenth century.

Without going into the historical documents concerned, we may briefly refer to the work of Shri Satis Kumar (Rana Polity in Nepal, 1967) who has written on the judicial administration for the period under study. Satis Kumar states that Jang Bahadur did little to organise the judicial structure of the country. This unwarranted version of Jang Bahadur administration is blindly accepted by Shri M.S. Jain (The Emergence of a New Aristocracy in Nepal, 1972). But as the following discussion and data show, it was Jang Bahadur who created more judicial courts both in the hills and in the Tarai districts. The judicial administration of Nepal during this period can best be studied under two main heads, namely centre and districts.

Centre

Kausal

First, at the top of the judicial structure at the centre, was the Kausal or State Council with the Prime Minister as its head.¹ The Kausal was not a purely judicial body, it was also an executive and legislative body. When it met to hear and decide some cases, it assumed the role of the highest tribunal. Further, the Kausal being a permanent body, it was entrusted with the task of making new laws and amending existing ones. Its jurisdiction extended to the whole of Nepal. In both civil and criminal cases, the Kausal possessed original and appellate jurisdictions. For instance, in V.S. 1920 (1863) the Kausal heard and decided some cases relating to rape, adultery, and caste disputes among the different subdivisions of the Gurung Community.² Likewise, in 1851 when there was a conspiracy against Prime Minister Jang Bahadur, the Kausal or the State Council tried the conspirators and sent them to British India for imprisonment.³

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The Kausal, under the Prime Minister, could hear appeals for any cases coming from the district judicial courts. In deciding cases involving more than Rs. 500/-, the district courts had to get the seal of the Prime Minister affixed to the written judgement.⁴ The district courts were further directed to request the Kausal to send instructions to settle such cases as were not explicitly written in the Ain.⁵ The Kausal heard appeals also from the principal four courts located at the centre. Before Jang Bahadur's time, as B.H. Modgson (1880) states, if a person was not satisfied with the judgement of the four courts, he could, in grave matters, appeal to the Prime Minister. And if he was not satisfied even with the judgement of the Prime Minister, he could go to the Palace gate and cry out "jutice! justice"! Thereafter, the king, with the aid of some Kajis, Sardars, Panchmen, Ditthas and Bicharis used to decide the case.⁶ The decision given by the king in-council was final. During Jang Bahadur's time the final decision lay with the Prime Minister-in-Kausal.

Sadar Courts

Below the Prime Minister-in-Kausal, there were four principal courts at the centre, and these were stationed in Kathmandu proper. These courts were: Koti Ling, Ita Chapali, Taksar and Dhansar. The first two courts, that is, Koti Ling and Ita Chapali, were inherited by the Shah rulers from the Malla Kings.⁷ The origin of the latter two courts - Taksar and Dhansar - is unknown. Probably they also belonged to the pre-Shah rule. These courts were called Adalats or Naya Sabhas.⁸ In some records of the period of Jang Bahadur, they are collectively addressed as Char Adalats - "four courts".⁹ Among them the Koti Ling was the highest followed by Ita Chapali. However the Ain of 1854 and other contemporary records give prominence to the Ita Chapali. According to Hodgson, there were no territorial limits to the jurisdiction of the courts.¹⁰ Any case could be filed in any of the four courts, except grave penal cases, which were to be referred to the Ita Chapali. But outside Kathmandu proper, the two cities of Bhadgaon and Patan had their own separate courts, each headed by one Bichari (a judicial functionary). The first appeals from these courts lay with the courts of Kathmandu proper, particularly to the Koti Ling and Ita Chapali. In short, the four Sadar Adalats had both original and appellate jurisdictions. However, Taksar and Dhansar had no jurisdiction to try cases like murder, cutting of limbs, confiscation of property, etc. The five major crimes, collectively called Pancha Khat (Brahmahatya - slaying a Brahman, Gauhatya - killing of a cow, Strihatya - killing of a woman, Balhatya - killing a child, and Patki - unlawful sexual intercourse, such as incest) could be tried only by the Ita Chapali, the chief judge of which was a Dittha, who also presided over the Koti Ling. The Taksar and Dhansar were in the charge of two Bicharis.¹¹ On occasions when some grave cases demanded his presence, the Dittha used to preside over the business of these two courts.

The Prime Ministership of Jang Bahadur witnessed some significant changes in the personnel administration of the four Sadar courts. First, dating from V.S. 1911 (1954), the Sadar courts had one chief judicial officer called a judge. The first person to hold this exalted position was Bishnu Prasad Gurugharana. In a letter of appointment given to him he was empowered to hear cases involving the death penalty and confiscation, and to give instructions to other judicial officers of all the existing subordinate courts.¹² Secondly, below the judge there were the additional positions of Bada Sardar (Senior Sardar), lieutenant and captain attached to the four courts, though their functions have not been precisely recorded. Finally, there were two separate Ditthas for the Koti Ling and Ita Chapali.¹³ As stated earlier, before Jang Bahadur's rule there was only the Dittha attached to the four Sadar Courts who acted as chief justice for the whole of Nepal.

District Courts

Before 1850

Before explaining the district judicial administration during this period, some knowledge of this administration before the second-half of the nineteenth century may be useful. Our chief authority on the judicial system of Nepal before the introduction of the legal code of 1854 was B.H. Hodgson. Thus on the basis of his published and unpublished papers, organisation and functioning of the judiciary in the hill and Tarai districts will be summarized below.

According to Hodgson, the hill districts were divided for judicial purposes into eight parts, with each part under one judicial authority called a Bichari.¹⁴ But the territorial limits of Bicharis were not precisely defined, and their number also changed from time to time. Furthermore, from the judicial point of view, the capital (Kathmandu Valley) was considered the centre of the country. The eastern and western interior parts of the country were divided into two "grand sections." The eastern grand section covered Mechi and Dudh Kosi.¹⁵ The western grand section was divided into two sections: the Kalipar division covered the territory between the Kali and Bheri rivers, and a second section covered the region between the Kali and Marsyangdi rivers. This area was called the Majhkhand circuit.¹⁶ Two Bicharis presided over the business of each of the greater divisions. In the eastern division there were two fixed judicial residences located in Majhkirat and Chainpur.¹⁷ In the west there were four fixed or permanent judicial residences of the Bicharis. Two permanent residences for the Kalipar division were located in Baglung Chour and Beni. The other two permanent residences of the Bicharis for the Majhkhand division were in Pokhara and Tarku.¹⁸ The remaining courts were movable or ambulatory.

From the writings of Hodgson it appears that the Tarai judicial administration, unlike that of the hills, was entrusted to the Subbas and Foujdars, the latter being subordinate to the former. The Tarai region which actually included some hill tracts also was divided for judicial purposes in the following way:¹⁹

1. Morang Division: This division was placed under one Subba and two Foujdars.
2. Saptari and Mahottari Division: This division was also under one Subba and two Foujdars.
3. Bara and Parsa Division: The same number of Subbas and Foujdars as in the case of the preceding two divisions.
4. Rautahat Division: This was under one Subba and one Foujdar.
5. Chitwan Division: One Subba and one Foujdar administered here.
6. Butwal Division: One Subba and one Foujdar.
7. Doti Division: There was only one Foujdar here.
8. Salyan Tarai Division: Only one Foujdar was in charge of this division.

All of the divisions mentioned above were independent of each other.

After 1850

As mentioned in the beginning of this article, the judicial system for both the hills and the Tarai, particularly the structure of the courts, was remodelled. To give a summary, there were three levels of courts in the districts. There were Gaudas, Adalats (sometimes also called Addas) and Amals, the last one referring to the village level. Ample references are available of the existence of some courts called Goswaras and Aminis in the Tarai districts, although there is no detailed information available concerning their activities as law courts. Nevertheless, the available names of the district courts may be noticed. The records cited explicitly give the location of the named district courts along with the rank of the important judicial functionaries attached to them. Below, the ranks of the judicial functionaries are given in parentheses for each district court concerned. But in the case of some districts the judicial functionaries are not available from the records.

1. Palpa Adalat (Dittha, Bichari, Bahidar and Tahbildar).²⁰
2. Doti Adalat (same).²¹
3. Dailekh Adalat (Bichari, Bahidar and Tahbildar).²²
4. Jumla Adalat (same).²³
5. Salyan Adalat (same).²⁴
6. Dhankuta Adalat (Bichari, Khardar, Bahidar and Tahbildar).²⁵
7. Kaski Adalat (same).²⁶ Some records refer to this as Pokhara Adalat. Pokhara was, as it is now, the headquarters of Kaski.
8. Lamjung Sadar Adalat (Bichari, Bahidar and Tahbildar).²⁷
9. Gorkha Adda (Bichari and Tahbildar).²⁸
10. Baglung Adalat (Dittha and Bichari).²⁹
11. Katarban Sadar Adalat (same).³⁰
12. Majh Khand, Palhi and Bethari Adalat (Dittha and Bichari).³¹
13. Jaleswor Sadar Adalat (same).³²
14. Bardiya Adalat (Dittha and Bichari).³³
15. Baitadi Sadar Adalat (not available).³⁴
16. Syangja Adalat (Bichari and Tahbildar).³⁵
17. Taulihawa Sadar Adalat (Dittha and Bichari).³⁶
18. Chainpur Adda (Bichari).³⁷
19. Ilam Adda (not available).³⁸
20. Tanahun Sur (Dittha).³⁹
21. Patan Adalat (not available).⁴⁰
22. Bhadgaon Adalat (not available).⁴¹

In addition to the foregoing Adalats located in the hills and the Tarai districts, there were courts called Goswaras and Aminis in the following Tarai districts:⁴²

1. Bara
2. Parsa
3. Chitwan
4. Mahottari
5. Saptari
6. Rautahat
7. Sarlahi, and
8. Butwal.

Until fresh documents are explored, no detailed study of these courts is possible. It may also be noted that the districts had also Thanas and Kachaharis. The Thanas, as their names suggest, were police or military outposts. Besides the military functionaries (usually of the ranks of captains and lieutenants), there were Ditthas and Bicharis along with other clerks attached to them.⁴³ The Ain of 1854 states that the Thanas, too, heard and decided cases.⁴⁴

Functions and Jurisdiction of the Courts

Gaudas: The word Gauda literally means "a narrow pass." But it is also used to refer to a hill station or to a castle or fort. Those districts which were called Gaudas were: Doti, Salyan, and Palpa in the West and Dhankuta in the east.⁴⁵ The judicial offices established in these districts were thus known as Gaudas. Since the introduction of Gorkha rule, the Gaudas were placed under responsible military officials — at first under Kajis or Sardars, and later on, under generals and colonels. In the Ain the chief judicial official of a Gauda is invariably referred to as Hakim and Malik. From the beginning the Gaudas served as appellate courts; but they also heard and decided original cases too.⁴⁶ The Ain and other records do not specify the activities of these courts. But the Ain gives some concessions as well as puts limitations on the jurisdiction of the Gaudas. For instance, the Ain allowed the Gaudas to hear disputes concerning the property of persons who were related to the judicial functionaries of other Addas, Adalats, Thanas and Amals.⁴⁷ The functionaries of the latter courts could not hear the complaints of their relations without the prior permission of the government or the Prime Minister. Secondly, although the Gaudas had jurisdiction regarding penal cases within the ambit of Panch-khat, they could order a murderer to be killed only when they got a Lal Mohar (royal red-seal document) from the Kausal.⁴⁸ In other cases these courts were given freedom to decide cases and award punishment as provided by the Ain.

Addas and Adalats

The Addas and Adalats were simultaneously used to denote the same law courts. In contemporary records some custom houses and other government offices were also called Addas. The Addas and Adalats were district level judicial courts with full original jurisdiction, the district Addas and Adalats received all complaints and law suits from the people of their respective districts. They had the power to try all cases, from simple theft to murder, as provided in the Ain. But before putting a person to death, they had to seek written permission from the Ita Chapali and the Kausal.⁴⁹ In matters of appeals, they received cases from the Amals and Kachaharis.

Amals and Kachaharis

Amals and Kachaharis were the judicial courts of a group of villages called Thums in the hills and Pargannas in the Tarai. In other words, they were village level courts having original jurisdiction. They had power to try all cases excepting execution, branding, degrading from castes, etc. In such matters, the Amals and Kachaharis had to submit the offenders to the Adalats along with a written admission of guilt (Kayalmama).⁵⁰

Conclusion

The foregoing is a brief account of the organisation and structure of Nepali courts during the Prime Ministership of Jang Bahadur. If further research is carried out on this topic, the exploration of new and original documents could better our understanding of this important branch of the nineteenth century Nepali administration.

Footnotes

1. The Prime Minister of that time was the highest court of appeal and also heard original cases. In this article only the organization and structure of regular courts is dealt with.
2. Order issued to Lt. Padma Dhoj Khatrichhetri and Bichari Karbir Khatrichhetri regarding caste disputes among different subdivisions of the Gurung Community, V.S. 1920 Bhadra Sudi 3, (Wednesday) 1920 Salko Daskhat Pratham, Kausi Tosa Khana, Nepal (KTKN). This provision was included in the Ain of 1854, now brought in published form. See Shri 5 Surendra Bikram Shah Dev Ka Shasan Kalma Baneko Muluki Ain (Hereafter quoted as Ain), Section 38. p. 454, (Kathmandu, HMG, Ministry of Law and Justice, V.S. 2022). For another

example regarding the decision of the Kausal in civil matter governing caste, see Ain. Section, 49, p. 392.

3. Foreign Consultation, 25 July, 1851, No. 14, National Archives of India (NAI) New Delhi.
4. Ain Section 1, p. 169.
5. Ibid., Section 21, p. 171.
6. B.H. Hodgson, Miscellaneous Essays Relating to Indian Subjects, Vol. II, (London: Trubner and Co., 1880), p. 213.
7. D.R. Regmi, Medieval Nepal, Vol. II, (Calcutta: K.L. Mukhopadhyaya, 1955), p. 479.
8. Hodgson, op. cit., pp. 211-12.
9. i. Register for V.S. 1910, Kausi Tosa Khana, Nepal (KTKN). The date of reference made is V.S. 1910, Aswin Badi 30.
ii. Registers for V.S. 1905 and 1933, Kamyandari Kitab Khana, Nepal (KKK). Now available in Rastriya Abhilekhalaya.
iii. Register, Serial No. 1, p. 61, Shahi Nepali Jangi Adda (SJA) Nepal.
iv. Ain, Section 12, p. 156.
10. Hodgson, op. cit., p. 212.
11. Hodgson, op. cit., pp. 215-16.
12. Order Regarding the Appointment of Bishnu Prasad Gurugharna as the Judge of the Sadar Courts, Bundle No. 11, Serial No. 2084/12, V.S. 1911, Pausa Sudi 11, (Lagat Phant; Records Section, Department of Land Revenue, Ministry of Finance, Nepal).
13. Register, Serial No. 1, p. 61 (SJA).
14. Political Consultation, 4 November, 1831, No. 22 (NAI).
15. Ibid.
16. Ibid.
17. Ibid.

18. Ibid.
19. Ibid.
20. Register, Serial No. 1, pp. 92-97 (SJA).
21. Ibid.
22. Ibid.
23. Ibid.
24. Ibid.
25. Ibid. One Register for V.S. 1920 entitled Daskhatya Pratham of KTKN mentioned the Dittha as chief judicial head.
26. Ibid., p. 83 (SJA).
27. i. Ibid., p. 63.
ii. Register for V.S. 1933 (KKK).
28. Bundle No. 24, V.S. 1926, Ministry of Foreign Affairs (MFAN), Nepal.
29. 1920 Salko Daskhatya Pradharna, V.S. 1920, Baisakh Sudi 14 (KTKN).
30. Bundle No. 34, V.S. 1930, Fagun Sudi 15 (MFAN).
31. Ibid., Pausa Sudi 2.
32. Ibid., Chaitra Badi 1.
33. Ibid., Magh Badi 12.
34. Ibid., Fagun Badi 6.
35. i. Ibid., Marga Sudi 7.
ii. Register, Serial No. 1, p. 63 (SJA).
36. Bundle No. 34, V.S. 1930, Paush Badi 2 (MFAN).
37. 1920 Salko Daskhatya Pradharna (KTKN).
38. Bundle No. 24, B.S. 1917, Chaitra Sudi 15 (MFAN).

39. Register for 1920, Daskhatya Pradharna (KTKN).
40. Register for V.S. 1913, Nijamati Thamauti (KKK).
41. Ibid.
42. Register for V.S. 1931, Madhes ko Darta Kitab (KKK).
43. Register, Serial No. 1, pp. 97-106 (SJA).
44. Ain (see "the Mahal relating to Adalat", pp. 169-180).
45. Hodgson calls the Gaudas as Vicerojeties and includes Palpa, Doti, Salyan, and the country of the Kitats, (Miscellaneous Essays, op. cit., p. 214; Political Consultations, 17 December, 1830, No. 17 (NAI), D.R. Regmi, however includes Silgari in the list of Gaudas, in place of Salyan. See D.R. Regmi, Modern Nepal (Calcutta, 1961), p. 300.
46. i. Hodgson, Miscellaneous Essays, op. cit., p. 214.
ii. Political Consultation, 17 December, 1830 (NAI).
iii. D.R. Regmi, Modern Nepal, op. cit., p. 300.
47. Ain, Section 36, p. 179.
48. Ibid., Section 2, p. 181.
49. Ibid.
50. Ibid., Section 6, p. 182.

