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**INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH**

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**JURISPRUDENTIAL EVOLUTION OF COMMERCE AND  
COMMERCIAL DISPUTE RESOLUTION IN INDIA: A HISTORICAL  
PERSPECTIVE FROM INDUS TO PRESENT**- Rakshit Dhingra<sup>1</sup>**Abstract**

Where commerce thrives, commercial disputes inevitably arise. This saying holds particularly true for India that boasts a rich history of trade over the millenniums. The commerce and business activities in India are not a new occurrence, as they are as old as India's documented history. The Indian Subcontinent has fostered extensive commercial relations with distant lands, as evidenced by historical records dating back to 1100 B.C., spanning over millennia and encompassing both overland and maritime routes, thereby facilitating robust economic ties with western regions.<sup>2</sup> Historical sources dating back to the 1<sup>st</sup> millennium BCE substantiate the existence of commercial exchanges between Western Asia and the western coast of the Indian Subcontinent.<sup>3</sup> While the historical prevalence of trade in India is well-established, this paper delves deeper, and explores the fascinating evolution of commercial jurisprudence i.e., the legal principles governing commerce, alongside India's vibrant commercial history.

**Ancient Period**

The law as we have it today is a product of Greco-Roman, Enlightenment and Industrial Revolution legacies, however, the culture of jurisprudence in India is far older and has its

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<sup>2</sup>Ch-II, History of foreign trade in India, available at: <https://gaganacad.files.wordpress.com/2019/07/history-of-foreign-trade-in-india.pdf> (last visited on March 2, 2023)

<sup>3</sup>Did You Know? The Port Trade Centre of Arikamedu and Roman Exchange with the Indian Subcontinent available at: <https://en.unesco.org/silkroad/content/did-you-know-port-trade-centre-arikamedu-and-roman-exchange-indian-subcontinent> (last visited on March 1, 2023)

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origins in ancient India.<sup>4</sup>Commercial activities in Indian subcontinent can be traced back to the Indus Valley Civilization which had developed a trade-based economy supported by advancements in transport, agriculture, animal husbandry, and metalworking, as evidenced by their diverse exports ranging from pottery to gemstones.<sup>5</sup>There are still several symbols from the Indus script that have not been deciphered, yet it is believed that a major purpose of such symbols was to maintain the records of trade and commerce due the presence of seals of many goods that have been found.<sup>6</sup> This is likely to have contributed to the prosperity of the Indus Valley civilization through lucrative long-distance trade.

Although it needs no proof to substantiate that there must have been commercial conflicts in ancient India from the time of Indus Valley civilisation, there are further sources that confirm that resolution of these disputes through various informal mechanisms. The sources go on to argue that an arbitration like system of 'Panchayat' was used in India some 2500 years ago for resolution of disputes wherein the decisions of the 'Panch' or head of the 'Panchayat' were irrevocable.<sup>7</sup> Hence, from this, it can be safely corroborated that the commercial disputes have been going on in India since the ancient times. The historical precedents underscore the symbiotic relationship between commerce and conflict.

The emergence of punch-marked silver coinage around 6th and 7th century BCE in the Mahajanapada period coincided with a surge in trade activity and urban development.<sup>8</sup> By 300 BCE, the rise of the Maurya Empire (c. 321 to 185 BCE) ushered in an era of political stability and military security which facilitated the establishment of a unified economic system, leading to a further flourishing of trade and commerce, alongside advancements in agricultural productivity.<sup>9</sup>

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<sup>4</sup>Arun Krishnan, "Improving Delivery of Justice in Commercial Cases: Could Modern India Look to its Pre-Modern History for Some Lessons?", Swarajya, Mar. 19, 2022, available at: <https://swarajyamag.com/business/improving-delivery-of-justice-in-commercial-cases-could-modern-india-look-to-its-pre-modern-history-for-some-lessons>(last visited on Mar. 1, 2024)

<sup>5</sup>Consulate General of India, Jeddah, "History of Indian Economy", May 14, 2013 available at: [https://cgijeddah.gov.in/web\\_files/267622636-History-of-Indian-Economy.pdf](https://cgijeddah.gov.in/web_files/267622636-History-of-Indian-Economy.pdf)(last visited on Mar. 2, 2024)

<sup>6</sup>OpenStax, "World History Volume 1: to 1500, 5.4 Vedic India to the Fall of the Maurya Empire", Apr. 19, 2023, available at: <https://openstax.org/books/world-history-volume-1/pages/5-4-vedic-india-to-the-fall-of-the-maurya-empire>(last visited on Mar. 3, 2024)

<sup>7</sup>Jerome T. Barrett and Joseph P. Barrett, *A History of Alternative Dispute Resolution* 8 (Jossey-Bass, San Francisco, 1st edn., 2004).

<sup>8</sup>Coinage-Ancient India Coinage, Reserve Bank of India, available at: <https://www.rbi.org.in/commonman/English/Currency/Scripts/Ancient.aspx/1000>(last visited on Mar. 2, 2024)

<sup>9</sup>Supra Note 4

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In the Mauryan empire, apart from informal ways as well, there was a regular judicial service for resolving the disputes, which was probably a tiered system with King at the apex of it.<sup>10</sup> Local disputes would have been settled by an arbitration like system between guilds, while more complex cases could be brought before special courts in cities and villages presided over by officials like Pradeshikas, Mahamatras, and Rajukas under the supervision of minister of law and order called “VinayasthitiSthapaka”.<sup>11</sup> There were probably separate courts as well as there are mentions of “Dharmasthiya” or court of civil law and “Kantakasodhana” or the court of criminal law, both led by three judges and three commissioners.<sup>12</sup> It can be safely concluded that India since ancient times had elaborate justice systems in place, whether it is sabha and samiti of Vedic era or the more comparatively advanced justice system under Mauryan empire. Some specialised courts were present in order to adjudicate the disputes between corporate entities dealing with guilds, weavers, artisans, etc.<sup>13</sup> These can be understood to be the nascent form of commercial disputes arising in India in ancient times.

Similarly, the Tamil Sangam period (c. 3<sup>rd</sup> century BCE to 3<sup>rd</sup> century CE) witnessed a flourishing of commercial activity, both domestically and internationally, particularly with the Roman Empire. This vibrant trade culture is evidenced by the rich literary sources of the era, which provides detailed accounts of the commercial endeavours undertaken by the people.<sup>14</sup> This must have necessitated mechanisms for resolving disputes, and there are literary sources and social structures offer insights into how these issues might have been addressed. There was, supposedly, a department of justice appointed by the King, and this body consisted of learned men who administered the justice in ‘Arak-kalam’ or the Hall of Justice on the basis of Dharmanul.<sup>15</sup> There were specific civil offenses of commercial nature as well, one such was failure to repay the debts incurred, whose reference is in in the

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<sup>10</sup>Hon’ble Mr. Justice S.S. Dhavan, *The Indian Judicial System A Historical Survey*, High Court of Allahabad, available at: [https://www.allahabadhighcourt.in/event/TheIndianJudicialSystem\\_SSDhavan.html](https://www.allahabadhighcourt.in/event/TheIndianJudicialSystem_SSDhavan.html) (last visited on Mar. 1, 2024)

<sup>11</sup>Anamika Yadav, “The Evolution and Development of ADR in India and its Different Kinds” 3 *International Journal of Law Management & Humanities* 579 (2020).

<sup>12</sup>Vanshika Shukla, “The Judicial Administration of ‘Mauryas: Military and Governance’” 7 *EPRA International Journal of Multidisciplinary Research* 161 (2021).

<sup>13</sup>Sandeep Balakrishna, “A Peek into the Legal and Judicial Aspects of Guilds and Corporations in Ancient India”, *The Dharma Dispatch*, Jun. 29, 2022, available at: <https://www.dharmadispatch.in/history/a-peek-into-the-legal-and-judicial-aspects-of-guilds-and-corporations-in-ancient-india> (last visited on Mar. 3, 2024).

<sup>14</sup>401: History of India (Early Times-1200Ad), available at: [https://rgu.ac.in/wp-content/uploads/2021/02/Download\\_604.pdf](https://rgu.ac.in/wp-content/uploads/2021/02/Download_604.pdf) (last visited on Mar. 6, 2024)

<sup>15</sup>Dr. R. Subramanian, “Administration of Justice in Tamil” 1 *Triveni Journal* (1992).

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Sirupancamulam, one of the eighteen poems in the category of Kikkanakku.<sup>16</sup> Perhaps informal methods such as merchant guilds employed arbitration by elders, or village panchayats relied on customary laws for resolution of disputes as well. There are records of villages being run by a group of elder people who met as a council, some examples of these councils include Manram, Avai, Podiyil, and Ambalam.<sup>17</sup>

The Gupta era (c. 3<sup>rd</sup> century CE to 6<sup>th</sup> century CE) witnessed a significant advancement in the judicial system compared to preceding periods.<sup>18</sup> This development is evidenced by the compilation of several legal texts and the clear demarcation between civil and criminal law. Furthermore, guilds of artisans, merchants, and other professionals likely possessed their own established legal codes governing their internal affairs, and the archaeological discoveries such as seals from Vaishali and Bhita near Allahabad provide physical evidence of these flourishing guild structures during the Gupta period.<sup>19</sup>

### Medieval Period

While the ancient period of India had an ever-growing trade as well as the informal and certain formal mechanisms of dispute resolution, yet it is the medieval period that has provided the pre-structures, and has impacted the modern forms of dispute resolution mechanisms the most. There was a certain decline in the trade in what is now known as the early medieval period due to a plethora of reasons, the period of 8<sup>th</sup> century to 10<sup>th</sup> century has seen a massive decline relatively.<sup>20</sup> However, the second phase in this regards which is 10<sup>th</sup> century onwards to 14<sup>th</sup> century which has seen the revival and a growth of commercial activities as this time period witnessed an expansion in the agricultural sector, coupled with a higher usage of money which led to a blooming market economy, where production transitioned from subsistence farming to goods intended for exchange.<sup>21</sup> Several contemporary foreign authors such as Benjamin or Tudela (A.D. 1170), Marco Polo etc. refer

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<sup>16</sup>Ibid

<sup>17</sup>K. A. Nilakanta Sastri, VII *Studies in Cola History and Administration* 73-84 (University of Madras, Madras, 1st edn., 1932).

<sup>18</sup>R.S. Sharma, *India's Ancient Past* 278-279 (Oxford University Press India, New Delhi, 2nd edn., 2006).

<sup>19</sup> Ibid

<sup>20</sup>Trade and Commerce in Early Medieval India, available at: <https://selfstudyhistory.com/2020/04/02/trade-and-commerce-in-early-medieval-india-part-i/> (last visited on Mar. 1, 2024)

<sup>21</sup>Unit 3, Trade and Commerce, eGyanKosh, available at: <https://egyankosh.ac.in/bitstream/123456789/20168/1/Unit-3.pdf> (last visited on Mar. 2, 2024)

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to the Indian merchants taking their goods to China in the East and Aden and Kish in the West for trade.<sup>22</sup>

Certain medieval texts on judicial procedure such as *bhasyas* and *nibandhas* delve extensively into the regulations governing corporate bodies, exploring the proper procedures for crafting internal regulations, how rulers should interact with and uphold these corporate codes, providing real-world examples of such conventions to illustrate their application, and detailing the punishments and procedures for handling violations of these corporate rules.<sup>23</sup> The arrival of Muslim rule in India or the Sultanate period (c. 1206 - 1526 CE) meant the intertwining of legal principles of Muslim law in Indian ethos, collectively known as *Hidaya* or *Hedaya*.<sup>24</sup> The *Hedaya*, surprisingly had provisions for a system like arbitration known as 'Tahkeem' led by an arbitrator known as 'Hakam'.<sup>25</sup> Most of the Sultans of Delhi Sultanate maintained strict adherence to law of Shari'ah and considered dispensation and administration of justice as religious, sacred and holy duty and some examples can be Sultan Iltutmish hanging chain of justice outside his palace, or Sultan Feroz Shah Tughlaq preparing a civil procedure code known as *Fiqh Firoz Shahi*.<sup>26</sup>

The Delhi Sultanate's legal system, heavily influenced by Islamic law, relied on a network of officials for justice administration. Qazis, acting as judges, and Muftis, serving as legal scholars, interpreted religious texts to resolve disputes. The Sultan himself, the ultimate authority in both original and appellate matters, presided over a court with two Muftis offering legal counsel. This system was further complemented by Qazi ulQuzat who headed a separate court handling all types of legal matters, and a specialized Department of Justice existed with two key institutions headed Sadr e Jahan: the Diwan e Mazalim, the highest court for criminal appeals, and the Diwan e Risalat, the highest court for civil appeals.<sup>27</sup>

There was a special revenue court to deal with tax related matters known as *Amil* in the provinces, no other court was empowered to hear revenue related matters, and the appeals to

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<sup>22</sup>V.K. Jain, "The Role of the Arab Traders in Western India During Early Medieval Period" 39 *Proceedings of the Indian History Congress*, 285-295 (1978).

<sup>23</sup>Donald R. Davis, "Intermediate Realms of Law: Corporate Groups and Rulers in Medieval India" 48 *Journal of the Economic and Social History of the Orient* 285-295 (2005).

<sup>24</sup>History of ADR in India: An Overview, available at: <https://www.yourlegalcareercoach.com/history-of-adr-in-india-an-overview/> (last accessed on Mar. 2, 2024)

<sup>25</sup> Ibid

<sup>26</sup>Waqar Khan Arif, "The Legal System of Sultans of Delhi: An Overview" 6 *International Journal of Development and Sustainability* 1987 (2017).

<sup>27</sup>Attia Madni, Rais Nouman Ahmed, et.al., "Administration of Justice in Medieval India: An Analytical Study of Legal Systems of Salateen of Dehli" 5 *Journal of Historical Studies* 138-140 (2017).

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his decisions lied not to any provincial courts or governor but to the Diwan e Subah, who was the finance minister and headed revenue court in the capital.<sup>28</sup> According to the Fiqh Firoz Shahi, the procedure in dealing with the civil and commercial cases specifically has all the features of the modern law that focuses on evidence, summons, framing of issues, and the principle of *audi alteram partem*.

The Mughal period (c. 1526 – 1857) that is a bridge between medieval period and the modern period is often referred as a successful time for trade and commerce, both in India and with foreigners. India had a massive balance of trade relations with China, Europe, west Asia, south-east Asia among others.<sup>29</sup>In the beginning of 18<sup>th</sup> Century, under Mughal rule, India boasted a staggering 24.4% share of global GDP, surpassing even Europe's combined economic output of 23.3%.<sup>30</sup>

The nation under the rule of Mughal Empire had an efficient system of government as well as a proper judicial system which was headed by a Qazi in every province and at the head of the judicial administration was Qazi-ul-quzat, who was the Supreme Qazi of the empire.<sup>31</sup>There was also a Chief Revenue Court, which was the third important court at Delhi after the Chief Justice Court and the Emperor's Court, and it was the highest Court of appeal to decide revenue cases and it was presided over by Diwaneala.<sup>32</sup>The Mughal period under Akbar saw significant reforms in judicial administration such as establishing a common citizenship, having a unified system of justice for all, frequent transfers judicial officers below the Chief Provincial Qazi after every two or three years, etc.<sup>33</sup>

The Mughal Empire developed a unique system of regulations called "Ains" or "Ahkams" encompassing various administrative branches like law, justice, finance, revenue, and military affairs, the prominent examples include Malfuzātī-Timūri, 'Ain-i-Akbarī, Dastur-ul-'Amal-i-Akbari, Waqīati-'Almgīri, Fatāwa-i-'Ālmgīrī, and Ahkam-i-Hamīduddīn.<sup>34</sup>These not

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<sup>28</sup> Ibid

<sup>29</sup>Andre Gunder Frank, "India in the World Economy, 1400-1750" 31 *Economic and Political Weekly* 50-52 (1996).

<sup>30</sup>Manjul K. Agarwal, II *From Bharata to India: Volume 2: The Rape of Chrysee* 477 (iUniverse, Inc., Bloomington, Indiana, 2012).

<sup>31</sup>Supra Note 9

<sup>32</sup>G. Madan and C. Renuga, "The Development of Indian Legal System" 120 *International Journal of Pure and Applied Mathematics* 353 (2018).

<sup>33</sup>Dr. Rahul Tripathi, The Judicial System in Medieval India, available at: <https://brewminate.com/the-judicial-system-in-medieval-india/> (last visited on Mar. 3, 2024)

<sup>34</sup>M. L. Roy Choudhury, "Principles of Law in the Mughal Empire" 10 *Proceedings of the Indian History Congress* 369 (1947).

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only dealt with criminal matters but also on matters of contracts and civil law, along with the law of evidence. Earlier in times in Medieval India, there was no distinction between civil law and commercial law, as the commercial matters were dealt by civil courts only. These courts *inter alia* adjudicated upon commercial matters related to contracts, money lending, partnerships, brokerage, guilds, recovery of money. Many cases were resolved by a system similar to mediation, though this was not a fully-developed modern mediation, it was a type of interest-based negotiation where the neutral third party seeks to identify the underlying needs and concerns of the parties; even the village panchayat shared some of the characteristics of mediation and some of the characteristics of arbitration.<sup>35</sup>The obligation for the payment of debts and settlement of liabilities was governed by customary laws enforceable in local courts, the declaration of bankruptcy by a businessman freed him from all obligations until he was proven solvent in a court of law.<sup>36</sup>

### Modern Period

The eventual growth of the British East India Company (“**BEIC**”) in India marked a turning point in the country’s modern history. The 18<sup>th</sup> century was a period of internal power struggle in India and with the declining power of the Mughal Empire, the British officials were provided with the perfect opportunity to establish their hold over Indian territory. Although several European companies competed for control of Indian territory, the BEIC emerged dominant by the latter half of 18th century, and continued to operate on a massive scale in India. This period holds particular significance for this paper on commercial disputes because post the Anglo-Maratha War of 1803, a corporation, instead of a traditional imperial power, effectively dictated the affairs of the Mughal Empire and most of the country.<sup>37</sup>This unique scenario, with a corporation as the *de facto* ruler, is crucial to understanding the nature of commercial disputes during this era. Many such disputes likely arose between corporations, highlighting a new paradigm in commercial interactions. However, the BEIC’s reign wouldn’t last. The Sepoy Mutiny of 1857 in India exposed the company’s

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<sup>35</sup>Mediation and Conciliation Project Committee, Supreme Court of India, “Mediation Training Manual of India” available at: <https://main.sci.gov.in/pdf/mediation/MT%20MANUAL%20OF%20INDIA.pdf>(last visited on Mar. 4, 2024)

<sup>36</sup>Unit 22, Business Practices and Monetary History, eGyanKosh, available at: <https://egyankosh.ac.in/bitstream/123456789/44532/1/Unit-22.pdf>(last visited on Mar. 3, 2024)

<sup>37</sup>William Dalrymple, *The Anarchy: The Relentless Rise of the East India Company* 388 (Bloomsbury Publishing, India, 2nd edn., 2020).

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shortcomings, leading the British Parliament to transfer control of India to the British Crown through the Government of India Act of 1858.<sup>38</sup>

Despite its eventual and deserving demise, the BEIC era witnessed significant developments in foreign trade, legal codification, company formation, and the exchange of ideas, all of which laid the groundwork for the future legal and commercial landscape of India. The British Raj in India witnessed a complex economic landscape including a rise in commercial agriculture, booming international trade, the beginnings of industrialization, yet tragically, periods of devastating famine.<sup>39</sup>

Additionally, the newly established British government held a monopoly on the highly lucrative opium trade with China. In terms of sheer volume, India's foreign trade registered a significant increase from the late nineteenth century because of multilateral trade between Great Britain, the United States of America and Japan in the second half of the nineteenth century, and in which India, by virtue of its location as a colony and as a major supplier of primary agricultural and processed goods played a crucial role.<sup>40</sup> India was Britain's leading import market, in 1928 India imported £84 Million sterling of British goods, i.e., 11 per cent, of their total exports, 28 per cent of their shipments of cotton piece goods, 16 per cent of their shipments of iron and steel and 19 per cent of their exports of machinery.<sup>41</sup> Domestically, the British implemented a policy of forced commercialization, prioritizing the cultivation of cash crops like cotton, jute, and indigo, alongside raw materials for British industries, while also establishing a monopoly on acquiring these materials at low prices.<sup>42</sup>

The understanding of commercial transactions and disputes is primarily based on written records of the European companies because merchants and business organisations rarely preserve their records.<sup>43</sup> Earlier, the pre-existing forms of dispute resolution mechanisms were being continued, there are instances and certain records of the institution of Qazi still practicing and rendering justice to the citizens on civil, and by that extent, commercial

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<sup>38</sup>Government of India Act of 1858, Capacity Building Mission, available at: <https://www.cbc.gov.in/cbcdev/crown/crown1.html> (last visited on Mar. 3, 2024)

<sup>39</sup>Ibid

<sup>40</sup>Unit 27, Colonialism and Trade: 1857-1947, eGyanKosh, available at: <https://egyankosh.ac.in/bitstream/123456789/44534/1/Unit-27.pdf> (last visited on Mar. 3, 2024)

<sup>41</sup>T. M. Ainscough, "British Trade with India" 78 *Journal of the Royal Society of Arts* 762 (1930)

<sup>42</sup>B. Mohit Nagal, "Impact of British Rule on India: Economic, Social and Cultural (1757-1857)" 2 *International Journal of Legal Research and Studies* 94 (2017).

<sup>43</sup>Ghulam A. Nadri, "Transacting Business Through/For Others in Early Colonial Western India: The Text, Context, and Meaning of a Mukhtār-Nāma of 1821" 64 *Journal of the Economic and Social History of the Orient* 642-643 (2021).

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matters.<sup>44</sup> However, after 1857 the nature of commercial disputes became much more formalised, with new legislations being introduced by the British government in India. There were certain advancements made, such as a rudimentary form of a judicial system based on common law in 18<sup>th</sup> century, leading up to more formal laws, most of which are followed to this date, with some amendments. This was a long-drawn process ranging over nearly two centuries. This is an integral part of modern history of India vis-à-vis dispute resolution.

### **Establishment of formal courts in India**

The beginning of codified common law in India can be traced back to 1726 when a Mayor's Court in Madras, Bombay and Calcutta were established by the East India Company pursuant to Charter of 1726.<sup>45</sup> While these courts and several of the subsequent charters applied only to the BEIC, its employees in India and to Europeans to some extent, they still represent one of the first instances in Indian modern history of codified laws not solely based on religion, but on common law. In later times, there can be seen some cases whereas both the Indian parties consented to be adjudicated by these courts.

The judicial reforms in India began emerging from 1770s itself, firstly with passing of the Regulating Act, 1773 wherein the Supreme Court was established at Calcutta and a Judicial Plan of 1772 was firstly introduced under Warren Hastings.<sup>46</sup> A Mofussil Diwani Adalat under supervision of a European collector was established in each district, who adjudicated civil disputes regarding personal property, inheritance, caste, marriage, debts, and so forth up to sums involving ₹500.<sup>47</sup> An appeal lied to the court of Sadr Diwani Adalat, and this laid down the foundations of a newer system of resolving civil and commercial disputes. This was amended by judicial plan of 1774 wherein instead of a collector, an *Amilor* a *Diwan* was appointed, from which the appeal lied to a newly set up Provincial Council, and the Sadr Diwani Adalat heard appeals against the decisions of the council over the value of ₹1,000; this was essentially a three-tiered system at the district level itself. A first of a kind civil code of procedure was made by Sir Elijah Impley, first Chief Justice of Supreme Court at Calcutta,

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<sup>44</sup>Swapna Liddle, *The Broken Script: Delhi Under the East India Company and the Fall of Mughal Dynasty 1803-1857* (Speaking Tiger Books LLP, New Delhi, 2022).

<sup>45</sup>India under East India Company's Rule, Anuj Jindal, available at: <https://www.anujjindal.in/wp-content/uploads/2022/06/2.-India-under-East-India-Companys-Rule.pdf> (last visited on Mar. 3, 2024)

<sup>46</sup>The Judicial Plans of Warren Hastings 1772, 1774 and 1780, Vaijayanti Banerjee, available at: <https://notesmilenge.files.wordpress.com/2014/09/warren-hastings-judicial-plans.pdf> (last visited on Mar. 1, 2024)

<sup>47</sup>H.V. Sreenivasa Murthy and Dr.V.S. Elizabeth, *History of India Part II* 152 (Eastern Book Company, Lucknow, 2012)

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in 1780s as a guiding principle for the courts below. Later on, similar courts to the Supreme Court of Calcutta were also established at Madras in 1801 and at Bombay in 1824.<sup>48</sup>

The Cornwallis reforms built up on the existing system, and the judicial plan of 1793 and 1831 provided for a 'district court' to be headed by a newly formed position of 'district judge', and an ascending hierarchy of civil courts was also set up with Munsiffs' Court, Court of Registrar, District or city courts, and finally the Sadr Diwani Adalat.<sup>49</sup> The more advanced system came up in 1861, under the British crown, when in 1861 the first High Courts Act was passed for establishing High Courts of Judicature in each presidency and to abolish the existing Supreme Courts and Sadr Adalats.<sup>50</sup> The High Courts were the highest adjudicatory bodies and had the power of supervision over the lower courts, however, the appeal lied to the Privy Council in certain cases. The 1861 Act was replaced with the High Courts Act, 1911 and later with the High Courts Act, 1911 1922 which brought some major changes, and finally the Government of India Act, 1935 ("**1935 Act**") replaced the prior acts.

The 1935 Act held that the High Courts shall be the Courts of Record, and further set up a Federal Court which later became the Supreme Court of India, and like today, the Federal Court had powers to hear appeals from the High Courts, had original and advisory jurisdiction, adjudicated matters between provinces, and so on.<sup>51</sup> The Federal Court in India was the final court of justice, however, in certain cases, an appeal was filed before the judicial committee of Privy Council in London, United Kingdom.

### **Legislative History of Dispute Resolution Mechanisms in India**

The Code of Civil Procedure ("**CPC**") was firstly enacted in 1859<sup>52</sup> on the basis of report of the Third Law Commission headed by Lord Thomas Babington Macaulay. Thereafter, the CPC was amended numerous times in 1860, 1861, 1878, 1879, and 1882. After facing these many amendments, finally, the CPC was re-enacted in the year 1908<sup>53</sup>, which is still in place today, subject to further amendments. The commercial disputes were heard as part of civil

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<sup>48</sup> Ibid

<sup>49</sup>Unit II, Judicial Reforms of Lord Cornwallis, Geeta Law College, available at: <https://www.geetalawcollege.in/wp-content/uploads/2019/12/Legal-History-B.A.LLB-2ND-SEM-1.pdf> (last visited on Mar. 1, 2024)

<sup>50</sup>History, Supreme Court of India, available at: <https://main.sci.gov.in/pdf/Museum/m2.pdf> (last visited on Mar. 3, 2024)

<sup>51</sup>Government of India Act, 1935 (26 GEO 5 & 1 EDW. 8 CH. 2), ss. 200-231.

<sup>52</sup>Code of Civil Procedure, 1859 (Act 8 of 1859)

<sup>53</sup> Code of Civil Procedure, 1908 (Act 5 of 1908)

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suits only, and that remained the case till long after the independence before enactment of the Commercial Courts Act<sup>54</sup>, and the disputes were decided by the Civil Courts itself. The High Courts of Bombay, Calcutta, and Madras, established during British rule, introduced a significant innovation i.e., the ‘commercial cause list’ under their original side rules which expedited the resolution process for commercial cases.<sup>55</sup> After independence, these High Courts continued this valuable practice. Notably, the Delhi High Court adopted a similar approach in 1967 by enacting its Original Side Rules and including a dedicated chapter for “Appeals from decrees in commercial matters”.

After the shift of government directly to the British Crown, there were plenty of laws that were enacted in India for ‘effective governance’ of the Indian subjects, on the recommendation of the Third Law Commission itself: the Companies Act, 1866, the General Clauses Act, 1868, and subsequently the Indian Contract Act, 1872, were passed with regards to the commercial dispute resolution. Further, the fourth law commission is responsible for drafting of the Negotiable Instruments Act, 1881, the Transfer of Property Act, 1882, the Easements Act, 1882, the Trusts Act, 1882, and the amendments of the CPC.

One of the most notable developments that occurred in the last year of 19<sup>th</sup> century British India was the enactment of the Arbitration Act, 1899<sup>56</sup> which made a special legislation for providing Arbitration as a mode of dispute resolution for commercial matters. Although the law for Arbitration has been there in India since when CPC was first passed in 1859, chapter VI of the code provides a whole chapter for arbitration.<sup>57</sup> It had also been touched up in prior legislations as well such as Bengal Regulation Act, 1772, Bombay Regulation Act, 1799 and Madras Regulation Act, 1802, yet this provided a separate legislation codifying a special law, based on its English model, for Arbitration in India. The Arbitration Act, 1899 was applicable in the presidency towns, and this had finally codified the provisions of arbitration under one umbrella act, thus formalising the age-old practice in India. Even the Privy Council recognised that the Panchayat practice was present in India for resolution of disputes, which was similar to the practice of Arbitration.<sup>58</sup> The Arbitration Act, 1940 replaced the previous Act, which was in turn itself replaced, due to several criticisms, by the Arbitration and

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<sup>54</sup>Commercial Courts Act, 2015 (Act 4 of 2016)

<sup>55</sup>Vijay Kumar Singh and Aratrika Deb, “Resolution of Commercial Disputes in India: A Review of the Commercial Courts, 2015” 8 *National Law School Business Law Review* 56 (2022).

<sup>56</sup>Arbitration Act, 1899 (Act 9 of 1899)

<sup>57</sup>Code of Civil Procedure, 1859 (Act 8 of 1859), ss. 312 – 327

<sup>58</sup>VytlaSitanna v. MarivadaViranna, 1934 SCC OnLine PC 14

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Conciliation Act, 1996 (“**Arbitration Act**”)<sup>59</sup>. The 1996 Act has been passed after the economic policy of 1991, keeping with the international practice as it is based on UNCITRAL Model Law on International Commercial Arbitration.

This long-drawn history of commerce and commercial disputes along with their resolution mechanism is an integral part that shapes the present-day scenario in India. Other methods of ADR such as negotiation and mediation have been in existence since time immemorial without the need of any law or precedents. Even to this day, negotiation and mediation are not codified, and are done by the parties on their own accord. Mediation is, however, a practice mandated by law before filing of a commercial suit. Apart from them, the Arbitration Act and other labour laws of the country have specific provisions therein dealing with the conciliation. The most common formal methods of commercial dispute resolution have been litigation and arbitration from a long period of time, which now in itself have sub-branches and specialisations, leading to ‘legal pluralism’ within the formal methods itself.

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<sup>59</sup> Arbitration and Conciliation Act, 1996 (Act 26 of 1996)

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