



RESEARCH PAPER

British Balochistan: A Study of the Role and Impact of Judicial Commissioners under Colonial Rule

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ABSTRACT

This paper presents a historical analysis of the judicial mechanism in British Balochistan, with a specific focus on the role of judicial commissioners. The paper argues that the role of judicial commissioners in Balochistan was central to the functioning of the judicial system and that their decisions had a significant impact on the lives of the local population. The paper also highlights some of the key challenges that the judicial system faced, such as linguistic and cultural barriers, and the tension between customary and colonial law. The Khanate of Kalat had a wide range of conflict resolution procedures, which reflected the region's complex legal and cultural environment. These systems, which were created to guarantee that disputes were settled fairly and justly, were frequently adapted to certain types of disputes. Overall, the paper contributes to our understanding of the history of Balochistan and the role of the British colonial authorities in shaping its legal system.

Keywords: Customary law, Gandamak Treaty, Jirga, Khanate, Khanate-e-Kalat

Introduction

British Balochistan was part of historical Balochistan but was not within the administrative regulation of the Khanate of Kalat (Khan, 2014). It was a region of British India, established to safeguard the interest of the British Empire (Faiz, 2015 & Breseeg, 2004). The Khanate of Kalat was a princely state, it was ruled by the Khan of Kalat, who was the hereditary monarch of the state since 1666. Before the establishment of British colonial rule in the region, the Khanate of Kalat had its judicial system, which was based on Islamic law and local customary practices. The Khan himself was the ultimate authority and final arbiter of justice and was responsible for appointing judges and overseeing the administration of justice. The Khanate had several dispute resolution mechanisms in place during its pre-colonial and colonial periods including the council of tribal elders, known as the *Jirga*, which would hear cases and render judgments (Ahmed et al., 2022). The Jirga was made up of respected members of the community, and its decisions were based on a combination of Islamic law and tribal customs. One of the primary dispute resolution mechanisms in the Khanate of Kalat was the Qazi Court, which was responsible for interpreting and enforcing Islamic law (Irshad et al., 2022; (Muzaffar, et. al. 2018)). The Qazi Court had jurisdiction over both civil and criminal cases and applied Islamic law to cases that came before it. The Qazi was responsible for ensuring that the law was applied fairly and justly and that the rights of all parties were protected.

In the late 19th century, a region known as British Balochistan fell under the British colonial administration (Muzaffar, et. al, 2021); Faiz, 2015; Khan, 2014; Breseeg, 2004 & Dashti, 2012). In Balochistan, the British government built a legal system that was mainly separate from the Indian Judicial system. The British colonial authority nominated judicial commissioners to lead this judicial system. In the research currently available, the function

and effects of these judicial commissioners in Balochistan have not been sufficiently investigated. By conducting a historical analysis of the role and significance of judicial commissioners in British Balochistan during colonial administration, this research aims to close this gap. The study will specifically look into how the British colonial authorities established a legal system in Balochistan, the function of judicial commissioners within the system, and how their decisions influenced the local people's life and the legal system as a whole. During the period of British colonial rule, the British established their legal system in the region. The British introduced English law and established courts that were modeled on the British legal system. However, the Khanate of Kalat retained some degree of autonomy in legal matters, and the Khanate's traditional legal system continued to be used in some cases.

Literature Review

There are minimal records of Balochistan's judicial history. The majority of the literary works that discuss judicial mechanisms are based on Balochistan's social and political life. Very few literatures or manuscripts focus solely on the Balochistan judicial system. Although Arabic historians were the first to write about Balochistan, there is little evidence of the type of judicial system that was in place there. The English writers formally recorded the earliest accounts of Balochistan's laws and strong norms.

Sir Henry Pottinger in his book *Travels in Baloochisten and Sindhe* (1816) sketched Baloch society, their way of living, their legal and social norms, and "also their political relation with neighbors the Persians, the Afghans, and the Indians" (Breseeg, 2004). He highlights the customs and laws that exist in Balochistan. Moreover, the work of Sir Henry Thorton, Sir Robert Sandeman's biography presents a good account of the events of historical significance. It mentions the achievements of Sandeman as he advanced the stronghold of the British Empire in Balochistan (Ahmed et al., 2021). The legal system adoptions and the various laws that were promulgated in British Balochistan are provided in this detailed biography. The importance of this work has a great impact because it consolidates events that had made great impacts on later developments in Balochistan.

Apart, from these basic British Writer sources, the Baloch writers like Mir Gul Khan Naseer, Sardar Khan Baloch, and Inayatullah Baloch had thrown light on the study of Balochistan. However, as the aim of the study is the judicial system of Balochistan, the works of these writers have not been a much-celebrated contribution to the elaboration of the judicial system of Balochistan. Mir Gul Khan Naseer in *Tareek-e-Balochistan* (1954) describes chronologically all the political events of Balochistan from the establishment of the Khanate of Kalat and its merger into Pakistan since 1947.

The works of contemporary foreign writers on Balochistan like Axmann Martin (2008), Tony Heathcote (2015), and Ricardo Redaelli (1997) have been counted as treasures. Axmann Martin's (2008) book *Back to the Future, the Khanate of Kalat and the Genesis of Baloch Nationalism 1915-1955* states the story of the Khanate of Kalat, its invasion and control by the British Empire, and its amalgamation in Pakistan. It thoroughly revises the Baloch political awakening in the 1930s and elaborates on the impacts of the 1935 Act on Balochistan (Irshad et al., 2022). It relates to the study in the sense, as it shows why the British wanted to gain ground in Balochistan, and as a consequence of that, various development does occur including the alteration of Jirga into a new institute of dispute resolution.

Tony Heathcote's *Balochistan, the British and the Great Game* (2015) explain how the great game of Central Asia expanded to Balochistan. Balochistan's strategic importance is highlighted, especially Bolan Pass, and the British occupation of Quetta (the capital of the province) is explained in detail. It also considers the service of ambitious Robert Sandeman who made great harm and a disservice to Balochistan. His work radically helped to

understand the process of the creation of British Balochistan, and its judicial system based on a judicial commissioner.

The political autobiography of Khan – E – Azam Mir Ahmed Yar Khan Baluch Ex-Ruler of Kalat State “Inside Balochistan (1975)” provides a unique and courageous historical analysis of Balochistan and its people. The book provides a comprehensive account of the region's political and social landscape, including a detailed examination of the development of the judicial system and its impact on society. However, what truly sets this book apart is its unflinching exploration of the complex political relationships between Afghanistan, Iran, the British Crown Representatives, and the author's own ruler-ancestors in Balochistan. Through various Treaties, Engagements, Sanads, and Agreements, the author lays bare the nature of political intercourse and reviews the region's intricate geopolitical dynamics.

Among the modern foreign work, *The Father's Bow: The Khanate of Kalat and British India (19th – 20th Century)* by Riccardo Redaelli (1997) occupies a leading role in the literature based on the study of Balochistan. He specifies the relationship and power dimensions between the Khan of Kalat, Sardars, and colonial rulers (Ahmed, 2011). An analysis of the Kalat States (Las Bela, Kharan, and Mekran) internal structure and their relation to the Khan as central power are provided. Moreover, even the better part of the work is based on the discussion of the constitutional status of Kalat in British India, especially with the treaties and communication made between Khan and the Viceroy of India after the passage of the 1935 Act.

The most exclusive work that relates solely to legal and judicial matters is Muhammad Akbar Azad's *Special Civil Laws of Balochistan (2009)* and Hamid Khan's *Judicial History of Pakistan (2015)*. Mr. Azad's work is about civil laws in Balochistan. It investigates the status of Qazi and the Dastoor-ul-Aml-Raisat-Diwani Kalat. Whether Dastoor-ul-Aml is still enforced or is considered repealed. However, there are various shortcomings, it does not take into consideration the development of other laws and is only a collection of special civil laws of Balochistan. Hamid Khan (2015) historical account of the judiciary of Pakistan mostly comprises the Supreme Court of Pakistan's evolution and development and had paid little attention to judicial development in Balochistan. Its scope is limited to describing the development of the judiciary of Balochistan from 1976 to 2000.

Material and Methods

The methodology for this study is designed to provide a comprehensive and in-depth analysis of the historical evolution and impact of the judicial commissioner in British Balochistan. By combining a range of research methods, the study aims to build a rich and nuanced understanding of the topic of the judicial system in pre-partition Balochistan, a thorough review of secondary sources, including historical documents, archives, books, and scholarly articles was carried out. This will provide an in-depth summary of the theories and information that already exist on the subject and provide guidance for the research. To comprehend the development of the judicial process in pre-partition Balochistan, historical records including government reports, legal documents, and other pertinent materials were analyzed. To identify numerous reasons, a comparison of the judicial systems in other regions during the same time period as pre-partition Balochistan was made.

Results and Discussion

The Khanate of Kalat

From 1666, the Khanate of Kalat, often referred to as the Khanate of Kalat or Kalat State, governed nearly all of the territories that Mir Chakar Khan Rind had under his direct control. These territories include Makran, Derajat, Sistan, Lasbela, and Kalat itself.



Map 1: Khanate of Balochistan, 1758- 1795 Source: Faiz, (2015)

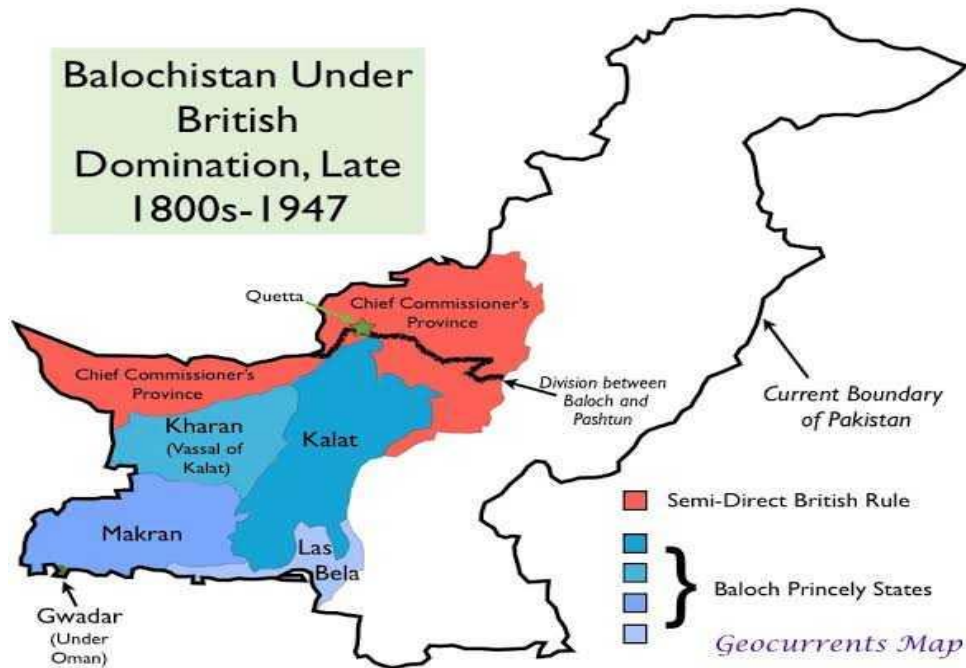
Balochistan holds significant geo-economic importance as it is located at the crossroads of routes connecting Central Asia, the Middle East, and South Asia. This strategic location made it a point of interest for many European nations, including the Portuguese, Russians, and British. The British began their involvement with Balochistan in the late 18th century as part of their efforts to counter French threats (Irshad et al., 2022). In March 1793, under orders from Marquis Cornwallis, the British government in India dispatched its first local spy to Balochistan and Afghanistan to gather reliable intelligence. Subsequently, in 1809, a second secret mission consisting of Captain Gran, Lieutenant Pottinger, and Captain Christie traveled to Balochistan and Sindh disguised as a Muslim pilgrim and horse trader. Captain Christie also went to Seistan as a descendant of the Prophet Mohammed, known as a "Sayad," to collect information for Britain's future expansionist policy. In 1838, Leach and Burnes gathered information about the trade routes and military strength of the Khanate of Balochistan. The British had one aim: to expand their empire, extract immense profits from the exploitation of the peoples of Central Asia and South Asia, and achieve their goals against Balochistan and Afghanistan.

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 direct control over Balochistan. Many historians, including Harrison (1981), contend that Britain did not take control of the Kalat State because they desired it; rather, they stationed troops there to establish a buffer zone so as to prevent Russia from carrying on with its colonial legacy in United India.

British Balochistan

The establishment of British Balochistan was the point of accomplishment of control over the strategic areas of Balochistan in terms of defense of the vast and lavish colonial empire in the Sub-continent. Moreover, the greater control of the British Empire was established on the rugged, desert, and rocky Balochistan, which was an uncertain boundary and frontier to their empire in British India.

British Balochistan included Sibi, Harnai, Pishin, Chaman, Zohb, Loralai, areas of Marri, Bughti, and Khetran Tribes coupled with the Quetta and Bolan.



Map 2: of British Balochistan Source: (Faiz, 2015)

The Gandamak Treaty (1879) and The Durand Line (1893/4)

The Afghan Amir, Mohammad Yaqub Khan, and the British Government Indian Office (Representative) Sir Louis Cavagnari had officially signed the 1879 treaty in the Gandamak Village which is commonly known as the Gandamak Treaty 1879). As a result of the Gandamak Treaty the area of Zhob and Loralai, Pishin, Harnai, Sibi, and Quetta were ceded by the British Raj from Afghanistan and ended the Afghan-Anglo war.

The Kalat-British Agreement (1883)

The British and the ruler of Kalat in 1883 signed an agreement, under which the British leased the Bolan Pass, Nasirabad, Chagai, as well as the Marri-Bughti areas of the Kalat State. The Baloch and Pashtun ceded/leased areas were combined and made the 'British Balochistan' by the British Empire. Finally, all mentioned areas were declared as the British Territories and the east became 'British Balochistan' and remained under the direct control of the British Raj. Both Afghanistan and Balochistan shrunken and according to Matheson (1997), the Kalat State enjoyed their protectorate status till the creation of Pakistan. After many historical developments, British Balochistan joined British India with the adoption of a resolution on November 1st, 1887 (Irshad et al., 2021). These incidents would set the stage for the creation of British Balochistan, which, according to many historians and academics, was created to protect British India from a potential Russian invasion. The Balochistan and Afghan fronts were where the growing Russian threat was felt (Mengal, 2013; Faiz, 2015; and Khan, 2014). Among the most significant occasions leading to the establishment of British Balochistan were the deployment of Sandeman on the Second Mission to Balochistan and the signing of the Mastung Treaty in 1876.

Sandeman reached Mastung and summoned a meeting of Khan and all the Sardars on 31st May 1876. Further, on 13th July 1876, Khan accepted the Mastung Treaty, in which the British Empire was accepted as the sole arbitrator between Khan and his Sardar in case of a dispute. To ratify the Mastung Treaty Lord Delton, the Viceroy of India came to

Jacobabad on 7 December 1876. On the 8th of December, the next day Khan and Viceroy both signed a treaty, which came to be called the Treaty of 1876. This treaty changed the relationship between Kalat and British Empire in two ways. Firstly, it established a permanent office of the Political Agency in Kalat, and secondly, it imparted and concluded the British Empire is the mediator between Khan of Khan and the British Empire. Riccardo Redaelli mentions that “the 1876 Treaty of Jacobabad, signed between the British Government and the Khelat State – which was to be the fundamental treaty for Anglo-Baluchi relation until the partition of 1947” (Redaelli, 1997). On successful conclusion of the Jacobabad treaty, Khan gifted an area called Khan Garh to the British Empire, wherein, Lord Delton, the viceroy of India appointed Sir Robert Sandeman as AGG. Moreover, on 21 Feb 1877, British India established Balochistan Agency with three Political Agents (Mengal, 2013). On February 21, 1877, the foundation of the Balochistan Agency was laid, which later became British Balochistan (Thornton, 1895).

The British extended their influence around Quetta, and the Bolan Pass, and the Khan’s control was reduced to nominal. By 1877, the British practically divided Khanate into four parts:

- A. The British Balochistan, which included Shahrag, Sibi, Duki, Pishin, and Chaman;
- B. Agency territories, including Mari- Bugti areas;
- C. The Khanate territories of Arund and Dajal, which were incorporated into Punjab;
- D. Khanate proper with its dependencies of Kharan, Makuran, and Las Bela (Dashti, 2012).

Judicial Mechanism in British Balochistan

The different regions of Balochistan were governed by different governments under a distinct set of laws with their peculiar judicial systems. British Balochistan was governed by the British administration directly. In 1896, a Judicial Commissioner was established for dispute resolutions. 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.

The Kalat States were administered by the Khan of Kalat. Before Pakistan's independence in 1947, Shariat was the only rule of law in all civil disputes in Kalat State, but there was no written civil law in the State. However, after the formation of the Balochistan State Union in 1952, the Dastoor-ul-Amal Diwani Riasat Kalat was promulgated, and Shariat was given judicial recognition for the adjudication of civil disputes among Muslim parties. The minorities of the area could approach Jirga or Panchayat for the settlement of controversies, with due regard to their rights. “Islamic Shariat law was promulgated as the Laws of the States with certain limitations. All judicial matters were dealt with through Islamic Shariat Law (Naseer, 2016). “The Department of Justice was in the hands of the Qadis (judges). In tribal areas, the judicial powers were vested in the Sardars, who had to be guided by the Qadis and Jirgas, according to the *Sharia* and *Rawaj*” (Baloch, 1987).

Balochistan Agency was presided over by an Agent to the Governor-General (AGG) and Sandeman remained its AGG till his death in 1892. The law governing the agency was the Frontier Crimes Regulation (FCR) and the AGG had wide judicial power under it. There were also a Revenue Commissioner and a Judicial Commissioner and various Political Agents (PA). The executive and the judiciary are not separated, and the Political Agent (PA) played the roles of judge, jury, prosecutor, investigator, police, and collector, all at once. As the executive head of the agency, the PA wields the same powers as the courts.

The Second Anglo-Afghan War (1878–1880), was another significant event that contributed to the establishment of British Balochistan. Following the successful end of the war, the British Empire and the Amir of Kabul signed the Gandamak Treaty, which saw the ceding of a number of Afghan provinces to the British Isles. More significantly, a portion of the British Army occupied the Khan Citadel in Quetta in protest after the killing of a British officer by a worker at the Royal fort. The Fort was being built as a resident of AGG in Quetta. Moreover, the British Government acquired through a lease agreement the rights of Quetta and Bolan on an annual consideration of fifty thousand and thirty thousand, respectively. Finally, accumulating the territories gained from the Gandamak Treaty and leased territories of Quetta and Bolan, the British Government formed the province of British Balochistan.

Judicial Commissioner: A Brief Overview

The judicial institution of British Balochistan was a Court headed by a Judicial Commissioner. The system of Judicial Commissioner was not particularly for Balochistan only, but it has existed in present-day Pakistan all provinces, and even in some other regions of British India like Burma. When Burma was within British India before the passage of the Government of India Act 1935, a court under the supervision of a Judicial Commissioner was established in Burma in 1872, which was later transformed into a Chief Court as per necessity (Rao, n.d.). In Punjab, a Judicial Commissioner was established in 1853 by replacing the Board of Administration previously working. The Judicial Commissioner in Punjab was also the final Appellate authority in both civil and criminal matters. However, it ended with the creation of a Chief Court through the Chief Court Act, IV of 1866. In Sindh, in 1906 the Sindh Courts Amendment Act was introduced that amended the Bombay Act XII of 1866 and replaced Sindh Sadar Court with the Court of Judicial Commissioner of Sindh consisting of three or more judges. In the North-Western Frontier Province (NWFP) now Khyber-Pakhtunkhwa a province of Pakistan, the Law and Justice Regulation No.VII of 1901 introduced the Judicial Commissioner as the judicial institute. It was the final court for all criminal and civil appeals and revisions in the province. It also controlled all the lower courts of the province.

The Agent to Governor General exercised authority mainly with respect to the Frontier and tribal areas, among others his function was to administer British Balochistan as Chief Commissioner and acted as the Judicial Commissioner in judicial cases under regular law. The Chief Commissioner was vested with powers to act as a provisional authority under FCR. In the capacity of Judicial Commissioner, he acted as the highest judicial forum in other common and regular cases, hearing second appeals under the provisions of Civil Procedure, 1898, and the Code of Civil Procedure, 1908, within the territorial jurisdiction, which was somewhat equivalent to the High Court (Azad, 2009). Further the Court of Judicial Commissioner functioned in the colonial Balochistan under the British Balochistan Courts Regulation 1939 (Hussain, 2011).

A Critical Appraisal on its Role in British Balochistan

The judicial commissioner based in British Balochistan was a complex institution with both positive and negative effects on the legal system and society in the region. Its legacy continues to be debated and analyzed, contributing to the historical understanding of the legal system in Balochistan, some jurists argue that it helped to modernize the legal system and curb the power of local elites, while others contend that it was a form of colonial oppression that undermined traditional legal structures and served the interests of the British. Ultimately, the legacy of the judicial commissioner system in Balochistan is a matter of historical interpretation and political debate.

The Agent to the Governor General primarily held jurisdiction over the Frontier and Tribal areas and also served as the Chief Commissioner of British Balochistan. As the Chief

Commissioner, he had the authority to act as the Judicial Commissioner in regular law cases. Being the highest judicial authority for common and regular cases, he was authorized to hear second appeals under the provisions of the Code of Civil Procedure, 1898, and Code of Civil Procedure, 1908, within his territorial jurisdiction, which was comparable to that of a High Court (Ahmad et al., 2022). Additionally, the Chief Commissioner was empowered to act as a revisional authority under the FCR. The judicial commissioners were appointed by the British colonial government to administer justice and apply British law in the region, which played a crucial role in establishing and consolidating British colonial rule. This had both positive and negative impacts on the region's political and social landscape.

The role of judicial commissioners in British Balochistan was significant in shaping the region's political and legal systems. Their role was crucial in establishing and consolidating British colonial rule in the region, and they played a significant role in the implementation of colonial laws and policies. It had impacts on the Balochistan political and social landscape both positive and negative. On the one hand, the judicial commissioner's presence in the region led to the development of a legal system that was more accessible and fairer to the Baloch people. On the other hand, the implementation of British colonial law and the judicial commissioner's role in it had a negative impact on the Baloch people's traditional customs and practices. This was particularly evident in the area of land tenure, where British colonial law led to the transfer of land from the Baloch people to British settlers. The legal and judicial system of British colonial rule in Pakistan remained largely in place after independence. Both the Lahore High Court and the Sindh Chief Court continued to function as before, as did the courts of the Judicial Commissioner in NWFP (KPK) and Balochistan. These institutions, originally established during the period of British colonization, continued to play an important role within Pakistan's legal system.

Conclusion

The Judicial commissioner based in British Balochistan was the only judicial institute that used the modern procedure and manner of resolving disputes. The judicial commissioner in British Balochistan played a significant role in shaping the legal system and resolving disputes in the region during the colonial era. It was the only judicial institution in the region that was based on modern procedures and standards of justice, which helped to standardize legal practices and create a more efficient and effective legal system. As per some accounts, it was limited to English subjects and for the natives, the Jirga system was utilized. However, it is important to note that the judicial commissioner's decisions were also influenced by British interests and often favored colonial rule over the rights of the Baloch people. The judicial commissioner applied the laws in British Balochistan which existed in the rest of British India and later, laws were enacted for British Balochistan based on its unique location and diversification from the rest of India.

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