



# **THE HISTORICAL ACCOUNT OF MADRAS HIGH COURT ( 1862 – 2012 ) WITH REFERENCE TO THE JUDICIAL INSTITUTIONS IN TAMIL NADU .**

**P. MARY LEEMA ROSE,**

**Ph. D, Research Scholar, Department of History,**

**Bharathidasan University,**

**Tiruchirappalli – 620024.**

**Tamil Nadu, INDIA.**

**[leemaparisutham28@gmail.com](mailto:leemaparisutham28@gmail.com) &**

**Dr. N. RAJENDRAN,**

**Former Professor & HOD, Department of History**

**Bharathidasan University,**

**Tiruchirappalli – 620024.**

**Tamil Nadu, INDIA.**

The Judiciary in India is one of the important roots of the government and as such an integral part of good governance. The history of the Madras High Court dates back to 1862 when Queen Victoria granted the Letters Patent under of the British Parliament of the Indian High Court Act. The History of judicial institutions in Madras was started in the year 1600, even before Madras was born. A Court started functioning in Madras very soon after the founding of the settlement and it was called as the Choultry Court. It tried petty cases – civil or criminal. The first great court of Madras (a Supreme Court of Judicature ) was established at Fort St. George on 26<sup>th</sup> December, 1801. The High Court of Judicature at Madras came into existence on 15<sup>th</sup> August, 1862 in a building which later became the Collectorate of Madras. It is now known as Singaravelar Maaligai. After 30 years, in 1892 the High Court got shifted to its present location. It was fortunate for the High Court of Madras that able Justices were appointed, in succession, to guide its destinies. After India attain Independence Justice P.V. Rajamannar, to become the first Indian Chief Justice of the High Court of Madras. The Madras High Courts and has contributed a very illustrious chapter to the history of Indian High Courts and has been responsible for the confidence which people have in the Courts.

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The Madras High Court has contributed a very illustrious chapter to the history of Indian High Court and has been responsible for the confidence which people have in the court. The Legislature, the Executive and the Judiciary are three basic organs of the state. It has a vital role in the functioning of the state and more so, in a democracy based on rule of law. Since times immemorial, law and judiciary have played a vital role in Indian Polity. It also acts as a guardian of our constitution, by preventing abuse of power, unfair procedure, unconditional action and even inaction. This paper highlights the History of Madras High Court with reference to the Judicial institutions in the Madras Presidency. One of the characteristic of civilized societies is how their inhabitants settle disputes peacefully. Where there is peace, there is progress. If people get justice, they will remain content. If they fail to get justice, they will revolt. The Madras High Court founded on the Constitution preamble of Justice, Liberty, Equality and Fraternity. In its historical glory the Madras Presidency has seen the evolution of the legal system as we know it today.

The History of judiciary institutions in Madras was started in the year 1600, even before Madras was born. Queen Elizabeth granted a Charter on December, 31, 1600 to the London East India Company. The charter gave the power to the Governor and company to make reasonable laws, impose penalties by imprisonment or fine.<sup>1</sup> In 1639 Francis Day sailed to the south and obtained a grant from Damerla Venkatappa, the Nayak of Poonamalle under Emperor Venkata III for the construction of a settlement and a fort in or around Madraspatnam also called Channaraja Patnam, He found the place full of sand and mud with no scenic beauty, yet with good anchorage for ships. There a small fort, erected in 1640, was enlarged subsequently and was called Fort St George. The English obtained confirmation of their right to Madras from the Rajah of Chandragiri<sup>2</sup> The Emperor of Vijayanagar and the Sultan of Golkonda in return for the payment of annual rent, Through its rapid growth from a settlement of traders and sea men to a city of Tamils and Telugus, Madras overshadowed the cities of Kanchi, Vellore, and Arcot. In 1653 Fort St. George was made a separate Presidency. In 1654 it was the headquarters of the English on the Coromandel Coast<sup>3</sup>

The Fort with its European and British servants of the Company within it was called the White Town, but the village as MadrasPatnam as Madras originally was the Black Town. The Company was allowed by the Rajah to mint money and govern MadrasPatnam. The court started functioning in Madras very soon after the founding of the settlement and it was called as the Choultry Court. It tried petty cases – civil or criminal. The Charter of Charles II dated 3<sup>rd</sup> April, 1661 specifically authorized the Agent or Governor and Council to judge all person living under their power, both civil and criminal matters, according to the laws of England, and to executed judgment. As a consequence the Choultry Court was recognized by increasing the number of judges by the then governor of Madras, Streynsham Master. He directed the Justices to sit in court every Tuesday and Friday to dispense justice. But soon the Choultry Court was found insufficient to meet the rapidly rising needs of Madras. Therefore Streynsham Master made a wise decision to established the first Court of Judicature which came into existence in 1678.<sup>4</sup>

In 1687 the company constituted another court called the Mayor's Court. On 22<sup>nd</sup> July 1687, the first legally qualified person appeared in Madras. He was a lawyer named Sir John Biggs, who had been employed in England as Recorder of Plymouth. He entered upon his duties as judge advocate in Madras by holding the Quarter Sessions.<sup>5</sup> During the period from 1686 to 1726 the Mayor's Court as well as Choultry Court functioned at Madras. In 1729 the Sheriff's Court was created. The Sheriff was empowered to sit as a small cause judge and decide without appeal on his decisions on all matters not exceeding the values of five pagodas. The new Sheriff's Court had a short life. The Court of Directors were vexed with the experiment, and so, on 21<sup>st</sup> July, 1729 the Sheriff's Court was abolished.<sup>6</sup> With the establishment of the Court of the Recorder at Madras on 1<sup>st</sup> November, 1798, a new age dawned in the judicial administration. On the very next day, a scientific definition of the Town of Madras was given. But the Court of the Recorder at Madras was a short lived. It was abolished in 1800 but it was a very important experiment in the centralization of justice.<sup>7</sup>

The first great court of Madras (a Supreme Court of Judicature) was established at Fort St. George on 26<sup>th</sup> December, 1801. The new Supreme Court was to be a court of the Recorder, and it was made to consist

of one principal Judge who shall be called chief justice of the Supreme Court of Judicature. The establishment of Supreme Court at Madras had set the judicial system of the Town on firm foundations.<sup>8</sup> During the Government of Lord Clive the administration in the Presidency of Madras was reformed on the model of the system obtaining in Bengal.<sup>9</sup> In 1802, the new system was introduced through the Regulations. The Supreme Court at Madras and the Adawlut system of administration of justice built up the judicial pattern for the future.. The reputation of the Supreme Court grew, because of the succession of truly able Chief Justices, who presided over it.<sup>10</sup>

The East India Company received a serious jolt in its political career in India in 1857. The events of that year sealed its fate, and, led to the assumption of direct rule by the Government of England. By the Act for establishing High Courts of Judicature in India passed on the 6<sup>th</sup> August, 1861, the Queen of England was empowered by Letters Patent to erect and establish a High court of Judicature at Madras. The establishment of such High Court in the presidency of Madras, it was enacted that the Supreme Court at Madras and the Court of Sudder Adawlut and Foujdary Adawlut should be abolished. The High Court of Judicature at Madras came into existence on 15<sup>th</sup> August, 1862 in a building which later became the Collect orate of Madras. It is now known as Singaravelar Maaligai.<sup>11</sup>

With the implementation of several reforms, the graded system in civil justice consisted of Panchayat (Village munisiff) District panchayat (District munsiff) Zilla Courts and Suddar adawlut. The parallel set up in criminal justice consisted of Assistant magistrate District magistrate Criminal court of circuit and Foujdary adawlut. The English sought to govern the Indians with Indian law and Englishmen with English law, but the Hindu code was found vague. The English men received privileged treatment. In addition there functioned two systems, one organized by the Company and the other by the Crown.<sup>12</sup>

The High Court Act, 1865 empowered the Governor General in Council to alter the local limits of Jurisdiction of the High Courts. The High Court of Judicature at Madras was to continue to be a Court of Record. After nearly 30 years, in 1892 the High Court got shifted to its present location where a temple once existed. The temple was destroyed in a mysterious fire. The destruction of the temple of God paved the way for the construction of the temple of justice. The next important measure was the passing of the High Court Act, 1911 which fixes the maximum limit for the number of Judges of the High Court to twenty. Minor changes were introduced by the Government of India Act, 1915. The high Court became the symbol of serenity, unity and power.<sup>13</sup>

The establishment of the High Court at Madras synchronized with the great age in law. The Supreme Court and the Suddar Courts had to administer justice at a time when laws were uncertain or unascertained, and law reports were rare. Standard works on Indian law were not in existence, and the laws had to be searched out and garnered from oriental manuscripts or Arabic text. But judges of the High Court did not have to suffer from such a disability. Their main task became the art of interpreting the statute law, which came up before them in codified forms. The official law reports, supplemented by numerous unofficial ones, gave them considerable assistance, though perhaps, with the passing of years, it might be said that the presence of too many law reports has been disadvantageous to the grasp and exposition of fundamental principles.<sup>14</sup>

The Government of India Act, 1935, proved the next land mark. Section 220 of that Act dealt with the constitution of the Court, and substantially re-enacted the clauses of the Act of 1915. It provided that “every Judge of a High Court shall be appointed by His Majesty by Warrant under the Royal Sign Manual and shall hold office until he attain the age of sixty years”. His Excellency the Governor, under the Government of India Act, delegated the power of swearing in Puisne Judges to the Chief Justice. It was fortunate for the High Court of Madras that able Chief Justices were appointed, in succession, to guide its destinies.<sup>15</sup> Judicial administration at Madras was put to a severe test during the Second World War, particularly, during the time when the Japanese fleet was sighted in the Bay of Bengal, and the City of Madras was seized with panic (1942). During the event known as the ‘ Evacuation of Madras’ in 1942, the offices of the High Court had to move out of the High Court Buildings, with all their records and arrangements had to be made for the sittings of the Courts outside the Buildings. During this period, the High Court functioned in the buildings of a Convent in Theogaraya Nagar. But,

after a short time, the High Court reassembled in the High Court Buildings, and the various offices returned to the accustomed edifice with their records.

On the eve of Independence, Sir Frederick Gentle took over the rein of office from Sir Lionel Leach. But, he resigned the office in the very next year. This enable Justice P.V. Rajamannar, to become the first Indian Chief Justice of the High Court of Madras. Till that event, Indians had the distinction only of acting as a Chief Justice. During the long tenure of office of chief justice Dr. Rajamannar, which lasted till 1961, many events have happened which have a direct bearing on the history of the Madras High Court. The separation of the Judiciary from Executive, the formation of linguistic states and the consequent creation of the High Courts of Andhra, Kerala and Mysore, the former two of which could well be said to owe at least parent of their structure and traditions to this parent High Court.<sup>16</sup>

After India gained independence and the adoption of the Constitution on January 26, 1950, the Federal Court was superseded by the Supreme court of India. By India Act VII of 1950, the seal of the High Court was replaced by a new one bearing the device and impression of the Asoka capital within the exergue or label surrounding the same, with the inscription of “The Seal of the High Court at Madras” and “Satyameva Jayate” in Devanagari Script<sup>18</sup> The State of Madras was bifurcated in 1953 under the Andhra State Act and a separate High Court of Andhra was established with jurisdiction over thirteen districts, the High Court of Andhra was formed on 5<sup>th</sup> July, 1954, which resulted in the strength of the Judges of the Madras High Court getting reduced to 12 by the Notification of the Government of India, dated 3<sup>rd</sup> July, 1954.<sup>17</sup>

The State Re- organization Act, 1956, further reduced the number of districts under the Appellate Jurisdiction of the Madras High Court. Though by and large, the territorial jurisdiction of the High Court was only shrinking after independence, there was also one expansion, namely, to the Union Territory of Pondicherry in October 1954, an agreement was signed between India and France for the de facto transfer of French Territories, including Pondicherry, to India. A treaty of Cession was signed in May, 1956. It was ratified by the French parliament in 1962. On 16.8.1962, both countries exchanged instrument of ratification. Consequently, de jure transferred to get effected and Pondicherry and the enclaves of Karaikal, Mahe and Yanam became the Union Territory of Pondicherry from 01.07.1963. in the meantime, by virtue of the Pondicherry (Administration) Act, 1962, the jurisdiction of the High Court got extended to Pondicherry with effect from 06.11.1962.<sup>18</sup>

A historical fact which may also be viewed as a beautiful coincidence, is that within the very area of the present High Court building and enclosures, the old Temple of Chennakesvara appears to have stood till about 1762, when the Company made an equivalent grant of land south of China bazaar, and Chennaimalleawara Temples were erected there. The edifice of justice thus rests on consecrated ground.<sup>19</sup> Though by and large, the territorial jurisdiction of the high Court was only shrinking after independence, there was also one expansion, namely, to the Union territory of Pondicherry. In October 1954, an agreement was signed between India and France for the de facto transfer of French Territories, including Pondicherry, to India. A Treaty of Cession was signed in May 1956. It was ratified by French Parliament in 1962. On 16. 08. 1962, both countries exchanged instrument of ratification. Consequently, de jure transfer got effected and Pondicherry and the enclaves of Karaikal, Mahe and yeman became the Union Territory of Pondicherry from 01.07.1063. in the meantime, by virtue of the Pondicherry (Administration) Act, 1962, the jurisdiction of the High Court got extended to Pondicherry with effect from 06.11.1962.<sup>20</sup>

The High Court of Madras is a pioneer in promoting free legal aid to the poor. Article 39- A of the Indian Constitution mandating the state to provide free legal aid to person suffering from economic or other disabilities, came into force on 03.01.1977, by virtue of tne 42<sup>nd</sup> Amendment to the Constitution. But, even before that, the Government of Tamil Nadu constituted a one man Commission headed by Justice P. Ramakrishnan(Retd), in pursuance of the report submitted by Jutice V.R. Krishna Iyer to the Government of India in 1973.The mandate of the One Man Commission was to examine the feasibility of providing legal aid State’s cost. On the basis of his report, a Board known as the Tamil Nadu State Legal Aid and Advice Board was

constituted and notified in the Tamil Nadu Government Gazette on 04.12.1976 even before Article 39- A came into force. Within four months of the constitution of the Board, District Legal Aid and Advice Committees were formed in Chennai and other District in August 1977. Subsequently, the high Court Legal Aid Centre was constituted in July 1983. The Legal Service Authorities Act itself was enacted only in 1987, after 10 years of the constitution of the State Legal Aid and Advice Board. Today the Madras High Court have the State Legal Service Authority, the High Court Legal Service Committee and Legal Services Committees at the District and Taluk level.

In Tamil Nadu the first Family Court was started in Madras I High Court in 1988. The process of computerization of the Court started in 1996 with the National Informatics Centre, supplying Systems to the Court. At first computer were used for the preparation of case lists. In 2000, the daily case lists began to get hosted in the internet. Today, all judgements which are marked as reportable by the learned Judges, get hosted in the website of the High Court to which anyone can have access. The Amendment of the Civil Procedure Code in the year 2002, the techniques of alternative dispute resolution gained momentum. Therefore, in order to give impetus to mediation and Conciliation, which now have statutory sanction in terms of Section 89 of the Code of Civil Procedure, a Centre Known as "Tamil Nadu Mediation and Conciliation Centre" was established on 09.04.2005, within the High Court premises, perhaps as the first kind in the country.<sup>21</sup>In the year 1990 the Additional Family Court was established.<sup>22</sup> Due to increasing cases of the matrimonial disputes the second additional Family Court was set up in the year 1994<sup>23</sup> it was followed by the third additional Family Court in year 2010.<sup>24</sup> For the first time in India the holiday Family Court was established in the year 2011.<sup>25</sup>

In the year 2004, the High Court Museum was established with the technical advice and guidance from the School of Planning and Architecture, Anna University and the Director and Curators of the Madras Government Museum, at the instance of the then Chief Justice Markandey Katju. The Museum was opened on 9<sup>th</sup> April 2005. Some of the object displayed at the Museum are the Charters of the Mayor's court 1753, the recorder's Court 1798, the Supreme Court of madras 1800, The Letters Patents of 1862 and 1865, the Portraits of the first Chief Justice of the Supreme Court of Madras, the first Chief Justice of the High Court of Madras and the records relating to few cases that became sensational during the time when they were fought. The continuous request of the Southern Districts, the Government of India issued, in exercise of the power conferred by Section 51(2) of the State Re- organization Act, 1956, the Madras High Court (Establishment of a Permanent Bench at Madurai) Order, 2004. It was noticed on 06.07.2004 to come into effect on 24.07.2004. By virtue of the said order, a permanent Bench of the Madras High Court was directed to be established at Madurai with not less than five judges, as nominated by Chief Justice, to sit there and exercise jurisdiction and powers in respect of cases arising in the District of Kanyakumari, Tirunelveli, Tuticorin, Madurai, Dindigul, Ramanathapuram, Virudhunagar, Sivagangai, Pudukkottai, Thanjavur, Nagapattinam, Tiruchirappalli, Perambalur and Karur. The Bench was inaugurated on July 24.2004, by the then Chief Justice of India Mr. R.C. Lahoti. It was presided over by Justice B. Subashan Reddy, the then Chief Justice of the Madras High Court. In its centenary celebration from 1862 -1962, it was followed by 150<sup>th</sup> anniversary (1862 -2012) in the 150 years history, the Madras High Court had 34 Chief Justice since its inception in 1862. Honourable Mr. M.Y. Eqbal, Chief Justice, is the 35<sup>th</sup> Chief Justice of the Madras High Court. So far, 317 Judges have adorned the Bench of the Madras High Court. 24 Judges of the Madras High Court had been elevated to the Supreme Court.

The Madras High Court has witnessed certain innovative trends to help the litigants to get justice quickly. The Madras High Court was the first High Court in India to introduce Holiday Family Courts and Evening Courts, which have proved to be a great success and have attracted the attention of the judiciary in other states also. It is the pioneer in starting Tamil Nadu Mediation and Conciliation Centre. The predominant character of the Madras High court is that despite the new challenges being facet, it is able to withstand the perils and still retain the past legacy. The High Court of Madras acts as a Court of record. In this respect, it enjoys as much powers as Supreme Court at Delhi does. Judiciary is indisputably the bulwark for bringing to the society, the aspirations as guaranteed in our Constitution, which Chartered High Court, on its part, has done well, to effectively safeguard people's rights in today ever changing and fast paced world. The High Court of Madras will continue to expound and fashion the law for the present and future to meet the ends of justice and uphold the cannons of the Constitution.

## List of Chief Justices of Madras High Court from the inception and the period of their service

SIR CLLEY HARMAN SCOTLAND (1862 –2012)

SIR WALTER MORGAN (1871 – 1879)

SIR CHARLES ARTHUR TURNER (1879 – 1885)

SIR ARTHUR JOHN HAMMOND COLLINS, Q. C. (1885 – 1899)

SIR CHARLES ARNOLD WHITE (1899 – 1914)

SIR JOHN EDWARD POWER WALLIS, P. C. (1914 – 1921)

SIR WALTER GEORGE SALIS SCHWABE, K. C. (1921 – 1924)

SIR MURRAY COUTTS TROTTER (1924 -1929)

SIR HORAGE OWEN COMPTON BEASLEY (1929 – 1937)

SIR ALFRED HENRY LIONEL LEACH (1937 – 1947)

SIR FREDERICK WILLIAM GENTLE (1947 – 1948)

DR. PAKALA VENKATA RAJAMANNAR (1948 –1961)

JUSTICE SUBRAMANYA RAMACHANDRA IYER (1961 – 1964 )<sup>16</sup>

JUSTICE P. CHANDRA REDDI (1965 -1966)

JUSTICE M. ANANTHANARAYANAN (1966 -1969)

JUSTICE K. VEERASAMY (1969 -1976)

JUSTICE P.S. KAILASAM (1976 – 1977)

JUSTICE P. GOVINDA NAIR (1977 – 1978)

JUSTICE T. RAMAPRASADA RAO (1978 -1979)

JUSTICE M.M. ISMAIL (1979- 1981)

JUSTICE K.B.N. SINGH (1982 -1984)

JUSTICE M.N. CHANDURKAR (1984 -1988)

JUSTICE A.S. ANAND (1989 -1992)

JUSTICE KANTA KUMARI PATNAKAR (1992 -1993)

JUSTICE K.A. SWAMY (1993 -1997)

JUSTICE M.S. LIBERHAN (1997 -1998)

JUSTICE ASHOK AGARWAL (1998 -1999)

JUSTICE K.G. BALAKRISHNAN (1999 – 2000)

JUSTICE N.K. JAIN (2000 -2001)

JUSTICE B. SUBHASHAN REDDY (2001 -2004)

JUSTICE MARKANDEY KATJU (2004 – 2005)

JUSTICE A.P. SHAH (2005 -2008)

JUSTICE A. K. GANGULY (2008 -2009)

JUSTICE H.L. GOKHALE (2009 – 2010)

JUSTICE M. YUSUF EQBAL ( 2010 - 2016)

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22. G.o Ms. No. I Additional Family Court, dated19.94.1990.
23. G.O ,No. 1123, II Additional Family Court, dated 21.09.1994.
24. G.O, No.719, III Additional Family Court, dated 13.08.2010.
25. G.O, No. 392, Holiday Family Court, dated 15.07.2011.