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NON-JUSTIFICATION OF THE CONTINUATION OF THE SMALL CAUSES COURTS IN THE PRESENT INDIAN LEGAL SYSTEM

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ABSTRACT

Small Cause Courts were established in the Presidency towns of Calcutta, Bombay and Madras for adjudication of petty civil matters of small amount of pecuniary value in a summary manner. Presently these courts are guided by the provisions laid down under the Presidency Small Cause Courts Act, 1882 and Section 8 of the Code of Civil Procedure, 1908. Since the concept of Presidency towns does not exist any longer, continuity of these courts is not at all desirable which also violates the constitutional provisions. Accordingly, the Presidency Small Cause Courts Act, 1882 and Section 8 of CPC should immediately be deleted.

KEY WORDS: Civil, Colonial, Presidency, Magistrate, Metropolitan.

INTRODUCTION

Small Causes Courts in India originated in the presidency towns of Calcutta, Bombay and Madras in 1753 by the Mayor's Court Charter of King George the Second, originally styled as the "Court of Request". Its first pecuniary limit had only been 100 rupees which was only 100 rupees which was subsequently enhanced from time to time. Acts and orders such as Act IX of 1850, Act XXVI of 1864 etc. governed the jurisdiction of these courts which was finally consolidated by the Presidency Small Cause Courts Act, 1882¹. These courts are the oldest courts established on request of the European traders. These are governed by the provisions laid down under the 1882 Act and the Presidency Small Cause Courts Manual, 1882. The courts remain to a great extent untouchable by the subsequent legislations of India till now. These courts are modelled as the English county court to provide rapid summary justice distinct from

¹ Act XV of 1882

the ordinary civil courts.

ORIGIN AND EVOLUTION OF THE PRESIDENCY TOWNS

The term “*Presidency town*” was originated during the early British colonial period when the East India Company used to administer its three fortified trading settlements – Madras, Bombay and Calcutta. Coastal factories were built by the East India Company in Madras in 1639, in Bombay in 1668 and in Calcutta in about 1690². Each of these chief settlements was headed by a senior Company officer designated as *President*. Accordingly, these regional territories became known as *Presidencies*³. Subsequently, population consisting of surrounding natives and Europeans grew around these factories like Fort St. George in Madras and Fort William in Calcutta and the settlements were to be termed as *Presidency towns*⁴.

KEY FEATURES OF THE PRESIDENCY SMALL CAUSE COURTS

These are specialized civil codes in India for resolution of minor financial claims, recovery of small claims, rudimentary disputes between landlords and tenants etc. A fast and simple legal process without long delay in ordinary civil courts are the characteristics of these courts situated only three Presidency towns of India. The Presidency Small Cause Courts have also been specifically referred in the Code of Civil Procedure, 1908⁵, the procedural code of civil law throughout the territory of India.

EXTENT OF JUSTIFICATION FOR CONTINUING THIS COURT

Prior to coming into effect of the Code of Criminal Procedure, 1973⁶, British India and subsequently independent India were governed by the Code of Criminal Procedure, 1898⁷ in which the description of the Presidency Magistrates was laid down⁸. A Presidency Magistrate was a special judicial officer appointed for discharging magisterial authority within the Presidency towns of Calcutta, Bombay and Madras. Their status was equivalent to that of the magistrate of the first class.

² Urbanstudies,institute

³ *Supra*

⁴ India State Stories

⁵ Section 8 of the Act No. 5 of 1908

⁶ Act no. 2 of 1974

⁷ Act no. 5 of 1898

⁸ Section 6 *Supra*

The courts of Presidency Magistrates were replaced by the courts of Metropolitan Magistrates in terms of the provisions laid down under the Code of Criminal Procedure of 1973⁹.

A metropolitan area has been defined by the 74th Amendment to the Indian Constitution as having a population of one million or more. Delhi (NCR), Mumbai (previously Bombay), Kolkata (previously, Calcutta), Chennai (previously, Madras), Bengaluru, Hyderabad, Ahmedabad and Pune have been declared as metropolitan cities. Accordingly, appointment of metropolitan magistrates for those areas was mandatory¹⁰.

Code of Criminal Procedure, 1973 was repealed by the Bharatiya Nagaril Suraksha Sanhita (BNSS), 2023¹¹ which became effective from 2024 throughout the territory of India. There is no provision of any metropolitan magistrate in the said enactment¹².

It reveals from the above discussion that the concept of Presidency Magistrate as mentioned in the Cr. P. Code of 1898, a British colonial legislation, was discarded by that Code of 1973, an enactment legislated by the independent India. The Code of 1973 introduced a new concept of Metropolitan Magistrates. The category of metropolitan area was declared by the 74th amendment of the Constitution of India in 1993. Ultimately, the concept of Metropolitan Magistrate was also discarded by the BNSS, the new criminal procedure code of India.

This may be mentioned here that the Code of Civil Procedure, 1908, the prevailing civil procedure code in India is also a British colonial legislation. The same was amended from time to time in independent India but the principal enactment remains intact till now containing the relevant provision in respect of the small cause court. The Presidency Small Cause Courts Act, 1882 exists as before in Kolkata, Mumbai and Chennai. While origin of the said courts, i.e., the concept of British colonial Presidency towns are not in existence, the continuity of the said courts seems to be absurd. Since the residents of the territories outside those towns are guided by the general provisions laid down under the Code of Civil Procedure, 1908 in all the civil matters and only the inhabitants of those three cities enjoy the privileges in the matters laid down under the Presidency Small Cause Courts Act, 1882, gross violation of the constitutional

⁹⁹ Section 16 Cr.P. Code, 1973

¹⁰ Section 16 (1) *Supra*

¹¹ Act no. 46 of 2023

¹² Section 6 BNSS

mandate¹³ is continuously being carried out causing the provisions laid down under the Presidency Small Cause Courts Act, 1882 and Section 8 of the Code of Civil Procedure, 1908 liable to be *ultra vires*.

CONCLUSION

Under the facts and circumstances mentioned above, it may be suggested that the Presidency Small Cause Courts Act, 1908 and Section 8 of the Code of Civil Procedure, 1908 should be deleted at the earliest.



¹³ Article 14 of the Constitution of India