CHAPTER I
INTRODUCTION

PRE-FRENCH PERIOD

The Union Territory of Pondicherry prior to its merger with the Indian Union was a French Colony. It was part of the Vijayanagar before it was established by the French in 1674. Prior to its becoming part of the Vijayanagara Empire it was part of the Kingdom of Chola and Pallavas. During the reign of Pallavas and Cholas Pondicherry was a centre of learning. It had a very developed legal system and institutions of legal education. There is evidence of several educational Institutions that existed in Pondicherry.

Legal Education was accorded due importance in ancient days in Pondicherry. The Bahoor Vidyastana (College) was in existence during the eighth century. A verse in Bahoor plates mentions the Dharma Sastra College.¹ Another college at Thirubuvanai near Pondicherry was also in existence during the period of Chola Kings. In that college laws of Manu (Manusastra) was also in the curriculum of

¹ C.Minakshi. Administration and Social Life under the Pallavas (Madras), 1938 pp.205-207.
studies. The importance given to these laws in the curriculum gives the impression that these laws were in force in the territory which now forms Pondicherry.²

Most of the disputes used to be resolved by village assemblies during the reign of Chola Kings. These village assemblies had both civil and criminal jurisdiction. The small committees of nyayathar also settled disputes. By way of arbitration also the general disputes were resolved and some criminal offences used to be compounded. Treason was considered to be a grave offence and the same was dealt with severely. Offences like murder of the members of the royal family, non-payment of fines imposed by the king, persistent efforts to disturb the king’s peace and creation of disorder in the realm, violation of royal grants and failure to pay expenses incurred for the conduct of worship of temples etc. were considered very grave offences.³ All treason against people’s organisation like the grama and the nadu were considered to be more heinous than treason against the king.⁴

There was some kind of continuity so far as the legal system was conserved when Pondicherry became part of the Vijayanagara empire later. Under the Vijayanagara empire king was regarded as the fountain of justice. He was regarded as the Chief Judge. Krishnadeva Raya's Amuktamalyada declares that it is the duty of the king to hear complaints from the people in distress and redress their sufferings. But he himself did not dispense justice in all cases brought before him. There were judges who administered justice on his behalf. The Minister of the King called Pradhani actually acted as the Chief Judge. The available evidence indicates that the provincial governors held their own courts in their areas as the king did at the capital, regardless of whether a judge held court at the same place or not. Though there is no information about the distribution of judicial work between the king and other judges at the capital some records indicate that the king used not only to hear and decide the cases at the first instance but also heard appeals from the decisions of other judges. The king's agents or governors dispensed with justice at the provincial courts. In the outlying parts of the empire, there were popular courts such as those of village assemblies, temple trustees, and caste elders. The village courts were manned by the village mahajanas and caste courts by the

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elders of the respective castes. Leaders of the guild manned the courts of the guild and temple trustees decided disputes that arose in their arena.

Civil disputes were generally settled by arbitration by special judges. An officer having jurisdiction to try the case had the right to request a body of persons to conduct the trial on his behalf. But, in criminal cases a rough and ready procedure seemed to have been adopted. When a complaint was directly made to the king about a crime the king settled it then and there and also ordered the captain who accompanied him to enforce the decision. Indeed, in certain cases it appears that the king occasionally acted as accuser as well as judge. The village assemblies, temple authorities and provincial governors also exercised criminal jurisdiction. The local residents sometimes tried criminal cases. There is evidence of a case having tried by several persons. For example, a collegiate court consisting of not less than twelve members tried one Aindan in absentia and pronounced sentence for having deprived God Kunaravana Perumal of 150 PON from his garland. There appears to have been occasional

6. For instance, the king Krishna Deva Raya, blinded and imprisoned his minister Saluva Timma and his sons on suspicion of their murdering the king's son Tirumala.

7. PON: It is gold coin that weighed eight grams.
recourse to trial by ordeal in criminal cases, where there was no reliable evidence available. When there was no witness to prove the offence, oaths were taken. A person charged with an offence had to prove his innocence by going through one of the hazardous modes of taking oaths. He who swore that he was innocent of the offence charged against him plunged two fingers into boiling butter. It would appear that while in civil suits the plaintiff had to prove his claim against the defendant, in the criminal cases the burden of proof was on the accused. The accused's burden should have been onerous when he was tried by the village assembly, or the elders of the community to which the accused belonged as they had knowledge of the circumstances in which the crime came to be committed. The legal system imposed a sacred and religious duty on the kings to find out the truth. There are numerous texts which declare that by miscarriage of justice the king will not only lose the goodwill of his subjects, but will also incur punishment for his sin.

Under the Vijayanagar rulers punishments for criminal conduct were very severe. For a thief, amputation of a foot and a hand was

8. T.V.Mahalingam: South Indian Polity, Page-213, One is reminded of the "conviction in time" required if the French Magistrate before he passes sentence.
prescribed as punishment irrespective of the seriousness or the property involved in the crime. Grave crimes used to be dealt with by hanging with a hook under chin. Sometimes, the criminals were tortured to death. Treason was punishable with death. In case of theft of temple jewellery, the convict was first imprisoned and later banished from his village, with one of his hands chopped off and his lands confiscated. Apart from capital punishment, there were the common punishments of the times, like mutilation, forfeiture of property, fines and excommunication. Compensation appeared to have been sometimes paid to the victims of crime. The King was inclined to act as accuser and judge in his own cause, perhaps because all executive power as well as, ultimate judicial power vested in him. Epigraphia Carnatica relates an instance of the State compensating individuals for injustice done to them by the state.\textsuperscript{10} The French appear to have taken a leaf, or rather a few leaves, out of the Vijayanagar books, in matters of procedure and punishments. Indeed the French's indebtedness to Vijayanagara System was very limited though.

\textsuperscript{10} T.V. Mahalingam: Administration and Social Life, Page-129.
PONDICHERY : AFTER THE ADVENT OF THE FRENCH

Pondicherry had the experience of different administrative systems even after it was taken over by the French. The French established their colony in 1674; it was taken by the English in 1761. However, it was given back to French in 1765. Once again Pondicherry was retaken by English in 1778 but was restored to the French in 1816. Thus its experience with different systems of law was not something new. However, Pondicherry could retain its Indo-French System without any major interference.

The French establishments in India consisted of five small units. They were Pondicherry, Karaikal, Mahe, Yanam and Chandernagore. There was no geographical contiguity with each units apart from their linguistic diversity with general culture. Though all the five regions were scattered in various parts of our country, Pondicherry, Karaikal and Yanam were on or near the south east coast. Mahe was on the west coast while Chandernagore was near Calcutta in the north. The languages of Pondicherry and Karaikal, Yanam, and Mahe had been Tamil, Telugu and Malayalam respectively. Inhabitants of Chandernagore spoke Bengali. At present Chandernagore is not with the Union Territory of Pondicherry. The other four territories viz.,
Pondicherry, Karaikal, Yanam and Mahe are parts of the present Union Territory of Pondicherry.

French Pondicherry had an area of 293.77 square kilometers. It consisted of eight territorial administrative divisions called “Communes”. They were Pondicherry, Mudaliarpet, Ozukarai, Ariankuppam, Villianur, Bahoor, Nettapakkam, Mannadipet. All the eight communes in total consisted of 234 villages. Pondicherry the living monument of French Culture in India, to-day edges the coromandel coast and is bound by the South Arcot district of Tamilnadu on the west, north and south and by the Bay of Bengal on the east. Though the reigns of Pondicherry kept on changing hands between the French, Dutch and the English from 1816 onwards Pondicherry was retained by the French without any interference. It should be noted that its rulers other than the French, the English and the Dutch, did not try to replace the then existing French Law.

Karaikal, had an area of 149.20 square kilometers. It also comprised of six communes. They were Karaikal, Thirumalairayan Pattinam, Tirunallar, Neravy, Nedungadu and Kottucherry. All the six communes contain 110 villages. Karaikal is situated about 120 kilometers south of Pondicherry and is bound on three sides by Tanjore
district of Tamilnadu and on the east by the Bay of Bengal. Though this part of the Union Territory was taken over by gratien Grolard in 1793, later on it was ceded to France by the King of Tanjore for 50,000 chakras.

Mahe, had an area of 8.41 square kilometres. Among the four units of the Union Territory of Pondicherry, Mahe was the smallest unit. But it had more density of population. It is situated on the Malabar Coast, some 420 kilometres west of Pondicherry. Mahe consist of two units. It is bound in the east by the Arabian Sea and on the other sides by the Kozhikodu district of Kerala State. The other unit is an enclave in the Cannanore district of Kerala State. It formed only one commune. It was acquired from the ruler of Kadattanadu who permitted the French to keep a garrison there. Mahe was taken back from them, but the French recaptured it. Their right to territory was confirmed by a treaty concluded in 1726.

Yanam, has an area of 17.29 square kilometres. It is situated near East Godavari District of Andhra Pradesh and is more than 500 kilometres to the north east of Pondicherry. Yanam is a narrow sketch of land bound in the south by the Godavari and on the east by the
tributaries of the Godavari River. It formed one commune. It now consists of Yanam Town and six villages.

As already noted the French establishment of Chandernagore is at present not a part of the Union Territory of Pondicherry. It was 30 kilometres north of Calcutta and consisted of 9.4 square kilometres including the enclave of Groretty. On the basis of a referendum, on 19th June 1949 Chandernagore opted for merger with the Indian Union.

JUSTICE DELIVERY SYSTEM IN PONDICHERRY DURING THE FRENCH PERIOD

The French Legal system was introduced in Pondicherry by an enactment of February 1701 promulgated by Louis XIV. By that enactment the Sovereign Council (Conseil Souverain) was set up for the administration of Justice. The Sovereign Council had jurisdiction both in civil and criminal matters. The Council was composed of Directors General of the French East India Company and in their absence, of the Directors of the establishment at Pondicherry and the merchants of the company residing in the establishment. The other body with local jurisdiction was called conseil Superieur and the same was constituted with capable and honest French merchants and tradesmen, who were invited to participate and hand down decisions in both civil and criminal matters. The enactment had also made
arrangements for administration of justice in certain subordinate establishments by constituting a court of first instance having sitting at the headquarters of the establishment with four for criminal matters. Appeal against the decisions of these courts were made before the Council Sovereign in Pondicherry.\textsuperscript{11}

In the Council Superior each of the Councillors had some special functions assigned to them. The first Councillor who manned the office of the Governor in his absence was the President of the Choultry court. The Governor was appointed by the King and he was responsible to the Company for the conduct of affairs in India. He was not endowed with any authority to override the Council. The Choultry court was in charge of rendering justice to the natives. Apart from the Administrative works the first Councillor was also entrusted with the work of dispensation of justice by sitting in the Sovereign Council. During the absence of the Governor or in the event of his being ill the first Councillor used to sit as a judge as stated above. The second councillor was Commissioner of the army, the third was incharge of the stores, the fourth was incharge of armaments and the fifth acted as \textit{procureur General}. The functions and numbers of Councillors were flexible. All the Councillors, by turn,

\textsuperscript{11} The Conseil Supeieur when sitting as a court was referred to as Conseil Souverain: Anandaranga Pillai's Dairy, Vol.5, Page-146.
sat as Judges in the Souvereign Council which held a weekly session on Tuesdays.  

The right to remove the Councillors appointed by the King without assigning any reason was excercised by the Company. The vacancies occasioned by removal had to be filled in by the Company by appointing other Councillors so that administration of Justice was not brought to a stop for want of personnel. The company also made the court of Justice to function as administrative council. Sometimes, the Sovereign Council would refuse to recognise the Councillors thus appointed by the Company. It indicated that the company instead of adhering to any principle of separation of powers actually favoured a fusion of functions as being expedient to promote its commercial interests. The court of Justice, as a result, was required to function as an administrative Council as well. In view of the fact that the over-riding powers excercised by the Governor, and the conspicuous absence of the principle of separation of powers, administration of justice did not always run smoothly. Governor used to interfere with the course of justice very frequently. For instance, the case of the administrator of

Chandernagore who was charged with a criminal offence came to be quashed though the *Conseil Superieur* authorised the prosecution of the administrator.

That the company actually favoured a fusion of functions to promote its commercial interests and the same necessitated the elimination of assessors in the tribunals. In the place of assessors new councillors were appointed and their number was increased in subsequent years to form provincial councils (*Counsels Provinciaux*) which functioned as courts in place of the tribunals set up by the enactment of 1701.

The Jurisdiction to try and decide, in the first and last instance, pertaining to all charges and disputes between the King's subjects in Pondicherry and its dependencies was given to the Council. It was also to decide the appeals from judgments rendered in Civil and Criminal matters by the tribunals of First Instance in the other French territories in India. The Council was to conform in its judgments and in its proceedings to the customs of Paris, to the special laws made and to be made for India, and to the provisions of the ordinance of 1670 in all the matters. And in all matters it had to conform to the laws and ordinances issued for the Kingdom in general. It was reiterated in the
ordinance about the familiar provision applicable to other territories in India. The ordinance of 1670 also provided that the commandants and Commissaries in some of the territories and heads of the territories to continue dispensation of justice in the first instance. Both the commandant and commissaire could invite three notables when deciding civil and criminal cases. The decisions of these tribunals were subject to appeal to the superior Council at Pondicherry. This organisation of dispensation of Justice was in vogue for few years and new set up was contemplated and provided for by law later.

The British captured Pondicherry in 1761. But the East India company was not in a position to run the administration. It incurred huge debt resulting in heavy loss to the company. Then it resolved to relinquish all its property in favour of the king of France with the understanding that he would pay its debts. The King took over the possessions of the Company by an order dated 8th April 1770. Free trade was permitted by the King in these possessions to all his subjects. The Conseil Superieur and the other provincial tribunals ceased to exercise administrative functions as the administration by the Company itself ceased to exist. Then, they again became pure judicial bodies rendering justice to the subjects of the king. By a royal enactment of 30th December 1772 the councils were reorganised.
According to this ordinance, the Council Superior which rendered judgment in the last instance was to consist of the Commandant General of the French Establishments, a Commissaire General of the French Establishments, a Commissaire General Ordonnateur, and prominent French merchants and businessmen who could be co-opted, three for civil cases and five in criminal matters.

The purpose for which the Council Superior and the Tribunals of First Instance were set up in the French councillor by the enactment of 1701 was reiterated by a royal enactment of February 1776. It stressed the fact that both were set up for the sole purpose of dispensation of justice to the subjects of the King. It was thought by the Company that it was better if the tribunals were concerned themselves with the affairs of the administration and commerce as well as matters of justice. But, the functions of the Council Superior and other tribunals with regard to the rendering of justice was restricted by the declaration of 30th September 1772. The enactment of 1776 abolished the existing council as it was felt to re-constitute and it established a new Conseil Superieur to render justice both for civil and criminal matters.

The new council was to consist of the Commandant General an Intendant, or Commissaire Ordonnateur, a Senior Officer of
Administration, who had the rank of Commissaire of the Navy. Seven permanent Councillors, one Procureur General and one Chief Graffier, two assessors, a substitute Procureur and a Commis Greffier. The King appointed the Councillors, Procureur General and the greffier. The Administrators were authorised to appoint a temporary Graffier if any vacancy arose in the office. The substitute of the Procureur General could also be appointed temporarily by the administrators apart from appointing the Commis Greffier on the recommendation of the Chief Greffier with the approval of the Company. As per the enactment the number of members while trying criminal cases should be seven and the same could be five for the trial of civil disputes. The participation in the deliberations by the assessors were permitted only in those cases where they acted as Rapporteur. However, they could take part in the deliberations if the number of permanent Councillors present was inadequate and major issues had been set down for decision. In case of inadequacy in the number of judges, it was also provided that the alternate procurer General as well as the Chief Greffier could act as judges. The King's recognition of the need to maintain collegiate courts as well as his serious concern for the speedy dispensation of justice with public participation to the extent possible was evident with the authorisation given to the council itself to invite notables to complete
the required number of judges fixed by the edict, if the services of the officers designated could not be made readily available.

The justice delivery system in the establishments was re-organised by an ordinance of 1784. The reorganisation was done on the lines envisaged in the ordinance of 1701. The preamble of the new ordinance made it clear that the King had resorted to this to suit the needs of the public. The Council was abolished in 1776 and a new council consisting of permanent judges was established as in other colonies so as to have uniformity and to keep the proceedings of the tribunal continuous. The King, wanted to constitute the council as had been done before 1776 so as to have prompt and simple dispensation of justice with less burden on the finances of the establishments. Hence the council Superior set up by the ordinance of February 1776 was abolished.

A new superior council consisting of the Governor or Commandant General or Indendant or Commissaire General Ordonnateur was established in the place of the old one. In the absence of the above officials a senior officer in the administration or French merchants and notables above the age of 25 years were also summoned to associate with the rest in dispensing justice. The council
had a jurisdiction to try all disputes between inhabitants and residents of the town and Fort of Pondicherry, with three judges hearing civil cases and five trying criminal cases. The appeals preferred to the council from other Establishments were also heard by the same number of judges. All the matters exclusively left to the jurisdiction of the administrators as per the provisions of the ordinance of February 1776 were excluded from the jurisdiction of the council. The ordinance of February 1776 authorised the Governor or Commandant General or his representative to defer until receipt of the King’s orders in execution of sentence of death. That kind of deferring was done where the Governor, the Commissaire Ordannateur and the Procureur unanimously considered that the convict could be pardoned or the sentence commuted. The Commandant and Commissaires in the territories and other Chiefs (Where there was no commandant or Commissaire) were empowered to render justice in the first instance co-opting three notables in civil cases and five in criminal trials. The appeals against the judgments of this body were made to the Superior Council at Pondicherry.

**CH OULTRY COURT**

The choultry court (TRIBUNAL DE LA CHAUDRIE) was established in Pondicherry in 1728. This court was established for
dispensing justice to the indigenous population. It was composed of a Civil Lieutenant and two assessors, two clerks, one European and the other Indian, an Indian Process Server (Huissier) and four interpreters. This choultry court was required to administer justice to Indians according to their own laws and customs. The French administration had guaranteed the indigenous population the protection of their customs and preservation of their laws. The very idea of establishing choultry court was to comply with this promise. In criminal matters summary procedure was followed. After filing complaint or report necessary investigation would be conducted and sentence pronounced and also executed during the court session itself. The following punishments were imposed on the Indians upon conviction:-

(i) Corporal punishments laid down in the ordinances and mutilation of the ears.

(ii) Slavery for a fixed period or in perpetuity in the Islands of Bourbon and Ile de France,

(iii) Fines,

(iv) Confiscation

(v) Banishment from the territory

(vi) Flogging or whipping.

These punishments could also be imposed cumulatively. It appears that whipping was regarded as compulsory accessory to all other punishments. Certain reforms were effected in the constitution of
the Choultry court as well as in the law applicable to Indians when law
de Lauriston was the Governor. An order of 30th December 1769,
sought to re-organise the court and policing of the town. That court
composed of a Councillor of the Conseil Souverain who was its
president and two subdealers as assessors. The presence of the
president was essential to render a judgment valid. If one of the
subdealers was absent the other two members including the president,
could adjudicate cases; even if both were absent, the president, could
function as a court. A majority of votes determined issues. If there was
an equal division of votes as when the president and one assessor
formed the bench, the voice of the president prevailed. The judgement
were, however unanimous in that all judges signed them. Two
interpreters, one of whom was to be a Christian, were attached to the
Choultry court. There was, however, no officer of the public ministry at
the court. The court was given jurisdiction not only in disputes between
Indians, but also between Indians and Europeans or Franco-Indians.

The right of appeal from decisions of the Choultry court in suits
the value of which was not less than 50 PAGODAS was limited by the

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13. Disputes between Europeans and Franco-Indians or between two persons
belonging to either of these classes were to be adjudged exclusively by the
Sovereign Council.
Governor Law de Lauriston by a regulation of 18th November 1769. The appellant was required to furnish a security (fine) proportional to the value of the suit. It was fixed that when the value of the suit was 50 PAGODAS, 25 PAGODAS were to be deposited. $33\frac{1}{2}$ PAGODAS were to be deposited when the value was 100 PAGODAS and a deposit of 50 were to be paid for the value of 200 PAGODAS. The deposit was fixed as 80 PAGODAS when the value was upto 1000 PAGODAS and one-tenth of the sum when the value was above 1000 PAGODAS. The amount of the deposit was confiscated to the Company in case of failure of appeal. Generally production of new documents at the appeal stage was prohibited. However, if the appellant produced such a document, and the Conseil Souverain was satisfied that it could have been produced before the court of first instance, the Conseil would accept it only on payment of an arbitrary fine which was imposed on him. This was only to discourage appeals except where important issues were involved. There was a limitation fixed for time limit for filling appeals from the decisions of the Choultry court. Those appeals were required to be filed with the Conseil Superieur within three months from the date of the judgement of the Choultry court was read out to the parties.
Within six weeks of filing the appeal, it had to be followed up in the conseil Superior failing which it was liable to be declared as abandoned. The value of a suit for its being taken up in the last instance was fixed at Rs.200/- (480 Francs) the fine for frivolous appeals was fixed at Rs.100/- (240 Francs) irrespective of the value of the suit. The appellant was required to deposit in the Choultry court the whole amount he was adjudged liable to pay; in case of default of deposit, appeal was not to be entertained.

PROVINCIAL COUNCILS

The edict of February 1701 while establishing a Conseil Souverain for Pondicherry, also set up sub-ordinate Councils in the other Establishments. The Chief of the Establishments, deliberating with notable and honest residents - three in civil matters and five in criminal cases were empowered to administer justice in the first instance in their respective regions. Appeals from their decisions lay to the Council Sovereign in Pondicherry. However, without prejudice to the appeal filed, judgement rendered in the first instance could be executed on furnishing security. The provincial councils had a Procureur du Roi who exercised the same powers and functions as the Procureur General attached to the Conseil Superieur.
By the edict of 1701 the provincial councils were formed in order to exercise the judicial functions conferred on the chief of the settlements as the number of Titular Councilors who replaced the assessors was increased. In an attempt to restrict to the councils their exclusive judicial function as contemplated by the edict of 1701, King Louis by his edict of 30th December 1772, provided that the commandants and commissaries in the settlements should administer both civil and criminal justice at the first instance. They were also provided with the assistance of prominent merchants and businessmen who could be co-opted for both civil and criminal matters. To form the tribunal of civil three of them were co-opted while for criminal matters the strength was fixed as five.

This was virtually abolition of the Provincial Councils, substituting for it the Commandants and Commissaires. In spite of the avowed purpose in promulgating the edict, which was to invest the council exclusively with judicial powers, it is clear that by leaving those powers in the hands of administrative officers who could select any three or five persons of their liking, judicial and executive functions were again being given to the same persons. Under the edict of 1701 as it was actually brought into operation, same body of persons carried on both executive and judicial functions. The saving grace of the edit was the provision
for appeal to the Sovereign Council in Pondicherry from the decisions of these provincial tribunals.

**CHAMBER OF CONSULTATION**

The Chamber of Consultation was established by a regulation of the 27th January 1778. It consisted of eight Indians of not less than 25 years of age known for their integrity and their knowledge of the “usage of customs” of the country and of the different castes so that they would be in a position to express opinion on matters referred to them. The Chief Administrators of the Colony used to appoint them. They were to meet at the Choultry Court as often as necessary to deliberate upon and decide matters referred to them for consideration by the Superior Council or by the Civil Lieutenant or by the Police Lieutenant. While reaching at a decision, the Chamber was expected to conform to the laws, manners and customs of the country if the matter related to marriage, inheritance, wills and partitions or to rights and privileges of the caste, temples or endowments. If a matter relating to a relative of a member was to be adjudicated, he was required to withdraw from deliberation. This was only to avoid any possible bias in the decision. Neither the Chamber nor a member should ask for or demand or receive anything for whatever reason, from the parties whose cause was referred to the Chamber for its opinion. It was enacted in the
regulation. It’s violation would attract exemplary punishment. This ensured strict compliance at all times. The said regulation also imposed on the Chamber and on each of its members the task of preparing a code of Tamil laws and a compilation of native customs including those peculiar to each caste. After a period of 40 years of its functioning the Chamber was abolished in October 1827 and it was later replaced by the Advisory Committee on Indian Law in 1828.

ANNEXATION OF PONDICHERY TO THE BRITISH TERRITORY

The Superior Council consisting of a president, four councillors, four assessors, one Procurer General, one alternate Procurer, one Greffier, and two assistant clerks could not function long, as Pondicherry was captured by the British on the 21st August 1793. From 1793 to 1816, for 23 years, when Pondicherry was under the British, laws in force before the Capture were continued in operation. Judicial organisation also underwent no change, for nearly four years from 1793.

In 1796 however the British Governor suspended the work of the courts. In 1797 the courts were re-established with some modifications in their organisation. The Superior council was to have now five councillors; one of them to be appointed by the Government of Madras.
Governor's appointee was to be the president. The office of the Procureur General was retained. The jurisdiction of Council was limited territorially to the four establishments in the presidency of Madras. The Council was not given jurisdiction to decide disputes between British subjects or try cases relating to public revenue. The Government of Madras set up a court of revision or cassation consisting of the Commandant of Pondicherry, the president of the council Superior the senior most member of the council Superior, and two prominent residents. It was a court of appeal. A bench of three judges was necessary to hear a petition for revision. Among the three, one of them was to be either the Commandant or the president of the council Superior. It could retry the case; it could also quash the impugned decision. However, it did not entertain petitions for revision of judgements given in appeal by the Consul superieur from the decisions of the Choultry Court. To decide the disputes between French residents, Greeks or other foreigners a court of administrator was constituted. It was composed of the Commandant of Pondicherry and the president of the Council Superior. The Governor in Council in Madras heard the appeals from the decision of the court of administrator. British subjects were excluded from its jurisdiction.
The Treaty of Amiens (1802) restored Pondicherry to the French. But in 1805 it had again fallen into the hands of the British and the Governor established a court of Judicature in the place of Superior Council. This court consisting of three judges and two assessors could constitute a court to try criminal cases also when the offence was alleged to have been committed at Pondicherry or at one of its nine dependant villages. The assessors had the right to participate in these trials along with the three judges. In criminal trials the number of judges was to be at least five, but in special circumstances it could be seven by co-opting two or more assessors. The court was to meet three times a year to try criminal cases, on the first Mondays in April, August and December. The three Principal Judges were empowered to choose one or more assessors from among the respectable European residents, if the five members of the court were not available. No sentence of death was permitted to be carried out without the prior approval of the Governor in Council in Madras. The court of Judicature was set up by Article 78. The Regulation of 5th May 1805 stated expressly that the formal procedure of the court should be as far as possible, those of the former (French) court in Pondicherry. The laws, customs and usages previously in force would be generally regarded as the principles on which the court of Judicature should base its
procedure and regulation and that its decisions should be regulated according to them.

The British Administration put an end to the practice of appointing assessors in the Choultry court as early as in June 1795. After a decade, the Choultry court was also abolished. A few police regulations were adopted on the 15th May 1805. Some Civil disputes were resolved by arbitration at the bureau of the police which used to summon the heads of the disputant castes to decide the issue according to their own laws and customs. The settlement arrived at by respectable persons were required to be obeyed and an undertaking for the same was to be given prior to the settlement talks. During these days when certain organisational changes were effected, Indo-French law continued to be administered by the British so that when Pondicherry was restored to the French in 1816, no difficulty in the continued operation of the law was felt.

RE-ESTABLISHMENT OF JUDICIAL SET UP BY THE FRENCH AFTER 1816

The Council Superior and the provincial councils were re-established by the French on 8th February 1817. The council was renamed as Royal Court in 1819. Some material changes in the
Judicial organisation of the establishment were effected by a Royal ordinance of 23rd December 1827. It established a court of Justice of peace at Pondicherry with jurisdiction over Pondicherry and its three dependencies. The court was composed of the Lieutenant of police who acted as judge, an alternate judge and a Greffier. The Court functioned as a police court in criminal cases involving minor offences (Contraventions de Police) and a court of the Justice of Peace in civil disputes. When the court sat as a Police court the functions of the Ministere public were to be performed by the Inspector of Police. A tribunal of first instance at Pondicherry with the same territorial jurisdiction as that of the court of the Justice of Peace was set up by the ordinance. The tribunal consisted of a King’s judge and two assistant judges. A king’s Procurer, two Greffiers, one European and the other Indian and a clerk were attached to it. In case of absence or inability of the King’s judge to attend to his work, an Assistant Councillor, appointed by the Administrator General was to officiate for him. It had jurisdiction to decide civil actions, personal or pertaining to movables in the first and last instance. It heard and decided in the first instance civil cases relating to real property and mixed actions, as well as personal actions and those relating to movables where the value of the suit exceeded 480 francs.
An ordinance of 26th May 1827 had already laid down that the Lieutenant of Police could deal with the following matters, with no possibility of appeal, when the value of the suit did not exceed Rs.10/- (24 Francs) and with possibility of appeal when the value of the claim exceeded that amount:-

(a) civil actions for slander, brawls, assault and battery
(b) action for damage caused either by men or by animals to fields, fruits, and crops.
(c) payment of worker’s wages, servant’s wages and execution of the respective undertakings of masters and of their servants or workers.
(d) shifting of boundary marks, encroachment on lands, trees, trenches and other enclosures committed during the year, encroachments upon rivers used for irrigation of fields committed during the year and all actions for possession,
(e) repairs incumbent on the tenant, and
(f) compensation claimed by tenant farmer or lessee for non-enjoyment when the right to compensation was not disputed and dilapidation (degeneration) alleged by the owner.

The disputes arising between Indians on personal matters, chattels or commercial matters and disputes in which one of the parties or both were Foreigners not domiciled in the territory could be brought
before the Police court irrespective of the pecuniary value of Rs.20/- (48 Francs) and with possibility of appeal when the value of the claim exceeded the amount. It was provided by the ordinance mentioned above. The police court was also given jurisdiction to try police offences, thefts, swindles, brawls, assault and battery and infringement of ordinances and regulations relating to direct and indirect taxes. Appeals in civil as well as police matters lay to the court of first Instances. Decisions pertaining to certain matters of caste were however expressly exempted from the appellate jurisdiction of the court. The ordinance of 26th May 1827 declared:-

"Special disputes other than those relating to interests and claims arising in the families of Indians or in the same caste about ceremonies, marriages, funerals and other matters called matters caste are brought before the police judge and referred either to the Advisory Chamber or to the assembly of caste or of relatives for being considered there and decided upon in conformity with the custom, such decision being then confirmed with the custom, such decision being then confirmed by the judge, fully or partly, as necessary. But with respect to some major disputes which may arise between one or more castes about their worship, customs or privileges, the police can deal with them only on special authorisation of the Administrator who alone is competent to decide them."14

14. Article 6 of the ordinance of 26.05.1827.
It was provided in the ordinance that one of the judges of the tribunal at Karaikal was to be a Licentiate in Law and was to be entrusted with investigations, examinations, orders and all proceedings in civil and criminal matters, in addition to his functions as judge Commissioner and judge Rapporteur. However, no changes were introduced in the composition or jurisdiction of tribunals of First Instance in the other French establishments in India. The Choultry court which was in existence for nearly a hundred years was abolished and all cases pending before that court were to be transferred to the tribunal of First Instance. And whenever called upon by the courts the Advisory Chamber was to continue to function and was to give advice. The jurisdiction of the King’s court was to hear appeals in civil matters from decisions of the Tribunals of First Instance in various French establishments in India. It was also to hear appeals in correctional and criminal matters from judgements of tribunals from French establishments other than Pondicherry and its dependencies.

For Pondicherry and its dependencies, the King’s court was the court of First and Last Instance in Correctional and criminal matters. As per the ordinance, if the councillors and assistant Councillors were unable to attend to their works, notables could officiate. The composition of King’s court when sitting to try criminal cases was
slightly changed by the Royal ordinance of 11th September 1832. It was provided that the bench of seven judges required to give decisions in criminal matters should be composed of four Magistrates (Judges) of the court and three prominent residents. Thus public participation was assured.

**LAWS IN FORCE IN THE 18TH CENTURY**

From the practice of the courts set up by the French in the 18th century, it may be gathered that the laws in force at the time they took over Pondicherry Administration, were the rules of Dharma-Sastra as varied by customs among Hindus. Quranic laws along with local customs appear to have been applicable to the Muslims. The French were eager to follow the customary laws while administrating justice to the Indians under them. The French Administration had guaranteed to Indians the application of their own laws and customs. The Regulation of 30th December 1769 specifically stated:-

"The nation having undertaken from the very beginning of its establishment in Pondicherry to try the local native inhabitants and other Indians who had recourse to French courts, according to their own customs and usages, the Lieutenant General is required to conform in this regard, to the practice followed until this day by the civil bench of the Choultry Court."\(^{15}\)

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according to French law. The Criminal laws prevent in India were not
accepted as stated in the regulation. The other regulation of 18th
November 1769 laid down certain rules derived from local usages. It
was thus provided that all Hindu and Christian natives who exchanged
palm-leaves or letters for loans observe the law of
PANCHAREDIPATIRAM as was traditionally done. The rule required
that the creditor and the debtor as well as two witnesses and the scribe
sign the palm leaf or letter that was exchanged.

SYSTEM OF JUDICIAL ORGANISATION AND ITS RE-ORGANISATION

Prior to 1963 for a period of hundred and twenty years that is,
from 1842 the Judicial Organisation in the French Indian
establishments was based on an ordinance of 7th February 1842 as
amended from time to time. The said ordinance sought to re-organise
the whole system of judiciary. For instance, Article-4 expressly stated
that judges could not disturb in any manner the work of the
administrative bodies, nor summon before them administrators, on
account of their functions, as otherwise they could be charged with
abuse of authority. This obvious separation of powers was a great

16. Ibid Article 17, See also the Regulation of 27 January 1778.

17. Arret de Reglement of 1769. Article 12. Also see F.N.Lanude Manuel du Droit
revolutionary change from the position adopted by the sovereign council over a century before. This ordinance was amended in certain details, among others, by a decree of 29th July 1939 which downgraded the court of appeal into a Superior tribunal of appeal, by the decree of 1st March 1879 that gave extended jurisdiction to the courts of Justice of peace in Mahe and Yanam. By the decree of 11th May 1934 the courts of Justice of Peace with the ordinary jurisdiction was abolished. The decree of 22nd August 1928, made certain substantial changes.

The courts in the French establishments as constituted before the de facto cession in 1954 consisted of the following:-

(a) Superior tribunal of appeal (Tribunal Superieur de appeal) at Pondicherry with a president, two other judges, and a procureur de la Republique (Public Prosecutor).

(b) Tribunal of First Instance, Second Class, at Pondicherry with a president, a judge, and assistant judge (Judge Suppleant) and a Procureur de la Republique. Tribunal of First Instance, third class, at Karaikal, with a president, an Assistant judge and a procureur de la republique.

(c) Courts of Justice of peace with extended jurisdiction at Mahe and Yanam, each consisting of one judge and a Greffier.
The Procureur de la Republique at the Superior Tribunal of appeal performed the functions of the head of the judicial department.

With the abolition of the courts of the Justice of Peace with ordinary jurisdiction, the right of appeal of the litigants whose case involved small pecuniary value or who were convicted of minor infractions of the criminal law was taken away from them. The right of appeal of higher court was not disputed; but it was considered unnecessary to have an appeal where the pecuniary value of the suit or the penalty likely to be imposed was insignificant. Those disputes were sought to be placed, under the decret of 22nd June 1934, before a judge belonging to the second degree of jurisdiction, that is, the president of the Tribunal of First Instance. These justices with enhanced competence had the same jurisdiction in civil matters. When the justice of peace with enhanced competence sat as Police Tribunal (Tribunal de Simple Police) to try persons charged with petty offences, they could impose a sentence of simple imprisonment for five days or a fine of 15 francs. There was no provision for appeal from such sentences. The Superior Tribunal of appeal at Pondicherry however, acted in these petty matters as a court of cassation, in place of the Cour de Cassation at Paris.
With the cession of the French establishments to the Indian union powers of cassation vested in the Cour de Cassation were transferred to the High Court of Judicature at Madras.

EXTENSION OF CENTRAL ENACTMENTS TO PONDICHERY

As the Government of France had transferred its administrative powers in French establishments to the Union of India the Union Government extended the application of a number of central enactments to these establishments with a view to providing for proper administration. In the year of de facto cession as many as forty-four enactments were extended to the establishments by the French establishments (Application of laws) Order, 1954 issued under the provisions of the Foreign Jurisdiction Act 1947.

After the adoption of the Constitution (Fourteenth Amendment) Act 1963, which made these establishments a component unit of the Indian Union and turned them into what is known as the Union Territory of Pondicherry, all enactments passed by Parliament automatically apply to this territory except where the legislature specifically provides for the exclusion of the territory from the application of an enactment. As the Central enactments passed prior to the date of the de jure cession did not apply to Pondicherry, various methods were adopted to
extend the application of such enactments to the Union Territory. Provision was made to bring into operation in Pondicherry 160 central enactments by 1st October 1963, by the adoption of the Pondicherry (Laws) Regulation, 1963. This regulation covered many important pieces of legislation such as the Code of Criminal Procedure 1898, the Indian Evidence Act 1872 and the Indian Penal Code 1860. The extension of these enactments necessitated a reorganisation of the machinery established for the Administration of Criminal Justice in the territory. Further under the provisions of the Pondicherry Administration Act, 1962, ten central enactments were extended to the Union Territory between 1962 and 1967.

As early as in 1963, the Code of Criminal Procedure, 1898 and the Indian Evidence Act 1872, were extended to Pondicherry necessitating adoption of provisions of these newly extended enactments by the criminal justice system. This has again brought about substantial changes in the judicial organisation of the Territory, bringing it in line with the set up in other parts of India, and especially in the neighbouring state of Tamilnadu.
RE-ORGANIZATION OF JUDICIAL SET-UP

Upon the introduction of the Indian Penal Code and the Code of Criminal Procedure into Pondicherry from 1st October 1963, it became necessary to re-constitute the Criminal courts in the Territory. Consequently, a court of sessions and a few Magistrate's courts were set up. The Union territory was brought under one sessions division and the former Superior Tribunal of appeal was constituted as a court of sessions and the President of the tribunal was appointed as principal sessions judge, the two judges as additional sessions judges and the Procureur de la Republiqur, as public prosecutor. The President of the tribunal was also designated as the head of the Judicial Department.

The Tribunal of First Instance at Pondicherry and Karaikal were turned into Assistant Session's Judge's court with the president of the Tribunal appointed Assistant and Sessions Judge. The investigating Judge (Judge d' Instruction) of the territory at Pondicherry was appointed District Magistrate and the Assistant Judge (Judge Suppleant). A First Class Magistrate and the Procureur de la Republique, (Public Prosecutor) were also appointed. The Justice of Peace in Mahe and Yanam who presided over courts with extended jurisdiction (Competence etendue) were made First Class Magistrates.
These were all at the beginning of the switch over of criminal justice delivery system from the French to the Indian system.

THE PRESENT SETUP - THE CRIMINAL COURTS

At present there are four sessions courts in the Union Territory of Pondicherry. Out of the four, three are at the head quarters of Pondicherry and the remaining one is at Karaikal. Among the three at Pondicherry two are additional like that of Karaikal and the other one is the Principal sessions Court. The Principal Sessions Court is presided over by the Chief Judge. He is the Chief of the Judicial Department of the Union Territory of Pondicherry. The powers and duties of the Sessions Courts are same like that of the sessions court of the State of Tamil Nadu as the Pondicherry Judiciary is under the control and supervision of Madras High Court. Appeals are also made from the sessions courts of Pondicherry to the Hon'ble High Court of Judicature at Madras as it is the appellate court. The practice and procedure of criminal courts are as per the Criminal Procedure Code of India, 1973.

There is also a principal Assistant sessions judge. At present the Principal Sub-Judge is vested with the power of the Principal Assistant Sessions Judge. The Chief Judicial Magistrate is also an Assistant Sessions Judge. There is a Chief Judicial Magistrate at
Pondicherry for the whole of the Union Territory. At the head quarters in Pondicherry there is a sub-divisional Judicial Magistrate court apart from three sub-divisional Judicial Magistrate’s court each at Mahe, Karaikal and Yanam. There are two Judicial First Class Magistrates Courts one each at Pondicherry and Karaikal. There are no special Magistrate courts at present. Additional Sessions Judges of Pondicherry are having their sessions sittings at Mahe and Yanam in the model of camp courts.

Though we could see French personal laws being enforced in the Union Territory of Pondicherry even today there is no such use or practice of French Criminal Procedure. The whole criminal justice delivery system throughout the Union Territory has been tailored to the Indian system.

Thus Pondicherry is the place in India which had the fortune or misfortune of having been subjected to different legal systems quite frequently. At first it was the local customs and the laws of Chola/Pallava kings that existed in Pondicherry. Later it came under the spell of Vijayanagara empire the laws of which were not that alien to the Pondicherians. However when Pondicherry came under the British and French Rulers Pondicherians experienced the impact of both the
major systems of Europe - the accusatorial system and the inquisitorial system. Subsequent temporary change of hands of the Administration between the French and the British also did have some impact on the legal system though the British was not that enthusiastic in overturning the Indo-French system prevalent in Pondicherry. Indeed, the French tried to inject the Indian Law. But so far as criminal law and procedure were concerned the French did not adopt the Indian law at all.

The accession of Pondicherry to the Indian Union has had important and interesting results on the legal system. The French Institution came to be restructured and new institutions sprang up in accordance with the Indian Law. This has overturned many an institution which installed public confidence in Pondicherry.

Many Pondicherians do have the nostaligic feeling that the French system was far Superior to the present system. But, understandably, this view is not being shared by others who have had no experience with the earlier system. Many however argue that there are many aspects of French Law which could be fruitfully adopted in our system to make it foolproof.
Comparative law is used to describe the process or method by which two or more legal systems are compared with a definite aim.\(^{18}\) Comparative research in the field of criminal justice is necessary on two counts. It can be established at the pragmatic level that certain procedures and operations in other societies can be usefully adopted in our own; and at the theoretical level, important advances can be made in criminology through a comparative study of the patterns of crime and their prevention.\(^{19}\)

Every society attempts to work out practical solutions to legal and operational problems in the administration of criminal justice in consonance with its political philosophy, experience, resources and the state of society itself. What is conceived as appropriate for one may not be suitable for another. At the same time, a rigid adherence to a particular system, despite persisting deficiencies and failures, represents staticity; on the other hand, changes which are transplanted abruptly without reference to the socio-cultural milieu may do more


harm than good. Either of these extremes can distort the capability of a system. Yet, keeping both the constraints in view, learning from our own experience and of others is the hallmark of wisdom. The legal system, by its nature and tradition, has a tendency to function in an ivory tower. It tends to develop liking for its institutions and dislike for those of other systems. Lepaulle is right when he observed this:

"When one is immersed in his own law in his own country he is unable to see things from outside; he has a psychologically unavoidable tendency to consider as natural, as necessary, as given by God, things that are simply due to historical accident, temporary social situations."

The Criminal justice system in India is a transplanted system which has taken root through an accident of the history. It is a common feature of all countries which were once colonial possessions of the western powers. In main, the legal systems in the developed world are either the Anglo-Saxon or continental systems which accept the broad principles of liberalism and the socialist system which is more attuned to socio-economic imperatives than individual freedoms. It is visualised that in the near future, a third type might emerge to serve the needs of the people of Africa and Asia which might have characteristics akin to western liberalism and the socialist structures.
As noted earlier, the Indian criminal justice system derives much of its structure and content from the legal system of England. The Indian statutory laws - I.P.C. and Cr. P.C. were drafted by British jurists in the middle of the last century have over the years become cumbersome and dilatory.

This situation has prompted scholars to undertake comparative studies in law. And, Pondicherry which had been the testing ground of both the systems provide the appropriate background for such meaningful comparative studies.

This chapter provides the groundwork for the study involving evaluation of the effectiveness of the respective systems not only through an analysis of the various provisions in the substantive and procedural laws, but also by an examination of the efficacy and efficiency of the various institutions in the context of public opinion and impressions gathered by way of empirical researches.