2. Evolution of Judicial System in Goa

2.1. Historical Background

It was in the year 1510 that the Portuguese conquered Goa by defeating the forces of Adil Shah of Bijapur. Before that, it was the Kadambas who had ruled Goa for a long time and were succeeded by the Yadava’s of Devagiri. Goa initially consisted of Ilhas (i.e. Island of Goa) comprising of 31 villages called Tiswadi; between the two perennial rivers of Mandovi in the North and Zuari in the South.

On conquest of this island in the next three decades, the Portuguese added the territories of Bardez and Salcette including Marmugao then designated as the capital of Estado da India. Estado da India was a term designated for the Portuguese floating empire from Mozambique on the West Coast of Africa to Timor and Macau in the China Seas. The area consisted of small pockets, settlements, forts and factories all along the Asia Coast. As the floating empire shrunk in the next hundred years, Estado da India was reduced in size.

To the Old Portuguese possession in Goa, then known as Old Conquests, the Portuguese added new territories known as New Conquests. From around the third quarter of eighteenth century, the term Goa as applied to the territories found in the present boundaries.\(^1\)

As we consider the field of research, we confine ourselves to the area occupied by Goa on the date of its Liberation in December 1961 and look behind to see what type of courts rendering criminal justice, how they were functioning and how they rendered justice.

Dr. Carmo D’Souza\(^2\) states that, before the advent of the Portuguese in Goa. Adil Shah of Bijapur had a sway on the major part of the territory and it was but natural that Sultanate judicial system prevailed there. Under the system Sultan was the most powerful judicial authority presiding over the Royal Court of Justice assisted by his appointee, the Qazi.

Besides, the judicial authorities such as Vazirs and Amirs of the Court who were invested with the original and appellate powers to be judicial heads of their territories, the office of Tarafdar had his judicial jurisdiction over the \textit{Atraf} or Taraf which included a group of villages. The Mokasi or the Havaldar also exercised judicial powers over the \textit{Mokasa} territory, where it existed\(^3\).

Dr. Carmo has also graphically explained the type of legal system that prevailed over the Goa Territory. At the beginning no line seems to have been drawn between civil and criminal matters. There was a mix of both the jurisdictions and what were more important were the persons leading the system rather than the procedures.

\(^2\) \textit{Id} at 24.

\(^3\) P.P. Shirodkar \textit{“Researches in Indo-Portuguese History”}, Publication Scheme – Jaipur, . 1998,pg.72.
According to Dr. Carmo D’Souza⁴, the transition of this judicial system into the new system under the Portuguese was not very quick in succession. The Portuguese took years to apply the laws prevailing in Portugal with several alterations depending upon the circumstances and situation in this part of the world to the local population.

On 16th September 1526, they made the first attempt to codify the uses, rights and customs of the Gaunkars, residents and farmers of the island of Goa by introducing a charter which regulated the payment of the revenue, taxes on the inheritances and properties to the King thereby protecting their rights on reciprocal basis. Under this Charter, certain cases which were not grave enough were judged by the Thanadar or (Chief Thanadar) in consultation with some Gaunkars.

In the case of extremely grave cases of rights, the Chief Thanadar was supposed to report them to the Chief Captain and the Governor of Estado da India or to the Captain of the City of Goa or to the Revenue inspector, if the matter pertained to him, for the necessary action and punishment to the guilty as per the Statutes and laws of the Portuguese realm. ‘The System of Father of Christians⁵’ prevailed during the early days of the Portuguese rule. After conversion of natives to Christianity, they began to live in communities, may be to keep themselves secure and also strengthen their faith.

⁴ Supra note 2.
⁵ P.P. Shirodkar, supra note 3.
The Priest who was leading the unit becomes a natural arbiter of disputes. He was in a position to secure obedience to the system through spiritual pressure and the mighty sword of ex-communication, which would put the person outside the community into social isolation. In the closed society, social isolation was feared more greatly then sending to jail or other physical punishment, thus the ‘Father of Christians’, came to be accepted as a person dealing with administration of justice as also looking after the physical and moral welfare of the community.

Before the Portuguese conquered Goa, there were seeds of Panchayat system in the villages that came later under one rule. The Muslim Rulers had the institutions of Qazi, Vazirs, and Amirs in the Mohammedan tradition. A group of villages together was judicially administered by an official called Tarafdar. P. P. Shirodkar⁶ says in the initial period of the Portuguese regime, a judicial Dignitary called Ouvidor General i.e. Auditor General wielded civil and criminal powers in the newly established colonial pockets.

Subsequently, in 1544, a three man judicial body namely Relacao Das Indias i.e. High Court headed by a Chancellor was established with its headquarters in Goa but with the authority over all the Portuguese settlement in the East. This judicial body has undergone a metamorphosis in the course of time with several alterations in its constitutional structure. In 1587, it had 10 member panel of judges. By the turn of the 16th century, in 1617 it comprised of 10 appellate

⁶ Ibid.
judges with four more waiting in case of need. In 1628, it dwindled to five and went up again to six in 1748.

But at the village level there were village communities known as Gaonkaria, whose members were called Gaunkars formed a closed unit with plenty of autonomy and exercising economic, political, judicial, social and religious functions, the Gaonkaria settled most of the judicial disputes at this level.

The Gaonkaria was assisted by a village clerk known as Kulkarni, who gave expert opinion on the uses and customs as well as procedures of the village. He was of the learned caste. At the highest level where a number of villages were grouped together, the unit was called Camara General. It decided general cases and those having inter-village repercussions.

This unit was assisted by a Scribe known as Nadkarni who was an expert in the law, uses and customs of the area. There also existed an official called Chief Thanadar who was a link between the General Body (Camara General) and the Muslim rulers. The Chief Thanadar administered justice for the whole territory.

It appears Alfonso-De-Albuquerque on conquest of Goa, appointed Timoja as Chief Thanadar who had also to administer the justice to the Hindus.

This aspect is supported by P. P. Shirodkar who states as follows: This dynamic personality had not left untouched the judiciary in the colonial domains of Portugal which were in the state of extreme decadence during his

---

7. *Id* at 72-73.
times. The King supported this view that the malady of decadence resulting out of administrative confusions, unwanted relaxations, abuses and deformities which year by year were precipitating could be and should be rectified at the earliest to avoid the total ruin of the Portuguese empire.

He therefore envisaged judicial reforms in the East as one of the remedies. In pursuance to this, the Fundamental Law of 15th January 1774 abolished the Relacao de Goa (High Court of the City of Goa) declaring magistrates and the officials as extinct and ordered that their functions should be exercised by the Auditor General and Judge (Juizo de Fora) with a directive that this law should be observed strictly.

Marques de Pombal pursued the new judicial reforms because he as well as the King was convinced that the system had reached such a stage that it was impossible for it to be fruitful and practical. According to them, it had taken such a perverse form with several antiquarian laws that it was producing the contrary effects. As a result, the people in the East were forced to breathe the air of intolerable oppressions\(^8\).

Under the new reforms, the Governor-General was assigned the permanent responsibility of Regedor de Justica (Chief Justice) in his entire jurisdiction. The Auditor General of the State of India was empowered with the duties of Chancellor, Intendment-General of Police, Judge of the Revenue Instruments,

\(^8\) Id at 74-75.
Chancellery and Justifications, Purveyor of the Deceased, the Missing, Orphans, Chapels and the Residue, with residence in the city of Goa.

He was supposed to deal with the appeals against the sentences passed by the judges and appeals in the proceeding if the main law-suits and the legal cases of the incidents of capital punishments. The Auditor General was given wide scrutiny powers as regards the ships leaving the port of Goa for Portugal. In the similar vein, he was asked to deal with the appeals against the Posturas (Laws) made by the Municipalities and the punitive steps passed by them.

While he was supposed to keep watch over the Royal Securities, he was duty bound to make an inquest every year of all the officials of the Judiciary, Revenue and even the ecclesiastical personnel. He would act as the Judge of the Crown and the Revenue. He had one important humanitarian function also. It was to visit the prison of Goa, on the first day of the month along with the judges from Goa, Bardez and Salcete to inspect the conditions of the inmates⁹.

The judges (Juízos de Fora) of Goa, Bardez and the adjacent islands (Ilhas) were also the judges of Orphans, Customs and the Auditors of the War personnel. These judges had the cumulative jurisdiction in all the criminal cases. And the Judge of Goa would serve as the Attorney of Crown and the Revenue¹⁰.

---


For the Criminal acts, the punishment was well prescribed. All the criminal proceedings would be verbal. If the crime was major one, the proceedings would be placed by the judges before the Auditor General and the Bench consisting of himself and other judges (Juizos de Fora) of Goa, Bardez and Salcete in the presence of the Governor-General would pass the sentence. As for the cases of conspiracy, sedition or rebellions against the Royal State, in order to maintain tranquility such cases would be dealt with immediately without any privileges and appeals to the King or any Courts\textsuperscript{11}.

As for the civil law-suits, the proceedings were well regulated by the judicial order. The lawyers who tried dilatory tactics were fined and at times were professionally suspended. Further, the Palace of Jury was replaced by a Board which included the Governor of Estado da India, Auditor General and the Judges of Goa. Among several other matters, it would determine the number of advocates in Ilhas and adjacent provinces\textsuperscript{12}.

While regulating the judicial administration in Estado Da India, the King as well as Marques de Pombal expected all the Magistrates to promote and sustain the faithful execution of all the laws in order to do away with injustices meted out of the populace which on account of its own ignorance precipitated the malignity of the times. They directed all the officials to follow and adhere to the Fundamental Law strictly in defense of the Crown as well as the populace.

\textsuperscript{11} Ibid.

\textsuperscript{12} Id at 76.
which was the victim mainly of the abominable Jesuits who misguided it through *Bulla de Goa* and Indices Expurgatorios which has been prescribed earlier by the law of 2nd April 1768\textsuperscript{13}.

These radical reforms in judicial administration had far reaching effects in the General life in the East, supplemented by the other measures of reforms on the ecclesiastical front. They brought a great measure of relief to the public subjected for a long time to the inhuman treatment tinged with villainy and atrocity. Marques de Pombal has immortalized himself not only by his action of abolishing the Inquisition but also by the judicial formidable opposition of the clergy. It was he who allowed the slaves to breathe the air of freedom.

He was solely responsible for the emancipation of the Red Indians in Brazil. He put an end to the distinction existed among the Christians and non-Christians and among the Hindus and the Christians in Goa. His regulations pertaining to the police force brought tranquility in general. However, most of these reforms were short-lived. With the death of Dr. Jose I on 24\textsuperscript{th} February 1777, Marques de Pombal went into oblivion facing humiliation at the hands of his ardent enemies and the gigantic work he put in during his 26 years of active life in the administration and politics was left behind only to be admired by the generations to come.

\textsuperscript{13} *Ibid.*
With the assumption of the Crown by D. Maria I on 04th March 1777, whatever reforms Marques de Pombal had introduced, including the judicial ones was made extinct and the *Relacao de Goa* (High Court) was re-established under the Law of 01st April 1778. His action of abolition of *Relacao de Goa* was not relished by many but considering the prevailing situation and circumstances it was a step towards social liberty\(^{14}\).

The newly re-established High Court comprised of a Chancellor and five Judges. However, later the office of the Intendent-General of the New Conquests was abolished and its powers were invested with the High Court.

During the Portuguese reign in Goa the system of Gaunkars continued till about the mid 19\(^{th}\) century when, according to Dr. Carmo\(^ {15}\); all local judicial authorities were swept aside in the succeeding years of various judicial reforms such as those of 4\(^{th}\) August 1881, which modified Civil Procedure Code of 08\(^{th}\) November 1876, a Penal reform of 14\(^{th}\) June 1884, Penal Code of 16\(^{th}\) September 1886, the Regiment of 20\(^{th}\) February 1891 and the Decrees of the Provincial Government of the Republic of 10\(^{th}\) October 1910 which revoked all the exceptional laws which forced the individuals to the exceptional judges for crimes.

The Decree of 31\(^{st}\) October 1910 on succession which amended the Civil Code, the Decree of 03\(^{rd}\) November 1910 on divorce and the Decree of 25\(^{th}\) December

\(^{14}\) P.P. Shirodkar *supra* note 3.

1910 on family laws paved way for evolving a reformative pattern of judicial system in the 20th century."16

During 1920’s among the various decrees and laws passed, a special mention is necessary for the Decree of 21st October 1922 on the Register of Landed Property and the Decree of 18th September 1922 on Notaries.17

2.2. Evolution of Formal Judicial System during Portuguese Period

With a view to consolidate the political hold as well as judicial powers, Portuguese Republic introduced a new body namely Judicial Organization for Colonies by the decree of 20th October 1927, wherein the Estado da India (State of India) was made the part of the judicial District of New Goa, where Tribunal de Relacao de Nova Goa (Appellate Court of North Goa) functioned. Under this decree, this court could decide upon the cases of second instance, of the Courts of the whole of Estado de India, Macao and Timor. This court comprised of five Judges, all Judicial Magistrates of Second Instance, one of them being President of Commission, nominated by the Minister."18

Besides this Court, Public Ministry in Portugal was represented by Procurador da Republica (Advocate General) who was the Judicial Magistrate of First Instance or Second of the Colonial Cadre, nominated in commission of judicial

---

"P.P. Shirodkar supra note 3.
"Ibid.
"Ibid, Chapter III.
service of the minister. He was the head of Public Ministry of the Judicial District and represented executive powers especially with regard to Fazenda Nacional (National Exchequer) before the Appellate Court\textsuperscript{19}.

It may be necessary to add here the special arrangement of municipal judges at Mormugao, Ponda and Diu. The special Municipal judicatures of Mormugao and Ponda had a Municipal judge each subordinate to the Juiz De Direito (Judge of Law) nominated by the Minister. The Judicature of Diu had a Municipal Judge who was nominated every two years by the Governor General.

It is interesting to note that in all these Municipal judicatures existed an agent of the Public Ministry namely Sub-Delegado do Procurador da Republica (Sub-delegate of the Advocate General). By the legislation of 08\textsuperscript{th} May 1952, the judges of municipal judicatures especially of Mormugao and Ponda were empowered to deal with all the criminal acts at the first Instance which did not come under the cases of civil and commercial nature involving the sum of not more than 50,000 escudos (Rs. 8,333/- approx.). They could also intervene in the cases of the Orphanological inventory involving a value not exceeding 50,000 escudos. The Municipal Judge of Diu was similarly given wide powers to deal with Criminal and Orphanological inventory cases\textsuperscript{20}.

\textsuperscript{19} \textit{Ibid.}

\textsuperscript{20} \textit{Id} at 80.
Thus we see what the judicial pattern that existed prior to the Liberation of Goa had been the result of the Judiciary’s evolution that continued to progress in the metropolis of Portugal and its colonies. In the process, the system has left behind an immense collection of records in Goa as well as in Portugal. Though it is extremely difficult to make a survey of all records, it is necessary to highlight certain judicial records which are of immense importance to the history of the judiciary in the erstwhile Portuguese regime\(^{21}\). They are as follows:-

1) Procuradoria de Republica (296 Volumes),

2) Judicial Municipal, Diu (1,595 files),

3) Judicial Court of Salcete Inventarios Orfanologicos (7,500 files),

4) Processos Civeis (11,800 files),

5) Processos Criminais (13,800 files),

6) Policía Correcional (1,800 files),

7) Process Tribunal Militar (over 1,600 files),

8) Cartas de Juizes Pedancos (1 Volume),

9) Chancelaria (30 Volumes),

10) Contratos (2 Volumes),

\(^{21}\) Id at.80-81.
11) Feitoria,

12) Officios da Corte (6 Volumes),

13) Justica (15 Volumes),

14) Assentos Da Meza do Paco, i.e. Palace Table Proceedings (1 Volume),

15) Processos Judiciaes (17 Volumes),

16) Provedoria (92 Volumes),

17) Relacao de Goa (5 volumes),

18) Conselho de Justica (1 Volume).

All local judicial attributes were swept aside by the currents of judicial reform, based on European influence and pattern. The existence of different groups in the territory, like, Portuguese on deputation, members of the village community, the new-Christian converts, the Hindus, the Clergy and religions, had created for Goa multifaceted adjudicating machinery. Letters patent were issued giving detailed jurisdiction to the officials. The Viceroy and Auditor Judges were given well defined jurisdiction to decide civil and criminal cases. Their letters patent were having specified pecuniary limits in civil cases and limit of fine or punishment to be imposed in criminal cases.
This has been well explained by P. P. Shirodkar\(^{22}\), the Viceroy or Governor represented the King of Portugal in the Portuguese Eastern Empire. He enjoyed vast criminal jurisdiction, he could execute a sentence even without further appeal. He was the final authority in the administration of justice. To avoid criticism, the Viceroy appointed an Auditor Judge to look after the administration of justice, especially to deal with criminal matters.

The Auditor General (Judge) was the higher authority to the Auditor judges and acted as a coordinating and controlling official. More or less he acted as an appeal Judge. To take care of Criminal matters, the Post of Auditor General was bifurcated into two separate departments; there was an Auditor General for Civil Matters and an Auditor General for Criminal matters.

Dr. Carmo\(^{23}\) mentions about a document of 1550 which describes the appointment of one Francisco as Auditor General for crimes. It was clearly laid down that he did not enjoy jurisdiction over revenue matters or matters pertaining to chancellery. Thus the criminal jurisdiction came into its own.

From the Criminal law point of view, the Post of Promoter of Justice is interesting. His main function was to set the judicial machinery in motion to meet the ends of justice\(^{24}\). The report of criminal proceedings regarding deaths and other offences were to be submitted to the Promoter. The Promoter had to

\(^{22}\) Id at 73.

\(^{23}\) Dr. Carmo D'Souza, supra note 15 at 32.

\(^{24}\) Id at 34.
draw up a roll of names of those found guilty from the report and had to request the Auditor General to apprehend and prosecute them.

Also reports of inquiries conducted at various forts of India and at Ormuz, Mallaca and Soffala, concerning deaths, amputation of parts of human body and other such types of crimes were required to be forwarded to the Auditor General, who had to submit it in his turn to the Promoter of Justice. He had to decide on the prosecution of the accused. Revenue matters were kept out of jurisdiction.

The Promoter of Justice had to build up the suit on the part of justice before the Auditor Judge about the suits, where he had to act as an accuser on the part of justice. It can be seen that the Promoter was a very important official in the judicial machinery and had to facilitate the prosecution of the guilty. He represented the Arm of the Law.²⁵

There was also a post called the ‘Judge Conservator of Christians’. He had criminal jurisdiction and had to deal with the problem of local Christians. He could use summary jurisdiction in matters, which did not involve the flow of blood. He was to be appointed from the secular and not ecclesiastical community. This seemed to be a very right move to keep the Church authorities out of the criminal justice system in Goa.²⁶


Then, there was a judge for the Hindus and the inhabitants of new conquests. Alfonse De Albuquerque had solemnly promised the Hindu inhabitants the preservation of their uses and customs which had culminated in the Charter in Charter of 1526. The prevailing judicial system consisting of ordinary, Auditor and High Court judges was available to the Hindu community as they were available to others, so also in criminal cases27.

2.2.1. The High Court28:

The establishment of the High Court in Goa on 03rd April 1544 was an important step in the direction of providing justice to the people especially through appeals. Dr. Francisco Toscano, who was appointed as the Chancellor as well as the Procurator of the cases of the dead and Simao Martins, who was appointed as the Auditor General as well as the judge of the matters of the Crown, together contributed towards the working of the High Court.

The Auditor General also dealt with criminal cases and was empowered to accept complaints, to conduct inquires, to pass letters of Security or issue arrest warrants just like correctors of crimes of the Royal Court in Portugal and also heard appeals from lower officials.

The chancellor was the head of the court and had the power to check and review machinery of all legal and judicial material going pit of the court. He

27 Id at 36-38.
28 Carmo D'Souza, supra note 15.
was also empowered to pass letters. He enjoyed all the powers that are Civil and Criminal Jurisdiction\textsuperscript{29}.

The second regiment of the High Court in 1548 laid down that in criminal matters, cognizance belonged to the Auditor General and the Judge of Revenue, they had to proceed with the case upto the end by themselves, and those contradicted and so on, were to be taken to the High Court bench and decided by at least 3 judges. In cases involving death, three conformable votes were required for decision.

The Auditor General had the power to order scourging for any captive slave or local without appeal or aggravation. The concern here was to maintain law and order at any cost. The regiment provided with a compulsory appeal against death sentences imposed by captains of Forts on Portuguese citizens\textsuperscript{30}.

In 1587, major changes were brought about in the functioning of the High Court. The number of Judges was increased to eleven. Separate duties were assigned to all of them. The Auditor General was given the jurisdiction in criminal matters so also the promoter of the cases of the Dead\textsuperscript{31}.

The Viceroy was given full powers and the civil and the criminal judges of the High Court had to account to him. In important cases of imposition of death penalty on a person of status, the judges had to account to the viceroy.

\textsuperscript{29} Ibid.

\textsuperscript{30} Id at 98 -101.

\textsuperscript{31} Id at 101 - 102.
personally before executing the sentence to avoid miscarriage of justice, he also had power to grant pardon and grant of mercy petition\textsuperscript{32}.

In criminal matters the Auditor General had power to take at first instance cognizance of all the delicts committed in Goa. He was the Judge of first instance. He also heard criminal aggravations of cases decided by different judges in Goa. He enjoyed a dual function, he was for Goa what the corrector of the court was for the city of Lisbon and also he was appellate judge functioning in High Court for cases coming on appeal from the other areas not in Goa city jurisdiction\textsuperscript{33}.

Since the Portuguese maritime empire was based on trade and commerce this involved human personnel as Traders, Sailors, Soldiers, Administrators and Settlers. It was but fair that the interest and acquisition of the above personnel was protected by law in the eventuality of death. For this purpose special official was installed in the High Court called the Chief Promoter of the cases of the dead. The Promoter took cognizance at first instance of cases arising within the City of Goa and an area of 5 leagues around, it including the territories of Bardez, and Salcete, even though the last two areas were situated outside the radius. The duty of the Promoter was to enquire into the causes of death and record the same\textsuperscript{34}.

\textsuperscript{32} \textit{Ibid.}

\textsuperscript{33} \textit{Id} at 105.

\textsuperscript{34} \textit{Id} at 107 -108.
Another important function of the High Court was the grant of pardon and the Condonation of sentences. This aspect was very important because the punishments were harsh and created a great deal of fear in the minds of the people. The application of Penal Law of Portugal to Goa produced anomalies in justice which had to be rectified. This required a flexible attitude for which this power to grant pardon became useful. There was also power to grant bail on financial security (Alvaras de Fiancas). Also High Court was empowered to allow prisoners to change prisons one place to another.\(^{35}\)

From the above discussion we can draw the following conclusion regarding the State of evolution of Criminal Judicial System in Goa in the earlier period of Portuguese rule:

1) The Portuguese created a very complex judicial system which was based on the Inquisitorial model coming down from the Roman Law System. This means the Judge had also inquisitorial powers to investigate crimes and come to conclusions. This is not so in the Indian system where the Judge only appreciates evidence and gives judgment while the police do the investigative part.

2) The Portuguese settlers who were responsible for selecting local Judges and safeguarding their interest. The village community members maintained the indigenous system of administration of justice by Village Communities.

\(^{35}\) *Id* at 111.
3) The Letters Patent were given to the Judges which defined the jurisdiction of the Judges just as in the Portugal.

4) The Viceroy played an important role in the administration of the justice.

5) The High Court of Goa played an effective role to decide appeals and other matters according to the law.

6) The missionaries succeeded in having a special judicial set up for local Christians. Under this system Priest and some lay persons were appointed to grant Justice.

7) The Village Communities were strengthened by proclamations which maintained local uses and customs and indigenous judicial structure.

8) Even a Judge was appointed to dispense justice to the Hindu Community.

9) A system of Inquiry Officials were appointed with jurisdiction to rectify errors committed by the Judges and to Judge and punish the guilty.

10) To protect interest of Orphans Judges were appointed. They were also kind of executive magistrates for matters concerning the Orphans.

11) The Power of the Church to administer justice and that of the State sometimes conflicted and the attempt of the Church to encroach upon secular Judicial Authorities was condemned. There was Tribunal of
Inquisition established in Goa during the mid 16th Century and abolished in early 19th Century to try cases of Heresy.

2.2.2. The Lower Courts

The Portuguese Government ultimately issued a Decree which held good till the liberation of Goa took place. This Decree does away with the older regiment of administration of justice of 20th February 1894. It organized the Judiciary under a Superior Judicial Council of Colonies.

The main provisions of the decree are as follows:

Art 1 : Approves the judicial organization of colonies.

Art 5 : Civil and Commercial cases will be processed and judged in terms and forms as is done in the Matropole (Portugal) except in what is applied specially to colonies. Such special laws can be applied after publication in the Official Bulletin of the respective colony.

Art 7 : Summary proceedings will be carried on for transgression or crimes which separately or cumulatively correspond to any of the following punishments.

---

36 Id at 76 to 78.
38 Ibid.
1. Correctional imprisonment, correctional work or banishment 
   \((Desterro)\) till 6 months.

2. \textit{Multa} up to 6 months or 500 or 300 rupees or \textit{patakas} when the 
   law fixes the quantity.

3. Suspension from employment till 2 years.

4. Suspension from political rights up to 2 years.

5. Reprimand (\textit{Repreensao})

6. Censure (\textit{Censura})

Sole paragraph: In the judgment of this process will be observed, 
some articles of earlier decree of 1915 and 1916 are observed.

Art 8 : Refers to process of correctional police. As per Art 8 the crimes 
mentioned earlier in Art 7 Nos. 1 to 4 are judged under police 
correctional if the penalties are of higher order but of same nature.

Art 9 : Judgments under ordinary process (\textit{de querela}) will be done 
without the intervention of Jury for all crimes which corresponds to 
penalties graver than those mentioned in Art 7 and 8.

Sole paragraph: In this process the judge will judge both the fact 
and law but without any appeal to \textit{Relacao} (High Court).
Art 10 : When in the Criminal process, the parties have not renounced audition appeal, in that case at the audition of judgment will be written down only the alterations or postponement of statement of witnesses, if these are already recorded in Corpus de delito.

Art 11 : In the process of querela it is not permitted to renounce the appeal.

Sole paragraph: Appeal is compulsory on the part of Ministry of Justice for a sentence which condemns in penalties superior to 3 years of exile (degredo) or of public works.

Art 12 : The penalty of exile (degredo) applied by Civil Courts to accused who are non Europeans or non assimilated will always carry an alternative of equal time of public work except if it concerns dangerous accused.

Paragraph one : The penalty of public work will be done in the same colony.

Paragraph two : In colonies where there are no such proper establishment, the Governors will fix a place where they can fulfill their penalties.

Art 44 : In Julgados which is not the seat of Comarca, the jurisdiction is exercised by the Municipal Judge.
Art 45 : The Municipal Judge are nominated for 2 years by the Governor of the colonies from a triple list submitted by the President of Relacao (High Court), preferring those who have higher studies of special or secondary level.

Art 48 : Next to the Municipal Judge functioned an agent of procurator of Republic, designated as sub-delegate of Procurator of Republic.

Paragraph one : The sub delegates before Municipal Judges are nominated by the Governor of Colony over the proposal submitted by the Procurator of the Colony.

Art 50 : In the villages (Freguesias) there is a popular judge with his substitute both nominated each year by the Governor over proposal made in triple list by the respective District Judge (Juiz de direito).

Art 63 : Jurisdiction of High Court some of the areas of Jurisdiction among others are:

1. To take appeal of decision given by Juiz de direito or by the Arbitrator in all civil, criminal and commercial cases.

2. To take cognizance of appeals on decisions of arrest (embargos e arrestos) decreed or confirmed by the Juiz de direito.
3. To review sentences given by foreign courts and to confirm them if in order.

4. To decide appeal from the decisions of *Juiz de direito* on appeals of Conservators, Secretaries of Tribunal of Commerce and Notaries.

5. To decide appeal from decisions of Portuguese consular tribunals.

6. To decide appeals over electoral proceedings.

7. To decide positive or negative conflicts of Jurisdiction between *Juiz de direito* or other Judicial Authorities in the Comarca.

To advert (*Advertir*) on judgments (*acordoas*) and penalize on costs and *multas* in terms of law judges and other judicial functionaries of the district.

To advert ( *Advertir* ), apply *multas* and suspended advocates and judicial procurators Judge matters about errors of office of all the judges (*de direito*) and members of Public Ministry was those judges as well as crimes which they commit within or outside of the exercise of their functions within the *Comarcas* of the judicial district.

To judge actions of losses and damages against judges and members of the Public Ministry mentioned in previous part.
8. To judge errors of office of Juiz de dereito and members of the Public Ministry before them.

9. To head the Criminal Registration in respective area of jurisdiction.

Art 77: It is within competence of Municipal Judge to organize crime text. To Judge crimes and transgressions corresponds separately or cumulatively to:

(a) Imprisonment or correctional work till 6 months.

(b) Banishment up to 6 months.

(c) Multas of 6 months or 500 Escudos or 300 Rupees or Patacas, when law forces the amount.

To pronounce on crimes which correspond to major penalty or to order to achieve respective process, when there are no sufficient indices for pronouncement.

Art 81: Popular Judges

It is within competence of popular judges

1. To conciliate parties in the suit, writing it out in destined book.

2. To judge ex aequo ed bono and summarily up to 50 Escudos or 15 Rupees or Patacas.
3. To write the statement of Public Crimes (*corpo de dereito*) committed in the Village and sending it immediately to superior judicial authority with the imprisoned if any.

The Chapter VI of the Decree of 1927 has the following important features on sessions and audiences among others.

Art 113 : High Court: 2 audiences per week and extra-ordinary as required.

Art 114 : Judge the *dereito* – 2 sessions per week

Art 117 : Sessions and audiences are public unless contrary found necessary.
2.2.3. Judicial District of Nova Goa:

The Judicial District of Nova Goa was divided into five Comarcas given below:

<table>
<thead>
<tr>
<th>Comarca</th>
<th>Seat</th>
<th>Territorial Areas</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bardez</td>
<td>Mapusa</td>
<td>Bardez with excepting Revora Assanora, Thivim, Nerul, Pilerne, Penha de Franca and Salvador do Mund (Reis Magos) Pernem (exception of Alorna and Ibrampur).</td>
</tr>
<tr>
<td>Island of Goa</td>
<td>Panjim</td>
<td>Tiswadi, adjacent Island except St. Esteves, Narova, included Reis Magos, Nerul, Pilerne, Penha da Franca, Salvador the Mundo except Orgao.</td>
</tr>
<tr>
<td>Quepem</td>
<td>Quepem</td>
<td>Quepem, Sanguem, Canacona, Village of Assolna, Paroda Cuncoli, Velim of Salcete and Island of Anjadeva</td>
</tr>
<tr>
<td>Salcete</td>
<td>Margao</td>
<td>Salcete except Paroda, Assolna Cuncolim and Velim.</td>
</tr>
</tbody>
</table>
Also the Comarca of Daman with a seat of Daman and Comarca of Macau with the seat at Santo Nome de Deus and Comarca of Timor with the seat at Dile came under the Judicial District of Nova Goa.

2.3. Legal Profession in Goa:

No Judicial System can work without the assistance of the legal profession. The legal profession in Goa during the Portuguese Rule was controlled by the Decree of 1927\(^{39}\).

Article 84 of the Decree\(^{40}\) inscribed those who could be inscribed as Advocates. There were two types of Advocates:

i) Degree holders or with a courts of Licentiate in law.

ii) Those who had a license to be Advocate

This article provides that the officials in the colonies who were remunerated by the State were not permitted to exercise the function of Advocate unless they obtained a special license from the Governor of a Colony, given annually or in plaints or in suits of their own either for being Bachelors or Licentiate in Law. However in no case these officers could advocate any suit against the state or against the Resolution and Acts of the Government of the Colony.

\(^{39}\) *Ibid.*

\(^{40}\) *Id* at Art 84, 1 and 2.
The Authority to practice was laid down in the following Articles:

Art 85 : In the High Court and before each (Juiz de dereito) there will be special book on which will inscribed the names of all the those people who can exercise the profession of advocacy before the Courts of Judicial District or respective Comarca\(^{41}\).

Art 86 : To inscribe the names for Bachelor or licentiate in law in the book of Advocates, it is a sufficient if they show that the license (Carta) or Certificate in original or an attested copy\(^{42}\).

Art 87 : The Bachelor or licentiates in law can (exercise) practice before any Court of any instance or nature in the Judicial District in which they are inscribed\(^{43}\).

Art 88 : The provisional Advocates (de provisao) can only practice before the Court which functions in the Comarca for which they have taken license\(^{44}\).

Art 89 : The License for advocacy can be conceded or granted when the respective Comarca Judge, after hearing the delegate of Procurator of Republic, recognizes by a dispatch preferred in virtue of the

---

\(^{41}\) Id at Art 85 of Decree of 1927.

\(^{42}\) Id at Art 86.

\(^{43}\) Id at Art 87.

\(^{44}\) Id at Art 88.
application by the interested party, that it is necessary, as there is
absolute lack of advocates who are Bachelor or Licentiate in law.45

Solo one : From the judgment (Dispacho) by the Judge an
appeal to the President of the High Court, can be
preferred by the delegate of Procurator of Republic
or by the interested parties from the Comarca46.

Art 90 : The maximum number of advocates (de Provisao) in each
Comarca will be fixed by High Court after hearing the respective
Judges of Juiz de dereito47.

Sole para : This number can be altered by the Court on the
proposal of the Juiz de dereito of the respective
Comarca.

Art 91 : Any person who deserve License for advocacy will apply to the
President of the respective High Court attaching the following
documents to his application48.

1. Certificate which proves majority or emancipation of the
applicant.

45 Id at Art 89.
46 Ibid.
47 Id at, Art 90.
48 Id at Art 91.
2. Certificate from criminal register to show that he is free of crimes.

3. Certificate of Probity or good conduct passed by Corporation or Administration of the respective area.

4. Certificate passed by Delegate of Comarca that maximum number of provisional advocates is not filled.

5. Certificate of final decision which is referred in Art 89.

6. Certificate which shows that the person has completed License Course or any Superior or Special Course.

Art 92: The President of High Court will examine the documents submitted by the applicant and recognizing that he is satisfied with the requisites of the previous article, he will order the Juiz de direito of the respective Comarca to proceed with the examination of the Applicant or in contrary he will (Indeferire) reject the request.

i. Exam will be about general notions, laws, terms and procedural formalities.

ii. The exam will be conducted in the seat of respective Comarca before a jury formed by the Juiz de direito who will preside also by the respective delegate of Procurator of Republic and the Conservator of Registrar of Properties or in Comarcas where
there is no such person then by first substitute of the District Judge.\textsuperscript{49}

iii. In Comarcas of two Judges, the Jury will be constituted by the two Judges presided by the senior most and in the case of absence of any one of them, by Conservator of Registrar of Properties or when he is not there, by the first substitute of the Civil Judge and the Delegate of the Civil Judge and in the case of his absence, by the Delegate of the Criminal Judge.

iv. The Jury which is referred in the previous paragraph cannot function without the presence of at least two magistrate members.

\textbf{Art 93 :} The \textit{Juiz de dereito} will remit the Certificate of the proceedings of the exam to the President of the High Court which will be attached to the respective process, granting, if the applicant is approved unanimously.

\textbf{Sole para :} If the Applicant is approved by the majority, it will be at the discretion of the President of High Court to grant or to deny the license.\textsuperscript{50}

\textbf{Art 94 :} The provision of license for advocacy is given in the forms of a Certificate (\textit{Alvara}) with previous payment of stamps and due

\textsuperscript{49} \textit{Id} at Art 92.

\textsuperscript{50} \textit{Id} at Art 93.
duties and must be registered in the Head Office of the High Court\textsuperscript{51}.

Art 95 : Advocate is suspended

i) When it is pronounced (*pronunciado*) and while the effects of pronouncement continued.

ii) When condemned in the process of correctional police while the effects of condemnation continued.

iii) When he has been suspended (*interdito*) of civil and political rights.

Sole para : This suspension is ordered or lifted by an order (*dispacho*) of *Juiz de direito* with appeal to the President of High Court\textsuperscript{52}.

Art 96 : The license to advocate (*cassada*) can be cancelled if:

1) When he is condemned in ordinary criminal process (*provisionarios*).

2) When unfit to exercise his profession as displayed by his behavior or by his ignorance or it is demonstrated from his writing that he is unfit to exercise his profession\textsuperscript{53}.

\textsuperscript{51} *Id* at Art.94.

\textsuperscript{52} *Id* at Art 95.
Art 97: The cancellation of License is made by a dispatch by the president of the High Court with the previous audience of the concerned person and public ministry and can also be by the *Juiz de direito*.

Sole para: From the order of the *Juiz de direito* there will be an appeal to the President of the High Court.\(^{54}\)

The above description of the Lower Courts and of the High Court and also of the legal profession gives us a complete picture of the framework of the Justice Delivery System in Goa up to December 1961 when Goa was Liberated by India. In comparison between the system in Goa before and after Liberation, one can see the missing link and that is Freedom and Democracy. That is why, the comparison between pre Liberation and Post-Liberation era becomes essential and very interesting.

Apart from the Portuguese system being highly related to the Roman System of Justice Dispensation, the Portuguese Government lacked total appreciation of Democratic values. This aspect provides the Indian System a higher appreciation and consequent greater faith of the people in the established system of justice.

We now move to the next chapter which deals with the administration of Criminal Justice in Goa.

\(^{53}\) *Id* at Art 96.

\(^{54}\) *Id* at Art 97.